

PA 11/07

Mrs Vicki Dunne MLA
Speaker
Legislative Assembly of the ACT
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Madam Speaker

IMPLEMENTATION OF LATIMER HOUSE PRINCIPLES IN THE ACT

Attached are the Audit Office's comments on the 'Report of the Implementation of Latimer House Principles in the Australian Capital Territory'.

The Audit Office has confined its comments to matters related to the work and operations of the Audit Office.

I would be pleased to provide further information on these comments if requested to do so.

Yours sincerely



Dr Maxine Cooper
Auditor-General

27
May 2015

Comments on the 'Report of the Implementation of Latimer House Principles in the Australian Capital Territory'.

A. Introduction

On 10 February 2015, the Speaker tabled a copy of a report titled 'Report of the Implementation of Latimer House Principles in the Australian Capital Territory' (the Report).

The Report was prepared by the Institute of Governance and Policy Analysis (IGPA) at the University of Canberra. The work by the IGPA was commissioned by the Legislative Assembly to 'evaluate the quality of the application of Latimer House Principles in the work of the Legislative Assembly'¹.

On 23 April 2015, the Acting Speaker, Dr Chris Bourke MLA invited the Audit Office to provide comments on the matters raised in the Report.

B. Comments

B.1 Examination of Auditor-General reports

The reviewers state that:

The review found, that despite well founded structures and formal processes existing in many areas of governance, that members of the Assembly believe that..... **scrutiny of government by the Assembly through detailed examination of Auditor-General reports has been diminished and there are mounting concerns as to appropriate resourcing in this area**².

A key function of the Audit Office under the *Auditor-General Act 1996* is to:

.... promote public accountability in the public administration of the Territory³.

The Audit Office achieves this by reporting to the Legislative Assembly on the results of audits ('audit findings') and drawing attention to areas where administration of public services could be improved. While there is no requirement to do so, Audit Office reports also include recommendations on how improvements could be made in the administration of public services.

The value of the Audit Office's work in ensuring that the government of the day is held to account for the effective and efficient administration of ACT public services relies, at least in part, on proper scrutiny of Auditor-General reports by the Legislative Assembly and its Committees, in particular the Public Accounts Committee (the PAC).

¹ Page 4 of the 'Report of the Implementation of Latimer House Principles in the Australian Capital Territory'.

² Page 8 of the 'Report of the Implementation of Latimer House Principles in the Australian Capital Territory'.

³ Section 10(1)(a) of the A-G Act.

The Audit Office considers that 'mounting concerns' referred to by the reviewers about resources which enable the proper scrutiny of the government of the day should be investigated and any corrective actions identified and implemented.

B.2 Resourcing of scrutiny bodies including the Audit Office

The reviewers recommend that:

Recommendation 3: General acceptance of the proposition that adequate resourcing be provided to scrutiny bodies through the budget is more than simply adopting a formal process of consultation. To strengthen public confidence, there is a requirement on the government of the day to reach a reasonable consensus across the political spectrum on an acceptable level of public allocations to these bodies.⁴

The Audit Office supports this recommendation.

In the 'Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office' dated 3 May 2010, the external reviewer, Mr Bob Sendt concluded that:

the existing performance audit function is viable, but just so.....⁵

Mr Sendt also noted that:

A program of eight or so audits may seem reasonable, but allowance must be made within this for one or two follow up audits each year and probably at least one ad hoc request by the Public Accounts Committee, the Legislative Assembly or the Government⁶.

As expected by Mr Sendt, the planned performance audit program has been varied in recent years in response to emerging priorities. The program was varied:

- in 2014-15 to undertake three audits not in the planned forward performance audit program: an audit on the integrity of data and reporting in the Health Directorate, in recognition of revised Commonwealth funding arrangements; another in relation to the sale of ACTTAB, in recognition of the Legislative Assembly interest in this sale; and an audit on Calvary Public Hospital financial and performance reporting following the reporting by Calvary of incorrect financial information to ACT Health in 2013-14;
- in 2013-14 to undertake two audits not in the planned forward performance audit program but were in response to information received through the public interest disclosure process (The Water and Sewerage Pricing Process; and Gastroenterology and Hepatology Unit, Canberra Hospital); and

⁴ Page 9 of the 'Report of the Implementation of Latimer House Principles in the Australian Capital Territory'.

⁵ Page 37 of the 'Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office' dated 3 May 2010.

⁶ Page 37 of the 'Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office' dated 3 May 2010.

- in 2012-13 to address matters raised by the Legislative Assembly and Chief Minister (Emergency Department Performance Information), and respond to queries by the PAC (2013 Executive Remuneration Disclosed in ACTEW Corporation Limited's 2010-11 Financial Statements and Annual Report 2011).

These audits represented seven (33.3 percent) of the 21 audits expected to be completed in the three years to 2014-15. Planned audits were deferred and audits in progress were delayed to enable these audits to be completed. The small number of audits provided for by current funding levels has meant that no follow up audits have occurred in the three years to 2014-15 and only one is planned in the foreseeable future.

Mr Sendt also noted that the size of the performance audit program:

... provided by the current level of funding makes it difficult for the Audit Office to plan a series of successive audits on a particular theme such as environmental protection, governance or risk management. In turn this limits the opportunity for any real degree of specialisation by those employed by the Office, which would allow skills and knowledge to be transferred to the next. The small complement of performance audit staff also means that the impact of staff turnover will have significant consequences⁷.

The reviewers note that:

In the current Assembly, the Opposition has adopted a position of seeking additional resources for the Auditor to undertake an increased number of performance audits, with resources at a level matching those utilised in conducting financial audits. They have indicated that they would implement this policy in government, while the Government maintains that current levels of resources are adequate, given budget priorities⁸.

In recent years, the PAC has recommended that the Audit Office be provided with additional funding to undertake an increased number of performance audits. This recommended additional funding has not been provided.

The demand for performance audits is expected to continue increasing in response to matters raised by the Legislative Assembly and community. Under recent changes made to the *Auditor-General's Act 1996*, the Audit Office may:

- audit the Government-funded activities of non-government entities in certain circumstances; and
- conduct joint or collaborative audits with Commonwealth, State and Territory Auditors-General.

These legislative changes increase the range of audits expected by the Legislative Assembly.

⁷ Page 37 of the 'Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office' dated 3 May 2010.

⁸ Page 21 of the 'Report of the Implementation of Latimer House Principles in the Australian Capital Territory'.

Additional appropriation would assist the Audit Office to respond effectively to increasing expectations of the Legislative Assembly and the PAC as reflected in changes to the *Auditor-General Act 1996*.

Under recent changes to the *Financial Management Act 1996* (the FMA), the Speaker is required to:

- consult with the Auditor-General and the PAC and advise the Treasurer of the appropriation that the Speaker considers should be made⁹;
- present the recommended appropriation to the Assembly¹⁰; and
- give the Treasurer a draft budget¹¹.

Where the appropriation for the Audit Office is less than the appropriation recommended by the Speaker, the Treasurer is required to present the Legislative Assembly with a 'statement of reasons' for departing from the recommended appropriation¹².

These recent changes to the FMA have strengthened processes for determining the funding provided to the Audit Office and increase scrutiny of funding provided. However, they apply for the first time to the 2015-16 budget of the Audit Office and whether they result in the provision of the funding recommended by the Speaker and the PAC remains to be seen.

B.3 Additional safeguards against corruption

The reviewers recommend that:

Recommendation 4: The ACT would do well not to be complacent in the area of possible corruption, and seek out appropriate strategies to guard against the potential of a growing corruption threat to the good governance of the ACT. While an ongoing corruption commission may not be justified for a small jurisdiction, other measures such as providing investigative powers and resources to existing integrity bodies and adopting mandatory review obligation by the Auditor in selected areas of administration could be considered¹³.

The Audit Office has not assessed the risks of potential corruption referred to by the reviewers or considered what measures that might act as an effective safeguard against corruption in a small jurisdiction such as the ACT.

The Audit Office has examined matters raised in public interest disclosures and representations. However, it has done this by delaying and deferring planned performance audits. If integrity officers such as the Auditor-General were allocated new

⁹ Section 20AB(a) of the FMA.

¹⁰ Section 20AB(b) of the FMA.

¹¹ Section 20AB(c) of the FMA.

¹² Section 20AC(1) and (2) of the FMA.

¹³ Pages 9 and 10 of the 'Report of the Implementation of Latimer House Principles in the Australian Capital Territory'.

responsibilities for the investigation of corruption, then, as indicated by the reviewers, these officers would need to be provided with sufficient resources to properly undertake these new responsibilities.

B.4 Responding to audit findings

The reviewers recommend that:

Recommendation 4: A granular approach whereby the majority of audit findings could be 'triaged' directly into rapid implementation while more contentious or resource intensive recommendations face greater political scrutiny would seem an appropriate strategy more in line with the Principles¹⁴.

The Audit Office supports this recommendation.

In making this recommendation the reviewers noted that:

Concerns were raised with the review that the Government has changed the way it publicly responds to recommendations of the Auditor-General. From November 2013 a truncated approach has been adopted that removed the initial response from the Directorate concerned to individual recommendations of the Auditor-General and limited the Government's response to the PAC to general statements only. If, and only if, the PAC undertakes an inquiry into the Auditor's findings does the Government respond with a detailed position indicated on each recommendation. The recent introduction of this new practice is at odds [with] past practice and with those followed in other jurisdictions.

The Government appears to have taken an expeditious approach to streamline processes, guided by directing public services to priorities on-hand, rather than one of full and open commitment to the Principle of scrutiny of action and performance, or to notions of continuous improvement. It appears to be somewhat self serving in that it delays approved responses to reports for some considerable period, and necessarily focuses only on those contentious issues remaining after PAC scrutiny. Given the PAC is now, like all committees of the Assembly, evenly balanced between Government and Opposition members, the likelihood of poor performance is significantly diminished.

Based on previous outcomes of audit reports most recommendations are likely to be supported by government, be non-controversial, represent good management practice and not involve significant resourcing imposts. A 'continuous improvement' philosophy would see such recommendations welcomed and publicly acknowledged, taken up and quickly implemented as management initiatives without detriment to the government rather than lost or delayed due to political posturing¹⁵.

The Audit Office shares the reviewers' concerns about the ACT Government's new approach to responding to audit recommendations.

¹⁴ Page 10 of the 'Report of the Implementation of Latimer House Principles in the Australian Capital Territory'.

¹⁵ Pages 27 and 28 of the 'Report of the Implementation of Latimer House Principles in the Australian Capital Territory'.

Statements of performance included in Audit Office's annual reports show the following results for 'the percentage of recommendations accepted in performance audits'.

Year	2008-09	2009-10	2010-11	2011-12	2012-13
Percentage accepted	71% ¹⁶	72% ¹⁷	86% ¹⁸	81% ¹⁹	91% ²⁰

The 'percentage accepted' was not measured in 2013-14 because a result is no longer measurable in a timely manner following the ACT Government's new approach to responding to performance audit reports²¹.

The results in the above table show that a consistently high proportion of recommendations were accepted by agencies in their responses to performance audit recommendations. These results provide a conservative indication of acceptance rates, because 'partial agreements', 'agreed-in-principle', unclear and 'noted' responses were excluded from the count of 'accepted recommendations' in measuring the above results with very few recommendations being 'not agreed'. For example:

- in 2008-09, only one recommendation was 'not agreed' (four were 'noted')²²;
- in 2009-10²³, 2010-11²⁴ and 2011-12²⁵, results were significantly affected by recommendations that were 'agreed-in-part' and 'agreed-in-principle'. There were no recommendations that were 'not agreed' in these years; and
- in 2012-13, the result was significantly affected by recommendations that were 'agreed-in-part' and 'agreed-in-principle'. Only one recommendation was 'not agreed'²⁶.

The ACT Government's 'Guidelines for Responding to Performance Audit Reports by the Auditor-General' state that:

Management responses to draft reports are to be purely factual, focused on correcting factual inaccuracies or providing additional factual material. On no account should a management response commit the government to a course of action²⁷.

¹⁶ Page 125 of Annual Report 2008-09.

¹⁷ Page 131 of Annual Report 2009-10.

¹⁸ Page 137 of Annual Report 2010-11.

¹⁹ Page 151 of Annual Report 2011-12.

²⁰ Page 153 of Annual Report 2012-13.

²¹ Page 162 of Annual Report 2013-14.

²² Page 132 of Annual Report 2008-09.

²³ Page 138 of Annual Report 2009-10.

²⁴ Page 144 of Annual Report 2010-11.

²⁵ Page 158 of Annual Report 2011-12.

²⁶ Page 161 of Annual Report 2012-13.

²⁷ Page 2 of the 'Guidelines for Responding to Performance Audit Reports by the Auditor-General'.

Those who comply with these guidelines will not be providing information which can be included in performance audit reports on what action, if any, will be taken in relation to audit findings and related recommendations. For most responding agencies, a failure to provide this information will represent a missed opportunity for agency management to inform the Legislative Assembly and the wider community of whether they agree with the audit recommendations or, for example, intend to take other actions to those suggested by the audit. As noted by the reviewers, the new approach to responding to performance audit reports is at odds with 'the Principle of scrutiny of action and performance, or to notions of continuous improvement'²⁸. The new approach may reduce public confidence in the Government's commitment to implementing this important Principle.

As indicated by the reviewers, a better and more transparent approach would be for agencies to provide informative responses to audit findings and recommendations whenever possible. To be informative, these comments should indicate what action, if any, will be taken in relation to audit findings and related recommendations. If there are other considerations which need to be considered before recommendations can be agreed to (e.g. budgetary constraints and other priorities), then this could be disclosed in agency responses.

²⁸ Pages 27 of the 'Report of the Implementation of Latimer House Principles in the Australian Capital Territory'.

