



**Brendan Smyth MLA**

Australian Capital Territory

## Deputy Leader of the Opposition

Member for Brindabella

Shadow Treasurer, Shadow Minister for Economic Development,  
Business and Tourism, Emergency Services, Territory Owned  
Corporations and Gaming & Racing

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Ms Amanda Bresnan MLA  
Chair  
Select Committee on Privileges 2011  
ACT Legislative Assembly  
CANBERRA ACT 2600

Dear Ms Bresnan

I refer to your letter, of 28 September 2011, concerning the inquiry into whether there was improper interference with the free exercise by the Standing Committee on Public Accounts (PAC) of its authority in relation to consideration of the proposed nominee to the position of Auditor-General, and whether there was any information I would like to provide.

There are a number of documents held by the PAC which would be relevant to the Committee's consideration of this matter. These documents include, in particular, letters to and from PAC and minutes of PAC meetings. These documents are of direct and compelling relevance.

However, I am not authorised to provide any of these documents to your Committee.

I would suggest that you ask PAC for access to these documents, as they will provide you with an essential insight into the deliberations of PAC on the matters which are raised by your inquiry. Without them, I fail to see how this Committee could reach any meaningful conclusion.

That fact notwithstanding, I will outline the essential elements that raised the concerns of interference as completely as I can.

First, I would draw the Committee's attention to advice prepared by the Chief Solicitor that stated: *'Notwithstanding its possible lack of clarity, it is my opinion that section 8 of the Auditor-General Act 1996 effectively gives the Public Accounts Committee a "veto" over the appointment of the Auditor-General.'*

This is a vital point. The Auditor-General is not an appointment that can be made without PAC approval, and a claim to do so is both inaccurate and invalid.

Against this light, there has been conduct that has interfered with this important Committee role in this appointment in two main areas: in relation to the announcement itself, and in relation to actions after the announcement.

The first shows a contempt for the proper role of the Committee in this appointment and the second is an attempt to interfere in the process to influence the outcome.

## **1. The Announcement**

### **Media release of 31 May 2011**

On 31 May 2011, the Chief Minister promulgated a media release headed: *'New Auditor-General for ACT'*.

This was made, in the public arena, without the PAC having any opportunity to consult or review the appointment, and any reasonable reading to the general public would be that the appointment was complete.

### **ABC Online of 31 May 2011**

A news item on ABC Online, which was posted later on the morning of 31 May 2011, was headed: *'Commissioner Cooper named Auditor-General'*.

As with the Chief Minister's media release, it is essential to consider what conclusions a reasonable person would place on this news item, particularly based on the heading.

### **Chief Minister's media website of 31 May 2011**

The Chief Minister's media website lists all her media releases. For 31 May 2011, there is only one listing: *'New Auditor-General for ACT'*.

Again, as with the Chief Minister's media release and the report on ABC Online, it is essential to consider what conclusions a reasonable person would place on reviewing the Chief Minister's listing of media releases.

### **Letter of 31 May 2011**

I understand that this letter was hand-delivered to the office of the Chair of PAC, rather than to the Committee Secretariat, just prior to the promulgation of the Chief Minister's media release of the same date.

This letter concluded with the Chief Minister noting: *'I would appreciate your favourable consideration of the nomination...'* [emphasis added]

Further, while this letter was a request from the Chief Minister for PAC to consider a nominee for the position of Auditor-General, only very brief details of the nominee were provided to PAC.

As a result, PAC was required to ask the Chief Minister for additional information on the nominee before PAC could form a considered opinion on the nominee.

### **Letter from PAC to Chief Minister of 31 May 2011**

The events of 31 May 2011 culminated in a letter from the Chair of PAC – on behalf of the members of PAC – to the Chief Minister.

The content of this letter raises, in a formal way, the initial concerns of PAC about the process being followed for the consideration of the new Auditor-General.

First, the Chair of PAC emphasised that, before PAC could make an appropriate evaluation of the proposed nominee as Auditor-General, PAC would require more information. Indeed, not only did the Chair ask for the selection criteria, but the Chair asked for:

‘a full *curriculum vitae* for the proposed nominee.’ [emphasis in original letter]

Second, the Chair of PAC set out in some detail the concerns of PAC about the process which had been followed by the Chief Minister in the actions she had taken earlier on 31 May 2011. The Chair made the following comments:

- ‘*it would have been courteous for [Ms Gallagher] to have waited until [PAC’s] views had been received*’;
- ‘*[the Chief Minister’s approach] is also a discourtesy to the proposed nominee*’; and
- ‘*the Committee strongly draws to your attention the nature of [PAC’s] statutory role*’.

The Chair then outlined in considerable detail both the formal process which should be followed with respect to nominees for Auditor-General and the response of PAC to following this process. The conclusion made by the Chair is worth repeating in full:

*‘The Committee is therefore of the view that your public announcement, prior to completion of the statutory process in accordance with section 8 of the Auditor-General Act 1996, was premature with regard to the process and a discourtesy to the important role played by the Committee, on behalf of the Assembly, in the appointment process.’*

## **2. Actions after the announcement**

### **Letter from Chief Minister of 3 June 2011**

The Chief Minister replied to the letter from the Chair of PAC on 3 June 2011. In attempting to defend her process of ‘announcing’ an appointment that she had no statutory right to do, Ms Gallagher confuses issues of confidentiality with statutory requirements relating to the appointment of the Auditor-General. Ms Gallagher also confuses the process for the appointment of an Auditor-General with the approach used for other Territory appointments.

Ms Gallagher also attempted to defend her process by arguing to minimise delays in announcements. Evidence from the nominee as Auditor-General, however, reveals that there had already been a considerable delay in this process (which the nominee attributed – incorrectly – to the actions of PAC: refer note from the Chair of 31 May 2011).

#### **Letter from PAC of 8 June 2011**

PAC responded to the letter from the Chief Minister on 8 June 2011. In what can only be a quite extra-ordinary request, PAC again asked for appropriate details relating to the interview process for the new Auditor-General.

PASC also requested an additional period of 30 days in which to consider the proposed nominee.

#### **Letter from Chief Minister of 9 June 2011**

The Chief Minister replied to the letter from PAC on 9 June 2011.

The Chief Minister agreed to the extension of time. At the same time, however, the Chief Minister added: *'Given the significance of the position I urge the Committee to finalise its consideration of this matter in a timely manner to allow the appointment of a new Auditor-General to proceed.'*

This contradicts the view of the nominee, who was reported to have told the Chair of PAC that she was wondering why the appointment process had taken so long (refer note from Chair of 31 May 2011).

The Chief Minister also took the unusual step of responding to PAC's request for additional information by offering a briefing on the interview process from the Chair of the Selection Committee and the Chief Minister.

#### **Letter from PAC of 10 June 2011**

Notwithstanding the offer from the Chief Minister, of 9 June 2011, PAC wrote again to the Chief Minister on 10 June 2011 seeking relevant information relating to the interview process. This was the third occasion on which PAC had sought this information.

#### **PAC – Minutes of meetings and other documents**

As you would be aware, there were extensive discussions within PAC about this matter. These discussions dealt with all aspects relating to the process by which the nomination for the new Auditor-General was considered by PAC.

I reiterate that I suggest that your Committee should obtain copies of the minutes of the relevant meetings of PAC to provide you with a clear understanding of the concerns which were expressed by PAC about this matter. Your Committee also should obtain copies of all relevant letters which were written by the Chief Minister, on behalf of the ACT Government, and by PAC in relation to this matter.

There are two additional incidents which bear directly on the matter of improper interference.

**Appointee's approach to Committee Chair**

The first incident is mentioned in the note prepared by the Chair of PAC on 31 May 2011. The Chair notes that the nominee for Auditor-General approached the Chair at a function on the evening of 31 May 2011 to discuss the delay in the appointment, when PAC had only heard of the nomination that day. As the Chair comments, she considered this approach to have been inappropriate. In the words of the Chair, she was trying to avoid a *'very awkward situation'*.

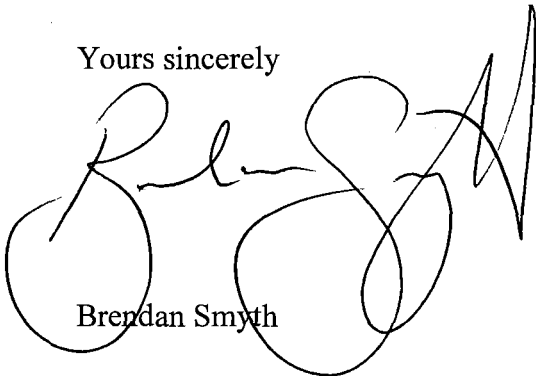
**Chief Minister's approach to Committee Chair**

The second incident concerns the fact that the Chair of PAC also was approached by the Chief Minister a day or so after the announcement of 31 May 2011. It is unclear precisely what transpired in this conversation but the key point is that this was a most inappropriate way for the Chief Minister to behave during PAC's consideration of the Government's nominee for Auditor-General.

I have set out the various actions in the process leading to the appointment of the new Auditor-General in some detail, because each of these actions is an important link in establishing the extent of the pressure which was being placed on PAC to respond to the Chief Minister's announcement of 31 May 2011.

I would be happy to meet with your Committee at a convenient time to consider this matter in more detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brendan Smyth', written in a cursive style. The signature is positioned above the printed name 'Brendan Smyth'.

Brendan Smyth

13 October 2011