LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

REVIEW OF AUDITOR-GENERAL'S REPORT NO 5, 1997

Management of Leave Liabilities

STANDING COMMITTEE FOR THE CHIEF MINISTER'S PORTFOLIO (INCORPORATING THE PUBLIC ACCOUNTS COMMITTEE)

Public Accounts Committee Report Number 3

June 1998

RESOLUTION OF APPOINTMENT

The Standing Committee for the Chief Minister's Portfolio was appointed by the Legislative Assembly on 28 April 1998 to examine any matter under the responsibility of the Chief Minister's portfolio. The Assembly also resolved that the committee perform the duties of a public accounts committee, specifically:

(a) to examine:

- (i) the accounts of the receipts and expenditure of the Australian Capital Territory;
- (ii) the financial affairs of authorities of the Australian Capital Territory; and
- (iii) all reports of the Auditor-General which have been laid before the Assembly;

(b) to report to the Assembly, with such comments as it thinks fit, on 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

(c) to 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.

MEMBERSHIP OF THE COMMITTEE

Mr Ted Quinlan MLA Committee Chair

Mr Trevor Kaine MLA Deputy Committee Chair

Mr Greg Cornwell MLA

Secretary: Bill Symington

1. INTRODUCTION

Background

1.1. Auditor-General's report No 5, 1997 was presented to the Assembly on 25 June 1997.

1.2. Review of this audit report by the Public Accounts Committee in the previous Assembly had not been completed before the Assembly was dissolved prior to the February 1998 election. In accordance with the resolution of the Assembly this committee has exercised its power to consider and make use of the evidence and records of the Public Accounts Committee in the previous Assembly.

1.3. The Audit Office considered the audit necessary due to the growing outstanding liabilities for long service leave with such liabilities at 30 June 1996 at $133.4m and liabilities for recreation leave at $76.8m. The Audit Office also had anecdotal information about inconsistencies in the granting of special leave.

1.4. The audit noted that under current practices a large proportion of long service leave liabilities will have to be met in cash as employees in most cases save their entitlements to be paid out when they cease employment. To effectively address the findings in the report, the audit suggested that legislation will need to be amended and industrial relations issues will need to be negotiated.

2. AUDIT FINDINGS

2.1. The audit findings were:[1]

(i) there are no legislation powers, policies or management procedures currently operating to contain growth in long service leave liabilities

(ii) there are only limited policies and management procedures operating to contain growth in recreation leave liabilities

(iii) there have been substantial approvals of leave in "special circumstances" and the reasons frequently given for such leave could not be regarded as "special circumstances"

Committee approach

2.2. Comment on the audit findings was sought by the Public Accounts Committee (PAC) in the previous Assembly from the Chief Minister who provided a Government submission to the PAC in a letter dated 6 August 1997.[2] The committee also sought

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[1] Audit report p3

[2] Chief Minister, letter to PAC dated 6 August 1997

and received from the Chief Minister advice on the extent to which the ACT was compensated by the Commonwealth Government for long service leave liabilities assumed by the ACT in respect of public servants who became ACT Government employees at self-government.

2.3. Comment on the audit report was also sought and received from the Community and Public Sector Union (ACT Branch). The Trades and Labour Council of the ACT was invited to draw the attention of other Unions representing ACT Government employees to the audit report with the request that they provide comments to the PAC.

3. COMMENT BY THE GOVERNMENT ON THE ISSUES

3.1. The Chief Minister expressed concern about unfunded liabilities relating to employee entitlements and noted the Government has stated it will pursue options to reduce the unfunded superannuation liability in the context of its objective to improve the Territory's operating result. However, the Chief Minister advised there are a number of employment and industrial issues that need to be taken into account in assessing whether and to what extent the unfunded liabilities in relation to long service leave and recreation leave should be handled in a similar way.

3.2. The Chief Minister advised that the audit report paints the ACT in a substantially worse position than it actually faces and the report’s conclusion was based on information that is not entirely accurate. In particular the Chief Minister was concerned that the report concludes that the ACT is out of step with other jurisdictions, that leave management arrangements are overly generous and that effective policies and management processes are not in place.

3.3. The Chief Minister advised that information from other jurisdictions in relation to long service leave and recreation leave policies and practices clearly indicates that ACT policies and practices in relation to the accrual of long service leave and recreation leave are consistent with the majority of other jurisdictions and are not “overly generous” as described by the audit report.

Legislative power, policies or management procedures

3.4. The Chief Minister advised that the major audit finding that there is no legislative power, policies or management procedures currently operating to contain the growth in long service leave and only limited policies and management procedures operate to contain the growth in recreation leave entitlements needs clarification. The Chief Minister stated that agencies and managers are working within the current legislative and policy framework and this framework is in line with that operating in other Australian government services.

Potential future liabilities

3.5. The Chief Minister recognised the broad level of concern expressed by the audit in relation to potential future liabilities and advised that the Commissioner for Public Administration has written to all chief executives suggesting that they take an active role in implementing strategies to monitor and minimise the accrual of leave entitlements.

Long service leave

3.6. In relation to long service leave, the Chief Minister advised that current legislative provisions enable employees to accrue leave, without being required to take leave, from the day they commence until the day they separate from the Service. Agencies have drawn attention to the fact that there is a cost to the employer for backfilling in service provider areas if employees were to be required to take long service leave in addition to their current recreation leave entitlement. They have also drawn attention to the difficulty of finding relief staff in specialist areas. In addition, there would undoubtedly be some resistance from unions and staff to any initiative that required employees to take their long service leave other than when they chose, in agreement with management, to do so. This would particularly be the case where staff intend to use their long service leave accrual as part of their retirement or separation strategy.

Recreation leave

3.7. With regard to recreation leave, the Chief Minister advised there are practices in place in agencies to limit accrual, through deeming arrangements and the rostering of annual leave. Again, agencies have drawn attention to the fact that any proposition which requires employees to take recreation leave or forfeit it has implications for backfilling and hence creates a cost to agencies. Changes in this area of employee entitlement is likely to be of concern to employees unless negotiated in the context of enterprise bargaining.

Special leave

3.8. The Chief Minister advised there appears to be an over reliance by the audit on anecdotal information. Nevertheless, some of the reasons provided on leave forms do not appear appropriate and while it is quite possible that the underlying reasons were discussed between management and staff and were not accurately described on the leave form, there does appear to be a case for tighter management processes within agencies and the Commissioner for Public Administration has addressed this point in the letter to chief executives referred to above.

Commonwealth compensation for leave liabilities assumed by the ACT

3.9. With regard to the extent of the Commonwealth compensation for long service leave and recreation leave liabilities assumed by the ACT in respect of public servants who became ACT Government employees at self-government, the Chief Minister advised that as part of the negotiations associated with the establishment of self-government in the ACT, the then Chief Minister formally sought a capital grant of $58 million to compensate for the accrued long service leave liabilities transferred to the ACT.

3.10. The Commonwealth response was that no special compensation was to be provided, as the Commonwealth considered they were providing sufficient funds in the ongoing annual general revenue grant. This was qualified on the basis that in the event of a major ACT Government staff redundancy program resulting in an abnormally large long service leave pay out, the Commonwealth would be prepared to consider a request for assistance from the ACT. No such request has been made. There was no separate claim made in relation to the accrued liability for recreation leave.

4. COMMENTS BY THE COMMUNITY AND PUBLIC SECTOR UNION (ACT BRANCH

4.1. The ACT Branch of the Community and Public Sector Union (CPSU) advised that the environment within which the employee operates has a significant impact upon an employee's decisions about leave usage. In a down-sizing environment employees are far more likely to bank leave entitlements as a “hedge” against possible redundancy. Down-sizing can create operational difficulties in leave scheduling and employees may be denied access to leave entitlements to enable operational requirements to be met.

4.2. The CPSU advised that change in the workplace impacts upon employee use of leave entitlements insofar as employees feel a need to be in the workplace to ensure they are not left behind by the change or restructured out of a job. Inflexible management practices wherein operational requirements have primacy when determining leave approvals can cause and/or facilitate excessive leave banking.

4.3. Following from this the CPSU advised it is both incumbent upon and prudent for an employer to ensure employees have an environment in which the taking of leave is facilitated through effective management practices rather than through prescription.

Long service and recreation leave

4.4. The CPSU advised that it would require any proposed change to existing long service and recreation leave conditions to be negotiated in a manner consistent with the terms of the agreements held between the CPSU and the ACT Government.

Special leave

4.5. The CPSU accepted the quantitative data provided in the audit report as a true reflection of special leave usage. However, the Union does not accept there has been substantial recourse to such leave as no comparative data has been provided to enable validation of such an opinion by the audit. The Union further noted that the audit comment was inconsistent with another comment that "it was not possible for the audit to draw a definitive conclusion on whether the quantity of Special Circumstances Leave being taken is excessive."[3]

4.6. The Union was unable to accept the audit finding about reasons given for special leave in the terms provided by the audit. The Union considered such an opinion would be better stated as "Approvals granted for Special Circumstances Leave may not be consistent with existing guidelines, where such guidelines exist".

4.7. The Union advised that reasons offered for this view arise from the fact that special leave is a discretionary entitlement. As such, and as implied by Public Sector Management (PSM) Standard 22. 1, the reason given, or recorded, is irrelevant as the only requirement to be met is that "in the opinion of the relevant chief executive, special circumstances exist".

4.8. From this the Union concluded that usage of special leave has been appropriate insofar as the approval for usage was given by an appropriately delegated officer and even in those areas where guidelines exist the provisions of PSM Standard 22.1 still apply. In this regard, the Union stated that the provision requiring the employee to provide justification for special leave does not also make the employee responsible when that justification is accepted and the leave granted, as the onus for determining appropriateness still resides with the delegate.[4]

4.9. The Union advised that it believes the issue, if in fact one exists, is whether a delegation is being appropriately exercised rather than whether reasons given and/or recorded are appropriate. The Union further advised that any prescription upon access to this leave may disadvantage employees and that introduction of guidelines, or other mechanisms of control, that seek to limit or vary existing special leave conditions would need to be negotiated in a manner consistent with the terms of the agreements held between the CPSU and the ACT Government.

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[3] Audit report p37
[4] Audit report p36

5. COMMITTEE COMMENT

5.1. The audit stated that in comparison with most Australian State jurisdictions the ACT is considerably more generous in allowing recreation leave balances to grow and that it would be prudent financial management for the ACT to implement similar policies to contain or reduce the growth in its leave liability.[5]

5.2. Comparative material provided by the Chief Minister[6] indicated that NSW and Victoria do not restrict the accumulation of long service leave while Victoria has no cashing out provisions except under workplace agreements. In those States which do have restrictions, Western Australia requires that such leave be taken as it accrues, although some agency workplace agreements may vary this arrangement, and the Northern Territory requires leave to be taken no later than three years after it accumulates. Tasmania limits accumulation to 100 days.

5.3. Data on recreation leave[7] indicated that compared to the ACT, which allows a maximum leave accumulation of 60 days before an officer is deemed to be on leave after 1 July and after two years leave has not been used, NSW has a maximum accumulation of 40 days unless an approved exemption is given. Victoria limits accumulation to two years credit, although this is not rigidly adhered to and rules vary between departments. Queensland limits accumulation to two years (40 days) or 50 days if the officer works in an isolated location although, again, the chief executive can approve an exemption. South Australia has no prescribed limit but agencies encourage officers to take leave within the year it accumulates unless special circumstances arise. The situation in Western Australia varies between agencies, but normally leave is taken in the year it accumulates although chief executives can approve accumulation beyond one leave year. Tasmania limits accumulation to two years (40 days but maximum acceptable is 60 days). This has not been adhered to in the past and leave credits are now managed at agency level and agencies can approve exemptions. The Northern Territory allows accumulation of two years leave (12 weeks), although forfeited leave may be restored in exceptional circumstances.

5.4. The comparisons outlined above lend some support to the audit finding that most other jurisdictions appear to limit the growth in their long service and recreation leave liabilities more effectively than does the ACT.

5.5. The committee notes the view expressed by the Chief Minister[8] and supported by the CPSU that the industrial implications of encouraging the taking of long service leave would need to be carefully assessed by agencies and that the accrual of such leave is consistent with the current legislated employment framework. The committee also notes that the accumulation of long service leave is an important element in the culture as well as the planning of officers in relation to their retirement or separation strategies.

[5] ibid pp32,33
[6] Chief Minister, letter to the PAC dated 6 August 1997, attachment A
[7] ibid
[8] ibid, attachment B

5.6. The committee has some reservations as to whether agency concerns about the costs of backfilling, and finding relief staff in specialist areas, are sustainable. The arithmetic indicates that a cost comparison between an employee who takes long service and recreation leave as it accrues and an employee who cashes out accumulated leave on termination is negligible. The committee also considers that while finding relief staff with specialist positions may be an isolated problem in some areas, where it exists it should be addressed by management as part of its expected role and bearing in mind that unforseen circumstances can as readily take a specialist out of the line as would planned long service leave.

5.7. With regard to special leave, the committee is attracted to the view expressed by the CPSU that to the extent that there is an issue in relation to reasons given for such leave, it is whether delegations are being appropriately exercised rather than whether reasons given or which are recorded are appropriate. The committee notes that this matter has been brought to the attention of agencies by the Commissioner for Public Administration.[9]

5.8. The committee has a concern that the extent of the Commonwealth's residual liability for accrued long service leave in particular cases may not have been fully explored. In other words, while the Commonwealth might consider requests for assistance only in the context of a general and major staff redundancy program, there are likely to be individual cases where considerable liabilities have accrued during the period prior to self-government. The committee considers that any such cases ought to be vigorously pursued with the Commonwealth.

5.9. The committee notes that the Government has a different view about aspects of the audit findings and notes, in particular, that the Government has challenged the audit in respect of comment on ACT policies and practices.

5.10. This is a concern to the committee and it will ask the Chief Minister to substantiate those claims where, in the Government's view, the audit has overstated the ACT's position.

6. RECOMMENDATION

6.1. The committee recommends that:

(i) with regard to any particular cases of significantly large accrued long service leave liabilities incurred when the Commonwealth was responsible for the administration of the ACT and which were assumed by the ACT on self-government, the Government seek a capital grant from the Commonwealth to compensate for these liabilities;

(ii) the Government carry out an analysis to plot future demand for long service leave payouts to allow planning against abnormal strain on annual budgets; and

[9] ibid, attachement C

(iii) firm ACT Public Service guidelines for the granting of special leave be drawn up, negotiated with employee representatives and promulgated throughout the ACT Administration.

Ted Quinlan MLA
Chair