



Legislative Assembly for the ACT

STANDING COMMITTEE ON PUBLIC ACCOUNTS

Review of Auditor-General's Review Report April 2005: Matters
relevant to the Office of the Special Adviser, Council of
Australian Governments and Inter-governmental Relations

AUGUST 2006

Report 6

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Resolution of appointment¹

The Legislative Assembly appointed the Standing Committee on Public Accounts on 7 December 2004 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;
- (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; and
- (iv) examine matters relating to economic and business development, small business, tourism, market and regulatory reform, public sector management, taxation and revenue and sustainability.

Terms of reference

To examine Auditor-General's Review Report of April 2005: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations* and report to the Legislative Assembly for the ACT.

Conduct of inquiry

The Committee met on 26 July and 10 August 2006 to discuss the Chair's draft report, which was adopted on 10 August 2006.

¹ Legislative Assembly for the ACT, Minutes of Proceedings, Tuesday 7 December 2004, p. 12.

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SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

2.6 The Committee recommends that the Government develop clear policy and guidelines for secondment arrangements.

RECOMMENDATION 2

2.21 The Committee recommends that the Government prioritise the finalisation of its response to the Commissioner for Public Administration's *Report of the Review of the Public Sector Management Act 1994*.

RECOMMENDATION 3

2.33 The Committee recommends, to the extent that work is not already taking place, that the Government look at implementing recommendations numbered 26 and 27 made in the *Report of the Review of the Public Sector Management Act 1994*.

RECOMMENDATION 4

2.35 The Committee recommends that the *Public Sector Management Act 1994* be revised to prescribe principles of procedural fairness for the early termination of a Chief Executive, that balance the requirements of due process with the practical need for early removal of a Chief Executive whose relationship with the Minister has broken down.

RECOMMENDATION 5

2.42 The Committee recommends that the Government document decisions relating to secondment arrangements, particularly funding and accountability arrangements.

RECOMMENDATION 6

3.18 The Committee recommends that the Government ensure that future secondment proposals should demonstrate the benefits of the proposed arrangements, particularly if the 'owning' Territory agency continues to meet the employee's salaries and other expenses.

RECOMMENDATION 7

4.17 The Committee recommends that the *Annual Reports (Government Agencies) Act 2004* and the Chief Minister's Annual Report Directions be revised to ensure that an annual report is provided for any agency that existed during a reporting year.

RECOMMENDATION 8

5.2 The Committee recommends that the Legislative Assembly for the ACT note the conclusions of Auditor-General's Review Report of April 2005.

1 INTRODUCTION

Auditor-General's Review Report of April 2005: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations* (the Review Report)

- 1.1 The Review Report was prepared subsequent to an examination of issues regarding the creation of the Office of Special Adviser, Council of Australian Governments and Inter-governmental Relations (OSA), and the appointment of the Special Adviser.²
- 1.2 Issues pertaining to the creation of the OSA were raised during hearings of the Standing Committee on Public Accounts³, as well as the Legislative Assembly⁴.
- 1.3 The Auditor-General conducted a review of the issues raised under the authority of section 10(a) of the *Auditor-General Act 1996* to promote public accountability in the public administration of the Territory.⁵
- 1.4 The examination of issues by the Auditor-General was not conducted as a performance audit, but as a review. Primarily, the review was limited to discussions with relevant Departmental staff, identification of relevant legislation and policy, and an examination of correspondence and documents.⁶
- 1.5 The Review Report provides analysis and comment on whether:
 - the OSA was created in accordance with relevant legislation;
 - accountability and reporting arrangements for the OSA met requirements of relevant legislation; and
 - employment arrangements for the Special Adviser met requirements of relevant legislation.⁷

² Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 1.

³ Standing Committee on Public Accounts, *Inquiry on Annual & Financial Reports 2003-04*, 22 February 2005, pp. 8-15; Standing Committee on Public Accounts, *Inquiry on Annual & Financial Reports 2004-05*, 1 Dec 2005, pp. 171-173.

⁴ Legislative Assembly for the ACT, Sixth Assembly, Hansard, 8 March 2005, pp. 696-698, 9 March 2005, pp. 775-778 & 835-836, 10 March 2005, p. 867, 15 March 2005, p. 995, 6 April 2005, pp. 1420-1422, 7 April 2005, p. 1517, 3 May 2005, p. 1714.

⁵ *Auditor-General's Act 1996*, Part 3.

⁶ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 2.

⁷ *Ibid.*, p. 2.

- 1.6 Further, the Review Report included Audit Office comments on some related issues of public administration identified during the course of the review.⁸
- 1.7 The Committee received a briefing from the Auditor-General on the Review Report⁹ and invited a Government submission¹⁰ in relation to the conclusions of the Review Report. The Government declined the invitation¹¹ to provide a submission. No other submissions were received.

Scope of Committee inquiry

- 1.8 The Committee is charged with ensuring that governmental expenditure is disbursed effectively and efficiently in accordance with parliamentary approved budgets.
- 1.9 The Committee believes that the public is entitled to expect that the funds raised by governments be used in the best possible way. The Committee is of the opinion that the public has a right to an assurance that the programs to which its dollars are allocated have a clear and relevant purpose, that those programs are being run efficiently and effectively, and are providing 'value for money'.
- 1.10 In this instance, this involves examining the relationship between the planned outputs of projects and programs and their eventual outcomes. This requires going beyond the analysis of determining whether funds have been expended in the way that was specified in parliamentary approved budgets, to determining whether the policy goals of that expenditure could have been more efficiently achieved.
- 1.11 Accordingly, the Committee resolved to inquire further into the Review Report because it considered the issues raised were of significant public interest and suggestive of the potential to improve public administration more broadly.

⁸ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 2.

⁹ 8 June 2005

¹⁰ By correspondence dated 14 December 2005.

¹¹ By correspondence dated 10 January 2006.

Effective accountability

- 1.12 Accountability of public officials is the cornerstone of an effective democracy.¹² It is an integral and indispensable part of establishing effective relationships for getting things done and taking responsibility, including when assigning authority and resources within a results-oriented learning environment.^{13, 14}
- 1.13 Accountability is (not a 'thing' in itself, but) a set of relationships through which politicians and bureaucrats must account for their integrity and their performance.¹⁵
- 1.14 Further, accountability is inextricably linked to the concept of public sector governance and in its broadest sense implies responsive governance.

Public sector governance

- 1.15 Public sector governance has a broad coverage, including how an organisation is managed, its corporate and other structures, its culture, its policies and strategies and the way it deals with its various stakeholders. The concept encompasses the manner in which public sector organisations acquit their responsibilities of stewardship by being open, accountable and prudent in decision-making, in providing policy advice, and in managing and delivering programs.¹⁶
- 1.16 Responsive governance focuses on two main requirements: **performance**, whereby governance arrangements contribute to an organisation's overall performance and the delivery of its goods, services, or programs; and **conformance**, whereby governance arrangements are used by an organisation to ensure that it meets the requirements of the law, regulations, published standards and community expectations of probity, accountability and openness.¹⁷

¹² Summers et al., *Government, Politics, Power and Policy in Australia*, 2002, p. 69.

¹³ Office of the Auditor-General of Canada, *Modernizing Accountability in the Public Sector*, Report of the Auditor-General of Canada, Ottawa, December 2002, pp. 1-7.

¹⁴ Mulgan, R, 'The processes of public accountability', *Australian Journal of Public Administration*, 56(1), 1997, pp. 25-36.

¹⁵ Summers et al., *Government, Politics, Power and Policy in Australia*, 2002, p. 69.

¹⁶ ANAO, *Better Practice Guide: Public Sector Governance Volume 1 - Framework, Processes & Practices*, 2003, p. 6.

¹⁷ *Ibid.*, p. 6.

1.17 Many of the structures and processes associated with responsive governance are supported by the application of the following core principles: accountability; transparency/openness; integrity; stewardship; leadership; and efficiency.^{18, 19}

Report context

1.18 Accordingly, the Committee has considered and assessed the conclusions raised by the Review Report within the aforementioned context of effective accountability and public sector governance principles. Its report focuses on a selection of the conclusions raised.

1.19 This focus includes:

- administration of the OSA (clarity of roles and responsibilities; complexity of administrative arrangements; review of the *Public Sector Management Act 1994*; re-introduction of the Public Sector Management Amendment Bill 2005; and the adequacy of accountability arrangements);
- economy of OSA outputs (adequacy of OSA performance expectations and linkages to the Territory's output based appropriation framework); and
- OSA evaluation and performance (annual reporting compliance; compliance for 2003-04 and 2004-05).

1.20 The Committee sought clarification on a number of related issues at public hearings in connection with its inquiries into the 2003-04 and 2004-05 Annual and Financial Reports. The full transcript of these public hearings is available on the Assembly website at <http://www.hansard.act.gov.au/hansard/2005>

¹⁸ International Federation of Accountants, *Governance in the public sector: a governing body perspective*, August 2001.

¹⁹ Nolan Committee (UK), *First Report of the Committee on Standards in Public Life*, 1995.

2 ADMINISTRATION

Clarity of OSA roles and responsibilities

- 2.1 The Committee notes that clarity of agency roles and responsibilities is the cornerstone of accountability and should be well understood and agreed upon. This understanding provides the context in which parties will respond and perform.
- 2.2 The Auditor-General concluded that the OSA was created in accordance with relevant legislation. However, the role and functions of the Office were not well documented, and since April 2004 there was only a tenuous connection to the outputs of the Chief Minister's Department.²⁰
- 2.3 The Committee is of the view that this was indicative of the circumstances surrounding the creation of the OSA as a response to a need to provide a relatively short-term, 'one-off' employment arrangement.²¹
- 2.4 This view is further supported by the fact that the Government indicated that it is unlikely to appoint a successor to the Special Adviser.^{22, 23} The Committee notes that the OSA was abolished on 29 April 2005.²⁴
- 2.5 The Committee emphasises that clarity of agency roles and responsibilities improves effectiveness in contributing to overall policy goals. Further, it drives efficiencies and improvements in the way an agency manages its responsibilities, and facilitates achievement of higher levels of performance, accountability and transparency in an agency's outcomes.

RECOMMENDATION 1

- 2.6 **The Committee recommends that the Government develop clear policy and guidelines for secondment arrangements.**

²⁰ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 2.

²¹ *Ibid.*, p. 6.

²² *Ibid.*, p. 6.

²³ Standing Committee on Public Accounts, *Inquiry on Annual and Financial Reports 2003-04, transcript of evidence*, 22 February 2005, p. 11.

²⁴ Chief Minister's Department, *Annual Report 2004-05*, p. 203.

Complexity of administrative arrangements

- 2.7 The Auditor-General also concluded that the arrangements for the Special Adviser's secondment were conducted transparently, but the arrangements did not represent best practice.
- 2.8 Notwithstanding that the creation of the OSA was to achieve a certain employment arrangement, the Auditor-General found that the role of the OSA was largely undefined, and there had been awkwardness in coordinating the administrative arrangement.²⁵
- 2.9 The Committee is of the view that lack of clarity regarding the role of the OSA leaves open the question of whether the arrangement could be soundly linked to the Territory's output-based appropriation framework.
- 2.10 The awkwardness in coordinating the administrative arrangements appears to be due to the complex administrative arrangements required because of limitations of Territory legislation, particularly the *Public Sector Management Act 1994* (the PSM Act).
- 2.11 The Committee expresses its concern that circumstances might require a department to 'work around' legislative provisions to implement a Government decision as well as meet legislative and reporting requirements.²⁶
- 2.12 The Auditor-General commented that:
- 'this situation would increase the risks of future mis-use of the powers and authorities under the Act [the PSM Act] to create offices to achieve certain employment decisions, which could have been done more efficiently and transparently under more effective legislation'.²⁷
- 2.13 Further, the Auditor-General noted that the Government intended to reintroduce²⁸ the Public Sector Management Amendment Bill 2005 to address the deficiencies regarding executive employment.²⁹

²⁵ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, pp. 11-12.

²⁶ Chief Minister's Department, *Annual Report 2004-05*, p. 203; Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 12.

²⁷ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 12.

²⁸ Legislative Assembly for the ACT, Sixth Assembly, Hansard, Wednesday 9 March 2005, p. 776.

Review of the *Public Sector Management Act 1994*

- 2.14 The Committee notes that a review of the PSM Act conducted by a former Commissioner for Public Administration made a number of recommendations to address the complex administrative arrangements involving executive employment.³⁰
- 2.15 The *Report of the Review of the Public Sector Management Act 1994* (the PSM Review Report) was presented to the Government, by the then Commissioner of Public Administration, in February 2003.
- 2.16 The need for a review of the PSM Act was first flagged in February 2001 as part of a wider initiative to reform and renew the ACT Public Service. The Stanhope Government reaffirmed that need in November 2001.³¹
- 2.17 The Committee sought information³² as to whether a Government response was prepared in reply to the PSM Review Report. Whilst the Government's answer stated that it been involved with, '*significant aspects of public sector management reform since 2002,*' it shed little light on whether a response had been prepared.³³
- 2.18 The Committee notes that the Chief Minister advised the Legislative Assembly on 16 August 2005 that, '*the Government is considering its response to the Commissioner's report*'.³⁴
- 2.19 The Committee notes that the PSM Act forms the legislative basis for employment in the ACT Public Service. The overall aim of the review conducted by the then Commissioner for Public Administration was to ensure that the Act continues to provide an effective and relevant framework to support the administration of government.³⁵

²⁹ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 12; Chief Minister's Department, *Annual Report 2004-05*, p. 203.

³⁰ *Ibid.*, pp. 47-50.

³¹ Commissioner for Public Administration, *Report of the Review of the Public Sector Management Act 1994*, Feb 2003, p. 1.

³² By correspondence dated 3 November 2005.

³³ By correspondence dated 24 November 2005.

³⁴ Legislative Assembly for the ACT, Sixth Assembly, Hansard, Tuesday 16 August 2005, p. 2764.

³⁵ Commissioner for Public Administration, *Report of the Review of the Public Sector Management Act 1994*, Feb 2003.

- 2.20 While the Committee appreciates the time consuming nature of preparing government responses, on this occasion it has difficulty understanding the delay of some two and a half years in the preparation of a government response to such an important piece of work.

RECOMMENDATION 2

- 2.21 **The Committee recommends that the Government prioritise the finalisation of its response to the Commissioner for Public Administration's *Report of the Review of the Public Sector Management Act 1994*.**

Re-introduction of the Public Sector Management Amendment Bill 2005

- 2.22 In response to a question without notice, the Chief Minister stated:

'I do propose some amendments to the Public Sector Management Act to deal with the incredibly inflexible executive employment arrangements that currently apply under the Public Sector Management Act. They are inflexible to the point of being essentially incapable of allowing any reasonable management of a senior executive...a bill was introduced last year to redress the impact for the more restrictive elements of the chief executive and executive employment framework...it is something I propose to proceed with. As I just mentioned, a bill was introduced last year, but it lapsed at the end of the last parliament and I have not yet reintroduced it. But it is something that has been referred to me for reintroduction and something that I will proceed with'.³⁶

- 2.23 The Government re-introduced the Public Sector Management Amendment Bill 2005 (No. 3) (the Bill) on 16 August 2005.³⁷ The Bill contained:

'a number of intermediate changes to redress the impact of some of the more restrictive elements of the current chief executive and executive employment framework'.³⁸

³⁶ Legislative Assembly for the ACT, Sixth Assembly, Hansard, Wednesday 9 March 2005, p. 776.

³⁷ The Bill, as a whole, was agreed to on Thursday 25 August 2005.

³⁸ Tabling Speech, Legislative Assembly for the ACT, Sixth Assembly, Hansard, Tuesday 16 August 2005, p. 2764.

- 2.24 The Committee notes that the amendments in the Bill pertinent to this inquiry relate to new arrangements to facilitate executive mobility.^{39, 40} The Chief Minister stated:
- ‘that given the small size of the ACT public service it was vital that governments had greater flexibility to meet emerging challenges or changed work environments by redeploying its top executives across the service. The amendments...would allow governments to transfer chief executives laterally, at level, or to transfer them to lower-level positions, while allowing them to retain their current remuneration for the term of their contract’.⁴¹
- 2.25 Further, the Chief Minister stated that the amendments to Chief Executive and Executive employment conditions were intermediate changes to address key issues identified in the PSM Review Report and marked the beginning of a Government response. Further, the Government was currently considering its response to the wider recommendations in the PSM Review Report.^{42, 43}
- 2.26 The Committee notes that the PSM Review Report recommended that:
- ‘there needs to be a clear framework to balance the requirements of due process with the practical need for the early removal of a chief executive when his or her relationship breaks down with a minister’.⁴⁴
- 2.27 The Committee is of the view that the above issue has not been addressed in the Bill.⁴⁵
- 2.28 The division of responsibility as specified by the respective roles of Ministers and Chief Executives relies on a good working relationship, and the maintenance of trust and confidence, between Ministers and Chief Executives.
- 2.29 The Committee recognises that the relationship between a Minister and a Chief Executive is unique. The relationship can break down for any number of reasons, and if it does, it will impact on the ability of the Government to

³⁹ Legislative Assembly for the ACT, Sixth Assembly, Hansard, Thursday 25 August 2005, p. 3278.

⁴⁰ Section 33A, *Public Sector Management Act 1994*, pp. 34-35.

⁴¹ Chief Minister, Media Release: *Government seeks greater flexibility to move and reward senior public servants*, 16 August 2005.

⁴² Legislative Assembly for the ACT, Sixth Assembly, Hansard, Tuesday 16 August 2005, p. 2764.

⁴³ Explanatory Statement, *Public Sector Management Amendment Bill 2005 (No 3)* pp. 2-3.

⁴⁴ Commissioner for Public Administration, *Report of the Review of the Public Sector Management Act 1994*, February 2003, p. 48.

⁴⁵ *Public Sector Management Act 1994*, Part 5, Section 73(3).

implement its policies and on the agency's ability to operate and deliver services.⁴⁶

2.30 The Committee notes that section 28A of the PSM Act prevents the termination of a Chief Executive on the grounds that he or she is incompatible with another person. It is understood that this section was introduced:

‘specifically to avoid subjective judgements and personality clashes as a reason for termination, but in its current form, if given a purposive interpretation, it may prohibit termination on the basis of a Minister losing trust and confidence in his or her Chief Executive’.⁴⁷

2.31 Further, the Committee notes that the issue of tenure for senior public servants was tested in the Commonwealth arena in 1999 when the relevant Minister terminated a departmental Secretary's appointment.⁴⁸ The matter was contested in the Federal Court, which found in favour of an entitlement to procedural fairness, and of the Secretary being provided with a statement of reasons for the termination decision, and being afforded an opportunity to respond. It also confirmed the Government's authority to terminate appointments and the limited rights of a Secretary to test the reasons.^{49, 50}

2.32 In the interests of efficient and effective public administration, the Committee is of the view that due consideration should be given to the issues concerning the tenure arrangements and grounds for termination of Chief Executives as documented in PSM Review Report.⁵¹

⁴⁶ Commissioner for Public Administration, *Report of the Review of the Public Sector Management Act 1994*, February 2003, p. 48.

⁴⁷ Commissioner for Public Administration, *Review of the Public Sector Management Act 1994, Discussion Paper IV – Chief Executive and Executive Employment*, March 2002, p. 12.

⁴⁸ Section 59 (1) of the *Public Service Act 1999*, ‘states that the Prime Minister may, by notice in writing, terminate an appointment of a Secretary at any time’.

⁴⁹ *Barratt v Howard* (no 2) FCA 1183 (26 August 1999)

⁵⁰ Australian Public Service Commission (APSC), *The Australian Experience of Public Sector Reform*, 2003, p. 75.

⁵¹ Commissioner for Public Administration, *Report of the Review of the Public Sector Management Act 1994*, Feb 2003, pp. 48-50.

RECOMMENDATION 3

- 2.33 **The Committee recommends, to the extent that work is not already taking place, that the Government look at implementing recommendations numbered 26⁵² and 27⁵³ made in the *Report of the Review of the Public Sector Management Act 1994*.**
- 2.34 While it is difficult to circumscribe in legislation all the circumstances that might lead to a breakdown of the relationship between a Chief Executive and a Minister, the Committee believes, that when it does arise, it is in the interests of the Service to terminate the arrangement as quickly as possible paying due respect to procedural fairness.⁵⁴

RECOMMENDATION 4

- 2.35 **The Committee recommends that the *Public Sector Management Act 1994* be revised to prescribe principles of procedural fairness for the early termination of a Chief Executive, that balance the requirements of due process with the practical need for early removal of a Chief Executive whose relationship with the Minister has broken down.**

Adequacy of accountability arrangements for the OSA

⁵² **Recommendation 26** - That Chief Executives continue to be employed on a contract basis; that the Act should not specify grounds on which they can be terminated; that Chief Executives whose contracts are terminated should be compensated for the employment they have forgone; that Chief Executives whose contracts are not renewed should also be compensated, but at a lesser level than in the case of early termination; that the responsibility for terminating a Chief Executive should be with the Chief Minister on the basis of a recommendation from the Chief Minister's Department Chief Executive, taking into account the views of the relevant Minister; that the Public Service Commissioner should be required to certify that the Chief Executive was informed of the reasons for the termination and was given an opportunity to reply to them; and that the Public Service Commissioner has the ability to report to the Assembly on the process where he or she feels it is appropriate to do so.

⁵³ **Recommendation 27** - That the responsibility for terminating the Chief Executive Chief Minister's Department should be that of the Chief Minister; that the Public Service Commissioner should audit the process to ensure the Chief Executive Chief Minister's Department was informed of the reasons for the termination and was given an opportunity to reply to them; and that the Public Service Commissioner should have the ability to report to the Assembly on the process where he or she feels it is appropriate to do so.

⁵⁴ Commissioner for Public Administration, *Report of the Review of the Public Sector Management Act 1994*, February 2003, pp. 48-49.

2.36 The Committee notes that there are key public sector governance structures and processes, partly conventional and partly statutory, to ensure responsive and accountable governance.

2.37 Further, the Committee notes that pursuant to the PSM Act, the public sector shall be administered with an objective of giving effect to:

‘a clear and explicit delineation of the responsibilities and accountabilities of public employees, administrative units and Territory instrumentalities’.⁵⁵

2.38 The Auditor-General concluded that the accountability arrangements for the OSA were unclear. The Auditor-General⁵⁶ found:

- no documentation to describe the role of the Special Adviser other than that contained in the Administrative Arrangements Order (the AAO)⁵⁷ and the explanatory statement accompanying Notifiable Instrument 2004-34. The Instrument specified that the OSA be allocated responsibility for, ‘*Council of Australian Governments, and intergovernmental relations, matters referred*’;
- no separate output class (or sub-class) in the Chief Minister’s Department (CMD) Statement of Performance for the OSA;
- no performance measures within the CMD’s output classes that relate specifically to the work of the OSA. Although there were measures that concern the Council of Australian Governments and intergovernmental relations, it was clear the measures relate to other departmental activities, and not the OSA;

⁵⁵ *Public Sector Management Act 1994*, Part 2, Section 7, p. 11.

⁵⁶ Auditor-General’s Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Intergovernmental Relations*, April 2005, pp. 13-14.

⁵⁷ (AAO) An order issued from time to time by government establishing the matters or outcomes to be dealt with by each department, and the Acts of parliament to be administered by each minister (Summers et al., *Government, Politics, Power & Policy in Australia*, 2002).

- no statement of intent⁵⁸, corporate plan⁵⁹ or other similar 'role defining' documentation for the OSA; and
- as Chief Executive of the OSA, the Special Adviser did not have a performance agreement with the Chief Minister.

2.39 The Committee notes that a Chief Executive performance agreement is an essential tool to ensure that there is understanding and agreement on the major tasks for the Chief Executive and to establish an agreed mechanism for assessing progress. In essence, such a performance agreement sets out the agenda for an agency for the following year and from this flow its accountabilities.

2.40 The Committee emphasises the difference between the performance agreement of a Chief Executive officer and other Senior Executive Service (SES) officers, in that it is an agreement with a Minister, an elected representative of the people and a person external to the agency.

2.41 The Committee highlights the importance of the need for clear and explicit accountability arrangements to ensure the efficient and effective management of resources employed by government.

RECOMMENDATION 5

2.42 **The Committee recommends that the Government document decisions relating to secondment arrangements, particularly funding and accountability arrangements.**

⁵⁸ The Statement of Intent (SOI) establishes the Government's ownership interest in the OSA. It sets out guidelines and performance requirements to ensure the Government receives the best possible return for the resources employed by the OSA. This is done through the efficient and business-like management of those resources and the prudent management of the Territory's exposure to financial risk (Commonwealth Department of Treasury, *Corporate Governance Review*, 2002).

⁵⁹ The result of a process in which an organisation, institution or business analyses its objectives, priorities, strategies and environment in light of its mandate. A corporate plan looks at the present as well as the longer term. The plan guides management and staff in a cohesive effort to carry out the organisation's mandate. It informs everyone involved (including the public and stakeholders) about the organisation's priorities and objectives (Thompson et al., *Crafting and Executing Strategy – The Quest for Competitive Advantage*, 2005).

3 ECONOMY OF OUTPUTS

Adequacy of OSA performance expectations

- 3.1 The Committee stresses the importance that those objectives being pursued by an agency, the accomplishments expected and the constraints to be respected should be explicit, understood and agreed upon. Further, if expectations are unclear, their realisation is, of course, quite unlikely. Accordingly, it is very important that the expectations are mutually understood and accepted.
- 3.2 The Committee notes that, given the Government stated that the Special Advisor was working for the Commonwealth, under secondment from the ACT Public Service⁶⁰, it might be reasonable to conclude that accountability in terms of determination of outputs and the appropriate performance level requirements would be a matter for the Special Adviser and the Commonwealth.⁶¹
- 3.3 However, as the Territory was meeting the full cost of the OSA, and the legal requirement⁶² that the work of the OSA be properly identified, '*as an output of, or on behalf of, a department,*' if the work of the OSA can be classed as an output of the CMD, it would be reasonable to conclude that the OSA is accountable to the Territory for that work.⁶³
- 3.4 The legislative requirements by which monies are appropriated for each financial year are set out in the Appropriation Act for that year. In the ACT the Appropriation Acts operate with reference to the *Australian Capital Territory (Self-Government) Act 1988* (the Self Government Act) and the *Financial Management Act 1996* (the FMA).⁶⁴

⁶⁰ Standing Committee on Public Accounts, *Inquiry on Annual and Financial Reports 2004-05, transcript of evidence*, 22 February 2005, pp. 10-13.

⁶¹ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 14.

⁶² Under annual *Appropriation Acts* and *Financial Management Act 1996*.

⁶³ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 14.

⁶⁴ *Ibid.*, p. 7.

Linkages to the Territory's output based appropriation framework

- 3.5 The Committee notes that the appropriation framework focuses on the outputs the public sector is producing and their contribution to the outcomes set by the Government and is aimed at assisting the tracking of results and progress towards targets. The output component of the framework also facilitates tracking and benchmarking of process, and hence is an important aid to improved efficiency.
- 3.6 The Auditor-General found no separate output class in CMD's Statement of Performance for the Office of the Special Adviser. The Special Adviser's salary (as Chief Executive, CMD and later as Chief Executive of the OSA) was included in the appropriation⁶⁵ made to the CMD and allocated on a pro-rata basis over all outputs of the CMD. This was consistent with CMD's practice of allocating Executive salary costs across all output classes of the department as an overhead. Similarly, the payment of the Special Adviser's salary was included under employee expenses in CMD's financial statements and allocated as an overhead over all output classes in the Statement of Performance.⁶⁶
- 3.7 As there can be no legal expenditure except in accordance with an appropriation, and the FMA requires that appropriations to departments shall be for the provision of outputs, the Auditor-General noted that the issue requiring clarification was whether the work of the OSA could be properly allocated to an output class, or the output classes, of CMD. This would require determining whether the Special Adviser is:

‘a person producing goods or providing services on behalf of a department’ or whether the work of the OSA represents ‘goods produced or services provided by a department’.^{67, 68}

⁶⁵ By way of a General Purpose Order (GPO).

⁶⁶ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 8.

⁶⁷ *Ibid.*, p. 8.

⁶⁸ *Financial Management Act 1996*

- 3.8 On the basis of evidence on the public record, the Auditor-General concluded that the work of the OSA may be represented as '*goods produced or services provided by a department*', and thus an output of CMD under Output Class 1 (Government Strategy) and Class 4 (Bushfire Recovery).⁶⁹
- 3.9 CMD Output Class 4 refers solely to Bushfire Recovery, defined as a:
'coordinated and efficient whole-of-Government response to address issues arising out of the aftermath of the bushfires of January 2003'.⁷⁰
- 3.10 The Auditor-General concluded that the Special Adviser's role on the COAG National Inquiry on Bushfire Mitigation and Management (November 2003 to April 2004) could be classified under CMD's Output Class 4.⁷¹
- 3.11 However, after the completion of the Bushfire Inquiry⁷², the Auditor-General found a diminution in the link between the Special Adviser's other activities (national security issues) and CMD outputs. After April 2004, the most relevant link to the Territory's output-based appropriation framework was CMD Output class 1.1 – Government Strategy, which includes:
'1.1: Strategic Policy Coordination and Development (Advice and support for the Chief Minister/Executive for informed Government decision-making, and development of whole-of-Government priorities and policies with Government and the community'.⁷³
- 3.12 The Auditor-General stated that it could be maintained that the OSA contributed to strategic policy development, as defined by output class 1.1, by representing the interests of the Territory in matters of strategic importance to Commonwealth and Territory Governments.⁷⁴

⁶⁹ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, pp. 9-10.

⁷⁰ *Ibid.*, p. 9.

⁷¹ *Ibid.*, p. 9.

⁷² The Special Adviser's role heading up the COAG National Inquiry on Bushfire Mitigation and Management ceased in April 2004.

⁷³ Chief Minister's Department, *Annual Report 2003-04*; Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 9.

⁷⁴ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, pp. 9-10.

- 3.13 Despite the tenuous representation of the OSA as an output of CMD since April 2004, the Auditor-General commented that better practice would have been for the Government to document the direct connection between the administrative unit of the OSA and the outputs of its 'owning department'.⁷⁵
- 3.14 The Auditor-General surmised that while it is evident that the arrangements made in relation to the OSA were consistent with the PSM Act and the FMA Act, they do not represent best practice for secondment arrangements and value for money in the public interest.⁷⁶
- 3.15 The Committee is of the view that further secondment proposals should demonstrate the benefits of the proposed arrangements, particularly where the decision would effectively transfer Territory taxpayers' money to outside organisations.⁷⁷
- 3.16 The Committee notes that the inclusion of outputs for budgeting purposes enables the Assembly and external stakeholders to scrutinise (*ex ante*) how appropriation monies will be spent, and to judge (*ex post*) how expenditure was used.
- 3.17 The Committee expresses its concern regarding the tenuous linkages of the OSA to the Territory's output based appropriation framework.

RECOMMENDATION 6

- 3.18 **The Committee recommends that the Government ensure that future secondment proposals should demonstrate the benefits of the proposed arrangements, particularly if the 'owning' Territory agency continues to meet the employee's salaries and other expenses.**

⁷⁵ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 10.

⁷⁶ *Ibid.*, pp. 9-12.

⁷⁷ *Ibid.*, pp. 9-12.

4 EVALUATION AND PERFORMANCE

Annual reporting compliance

- 4.1 In accordance with section 5(1) of the *Annual Reports (Government Agencies) Act 2004* (the Annual Reports Act), the Chief Executive of an administrative unit must, for each financial year, prepare a report (a chief executive annual report) about the operations of the administrative unit during the year. The reports must comply with any applicable annual report directions.^{78, 79}
- 4.2 The Chief Minister's *Annual Reports Directions* (the Directions)⁸⁰ play a crucial and central role in setting minimum standards for the preparation, form and content of annual reports by departmental Chief Executives and the Chairpersons of public authorities.^{81, 82}
- 4.3 The Directions, issued under the Annual Reports Act, apply consistent public accountability and statutory reporting requirements across the public sector, so that accountability is enhanced through the presentation of timely and performance-oriented information.⁸³

Compliance for 2003-04 reporting period

- 4.4 The Auditor-General concluded that the Special Adviser's Annual Report for 2003-04 did not fully meet the requirements of the Annual Reports Act or the Directions, in that it did not adequately report on the operations of the OSA.⁸⁴
- 4.5 As the OSA was a separate administrative unit, the Special Adviser was required to prepare a separate annual report.
- 4.6 For the 2003-04 reporting period, the OSA's Annual Report was included in the Chief Minister's Department Annual Report. The Report comprised a

⁷⁸ *Annual Reports (Government Agencies) Act 2004*, p 3.

⁷⁹ *Chief Minister's Annual Report Directions 2004-2005*, p 20.

⁸⁰ Accessible at www.psm.act.gov.au/publications/Annual_Report_Directions_2004-2005.pdf

⁸¹ *Chief Minister's Annual Report Directions 2004-2005*, pp. 1-2.

⁸² Legislative Assembly for the ACT, ACT Auditor-General response to Question on Notice No. 64, Standing Committee on Public Accounts, *Inquiry on Annual and Financial Reports 2004-05*, QON PAC 64.

⁸³ *Chief Minister's Annual Report Directions 2004-2005*, p. 3.

⁸⁴ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 18.

transmittal certificate and a half page account of the Special Adviser's activities during the period November 2003 to June 2004.⁸⁵

- 4.7 The Auditor-General determined that the Annual Report submitted by the Special Adviser, as Chief Executive of the OSA, did not comply with either the requirements or the intent of the Annual Reports Act and the Directions.⁸⁶
- 4.8 Further, as a key accountability document, the Annual Report submitted by the Special Adviser did not report on the operations of the OSA administrative unit and did not offer any information regarding the achievement of key objectives or the performance of the OSA.⁸⁷ In brief, it did not include sufficient information to permit the Minister, the Legislative Assembly, and the wider community to form a view on the management performance of the OSA.⁸⁸
- 4.9 Despite the prescriptive nature of the Directions, the Auditor-General found that the Special Adviser's Annual Report provided limited information on the OSA's performance. The report did little more than state that the Special Adviser provided assistance to the COAG National Inquiry on Bushfire Mitigation and Management from November 2003 to April 2004, and had since remained on secondment working on national security issues.⁸⁹

Compliance for 2004-05 reporting period

- 4.10 The Committee notes that whilst the OSA was abolished in April 2005, an annual report was not provided for the outstanding ten months of the 2004-05 financial year.⁹⁰

⁸⁵ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 16.

⁸⁶ *Ibid.*, p. 17.

⁸⁷ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 17; Chief Minister's Department, *Annual Report 2003-04*.

⁸⁸ *Ibid.*

⁸⁹ Auditor-General's Review Report: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations*, April 2005, p. 16.

⁹⁰ Standing Committee on Public Accounts, *Inquiry on Annual and Financial Reports 2004-05, transcript of evidence*, 1 December 2005, p. 171.

4.11 The Auditor-General stated that:

'because the OSA position was abolished in April 2005, the legal advice said that there was no chief executive in existence with that obligation to report. In the past, when a position was abolished the administrative unit could be transferred to another department and there would be another CEO responsible for reporting. In this case, there was no CEO at the end of the year with that responsibility. So, legally speaking and strictly on legal grounds, there is no requirement whatsoever for a report to be prepared on OSA because there is no chief executive having that responsibility imposed on him or her'.⁹¹

4.12 The Auditor-General commented that whilst the legal interpretation of the Annual Reports Act in the context of the OSA was sound, the situation highlighted a deficiency in the legislation.⁹²

4.13 Further, the Auditor-General commented:

'...it seems to me that the current reporting arrangements under the Act and Directions leave a gap in accountability to the Legislative Assembly and the community in situations where an administrative unit is abolished or the appointment of a Chief Executive is ended during the course of the financial year'.⁹³

4.14 In considering the Auditor-General's response to a question on notice seeking comment on the detailed and prescriptive nature of the Annual Report Directions, the Committee notes the Auditor-General's⁹⁴ comments in relation to addressing gaps in annual reporting.

⁹¹ Standing Committee on Public Accounts, *Inquiry on Annual and Financial Reports 2004-05, transcript of evidence*, 1 December 2005, p. 171.

⁹² *Ibid.*

⁹³ Legislative Assembly for the ACT, Sixth Assembly, Hansard, Thursday 14 December 2005, p. 4786.

⁹⁴ Legislative Assembly for the ACT, ACT Auditor-General response to Question on Notice No. 64, Standing Committee on Public Accounts, *Inquiry on Annual and Financial Reports 2004-05*, QON PAC 64.

4.15 The Auditor-General stated that any gaps in reporting should be addressed and would include:

‘revising the Annual Reports Act and Directions to ensure that a report was prepared for any agency that existed during the reporting year, including where an administrative unit is abolished, or the appointment of a Chief Executive is ended, during the course of a reporting year’.⁹⁵

4.16 The Committee is of the view that disclosure of information to the Assembly and the public about the performance of the ACT Public Service’s (ACTPS) activities and functions is essential to responsive governance in the ACTPS. An agency’s respective annual report is the principal vehicle by which it publicly reports on its performance.⁹⁶

RECOMMENDATION 7

4.17 **The Committee recommends that the *Annual Reports (Government Agencies) Act 2004* and the Chief Minister’s Annual Report Directions be revised to ensure that an annual report is provided for any agency that existed during a reporting year.**

⁹⁵ Legislative Assembly for the ACT, ACT Auditor-General response to Question on Notice No. 64, Standing Committee on Public Accounts, *Inquiry on Annual and Financial Reports 2004-05*, QON PAC 64.

⁹⁶ Australian Public Service Commission (APSC), *Foundations of Governance in the APS*, April 2004.

5 CONCLUSION

- 5.1 The Committee acknowledges the views presented and conclusions made in the Auditor-General's Review Report of April 2005.

RECOMMENDATION 8

- 5.2 **The Committee recommends that the Legislative Assembly for the ACT note the conclusions of Auditor-General's Review Report of April 2005.**
- 5.3 The Committee has made eight recommendations in relation to its inquiry into Auditor-General's Review Report of April 2005: *Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-governmental Relations.*

Richard J Mulcahy MLA

Chair

10 August 2006