Jon Stanhope MLA
CHIEF MINISTER
MINISTER FOR TRANSPORT MINISTER FOR TERRITORY AND MUNICIPAL SERVICES
MINISTER FOR BUSINESS AND ECONOMIC DEVELOPMENT
MINISTER FOR INDIGENOUS AFFAIRS MINISTER FOR THE ARTS AND HERITAGE

MEMBER FOR GINNINDERRA

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SUBMISSION NUMBER	4
DATE AUTH'D FOR PUBLICATION	18/2/2010

Mr Glenn Ryall
A/g Secretary
Standing Committee on Public Accounts
GPO Box 1020
CANBERRA CITY ACT 2601

Dear Mr Ryall

Thank you for the opportunity to provide an ACT Government Submission to the Standing Committee on Public Accounts inquiry into the ACT *Auditor-General Act 1996*.

The ACT Government recognises the valuable contribution that this inquiry will bring to maintaining public accountability in the ACT and is pleased to provide the attached Submission.

I look forward to the outcomes of the Committee's inquiry on this important matter.

Yours sincerely

Jon Stanhope MLA
Chief Minister
11 FEB 2010

ACT LEGISLATIVE ASSEMBLY
London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0104 Fax (02) 6205 0433 Email stanhope@act.gov.au

ACT Government Submission
to the
Standing Committee on Public Accounts
Inquiry into the ACT *Auditor-General Act 1996*

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Submission to Terms of Reference 1
Whether any amendments to the Act are required to take account of developments in both auditing standards and public administration in the ACT and other jurisdictions

<u>ACT Government Position</u>
To take account of developments in both auditing standards and public administration in the ACT and other jurisdictions, the ACT Government supports consideration being given to the incorporation of passages, similar to that identified in the NSW *Public Finance and Audit Act 1983* (s27B-4), into the ACT *Auditor-General Act 1996.*

<u>Context</u>
The ACT Government acknowledges the importance of the ACT Auditor-General and her Office, and the valuable role the Auditor-General's Office plays in maintaining accountability and confidence in the public administration of the Territory.

The ACT Government appreciates that compliance with recognised professional standards and practices (including application of the most current, up-to-date auditing and public administration standards) is a key element of ensuring the integrity of the ACT Auditor-General and her Office.

Similarly, the ACT Government appreciates, as noted by the OECD (Organisation for Economic Co-operation and Development) in April 2009, that new forms of public sector management, privatisation and new technologies have not only changed the way that the public sector operates, but have also created a need for new ways of making both agencies and governments accountable for what they do.

As such, the Government supports investigation and consideration of amendments to the ACT *Auditor-General Act 1996* which would seek to take account of recognised professional accountability standards and practices which address developments in both auditing standards and public administration.

By way of example, the ACT Government notes that the NSW *Public Finance and Audit Act 1983* (s27B-4) contains provisions which state "*the Auditor-General is required:*

- *to have regard to recognised professional standards and practices; and*
- *to comply with any relevant requirements imposed by law.*"

Based on the above, the ACT Government supports consideration being given to the incorporation of passages, similar to that identified in the NSW *Public Finance and Audit Act 1983* (s27B-4), into the ACT *Auditor-General Act 1996* in order to take account of developments in both auditing standards and public administration in the ACT and other jurisdictions.

Submission to Terms of Reference 2
Whether there should be changes to the coverage and scope of the ACT Auditor-General's audit mandate and, in particular, with the power to audit organisations that receive funds from the ACT Government

<u>ACT Government Position</u>
ACT Government suggests that the coverage and scope of the ACT Auditor-General's audit mandate should <u>not</u> be changed to encompass the power to audit organisations that receive funds from the ACT Government over and above those entities included at sections 11 (1) and 12 (1) of the ACT *Auditor-General Act 1996.*

<u>Context</u>
A report entitled *Independence of Auditors General: A survey of Australia and New Zealand Legislation* commissioned by the Victorian Auditor General's Office in July 2009 suggests a distinction between the Auditor General's traditional role as the 'auditor of the entity' and the Auditor General's broader role of holding the government to account. The report suggests this broader role of holding the government to account is achieved by "*empowering the Auditor General to 'follow the public dollar' wherever it has been spent*" by examining or investigating any matter relating to the use of public resources of any kind by any recipient or beneficiary.

It is noted that the ACT Auditor-General's current audit mandate (as outlined in section 11 (1) and section 12 (1) of the ACT *Auditor-General Act 1996*) encompasses:
- departments;
- territory entities;
- public sector companies;
- joint ventures in which the Territory (or a territory entity) has a controlling interest; and
- trusts in which the Territory (or a territory entity) has a controlling interest.

The ACT Government considers that it is the responsibility of each individual Territory entity to ensure it has adequate checks, balances and governance arrangements with respect to its funding agreements with external bodies.

As such, it is considered that it is entirely appropriate that the nexus of accountability for Government funds rests with the relevant Territory entity. It is considered that thorough and comprehensive audits of Territory-controlled bodies should provide sufficient opportunity for the Auditor-General to "follow the public dollar". This currently includes agencies' procurement and contract and grants management practices.

Additionally, contractual provisions in most grant and other funding agreements with non-government organisations (particularly with not for profit organisations) often include a requirement that the funded organisation permit the Territory to inspect or audit the records of the funded organisation, at least in relation to the funded amount. Therefore, there are already non-legislative ways in which government funded non-government organisations are required to account for their funding.

CMD is also working across government to develop a new performance and accountability framework for the ACT. This work forms part of the Accountability in Government initiative which aims to develop a more mature performance and accountability framework to strengthen the Government's capacity to deliver policy and service delivery outcomes;

promote agencies' accountability and performance; and enhance across-government planning, strategy development and delivery.

Based on the above, the ACT Government suggests that the coverage and scope of the ACT Auditor-General's audit mandate should <u>not</u> encompass the power to audit organisations that receive funds from the ACT Government, over and above those entities included at sections 11 (1) and 12 (1) of the ACT *Auditor-General Act 1996*.

Submission to Terms of Reference 3
Whether the annual budget for the ACT Auditor-General should be set by the Legislative Assembly and not by the Executive Government

<u>ACT Government Position</u>
The ACT Government does not support the view that the annual budget for the ACT Auditor-General should be set by the Legislative Assembly and not by the Executive Government.

<u>Context</u>
The ACT Government notes this matter was previously addressed in Mr Smyth's Private Member's Bill, *Auditor-General Amendment Bill 2009*, which sought to provide that the annual budget for the ACT Auditor-General be determined by the ACT Legislative Assembly.

The ACT Government considers:

- there are already provisions in the current ACT *Auditor-General Act 1996* to ensure the independence of the Auditor-General and her office from the Executive;
- there are already provisions in the current ACT *Auditor-General Act 1996* that allow the Public Accounts Committee to provide input to the development of the annual Budget appropriation for the Auditor-General and her office;
- determination of the annual budget for the ACT Auditor-General by the ACT Legislative Assembly runs contrary to section 65 of the *Australian Capital Territory (Self Government) Act (1988)* (Cwlth), which provides appropriations can only be introduced by Ministers;
- determination of the annual budget for the ACT Auditor-General by the ACT Legislative Assembly is likely beyond the constitutional capacity of the Legislative Assembly in as much as it purports to provide for the Assembly to direct the Executive; and
- the Territory already funds the Auditor-General to an appropriate level, based on per capita comparisons, including with small jurisdictions, and also previous funding history.

Based on the above, the ACT Government does not support the view that the annual budget for the ACT Auditor-General should be set by the Legislative Assembly and not by the Executive Government.

Submission to Terms of Reference 4
Any amendments which would strengthen the managerial autonomy and resourcing of the ACT Auditor-General

ACT Government Position
To strengthen the managerial autonomy and resourcing of the ACT Auditor-General, the ACT Government supports consideration of the incorporation of passages, similar to those in the Commonwealth *Auditor-General Act 1997* (s8-4), into the ACT *Auditor-General Act 1996.*

The ACT Government does not support incorporation of the legislative components identified in the *Independence of Auditors General: A survey of Australia and New Zealand Legislation* report.

Context
The *Independence of Auditors General: A survey of Australia and New Zealand Legislation* report of July 2009 identifies a set of key legislative components that contribute to the managerial and resourcing independence of the Auditor-General – these are shown in italics below, followed by the ACT Government's position against each.

- *Staffing autonomy or the independence from the Executive control of the public service*
  - Employees within the ACT Auditor-General's Office must be employed under the *Public Sector Management Act 1994.* Conversely, employees of the UK National Audit Office, which is highly regarded for its independence, are not part of the civil service as civil servants must resign from the service before taking up employment with the Audit Office.
  - It is suggested that covering Audit Office employees under the *Public Sector Management Act 1994* is likely to accrue greater benefits to the Auditor-General's office over the long term by attracting and maintaining higher quality staff, than the practice of requiring civil servants to resign from the service.
- *Financial autonomy or the independence of the process for establishing the budget for the Auditor General from the Executive.*
  - As discussed in the ACT Government's Submission to **Terms of Reference 3** above, the Government believes the *Auditor-General Act 1996* in its current form provides sufficient resourcing autonomy for the ACT Auditor-General.
- *Drawing rights on appropriated resources and to whom resources are appropriated and its independence from the Executive.*
  - The ACT Government considers the Auditor-General already has sufficient independence on drawing rights on appropriated resources.
- *Office autonomy or the independence of the structure supporting the Auditor General from Executive control.*
  - The ACT Government considers the Auditor-General already has sufficient office autonomy.
- *Whether the Auditor General is the Chief Executive or Accountable Officer for his or her office.*
  - The ACT Auditor General is the Accountable Officer for her office.
- *Whether the Auditor General is required to produce an annual report covering his or her office's operations and financial statements.*
  - Subject to Section 9A of the ACT *Auditor-General Act 1996*, the ACT Auditor General is required to produce an annual report.

- *Whether the appointment, terms of reference, and reporting line of the auditor of the Auditor General's office is subject to Executive control.*
  - Under Section 27 of the ACT *Auditor-General Act 1996, t*he engagement of an independent auditor to audit the Auditor-General's operations is the responsibility of the Minister on behalf of the Territory.
  - However, the ACT Government considers there are already provisions in Section 29 of the ACT *Auditor-General Act 1996* that allow the Public Accounts Committee to provide input to the independent audit of the Auditor-General and her office.

It is considered that the current *Auditor-General Act 1996* has provisions to ensure that the Auditor-General and the audit office are independent in their operations and are not subject to direction from the Executive or a Minister (as outlined in section 9 of the *Auditor-General Act 1996*) thus ensuring the Auditor-General's managerial autonomy. Nonetheless, it is also noted that the Commonwealth *Auditor-General Act 1997* (s8-4) includes a suite of provisions which seek to ensure the Auditor-General has complete discretion in its operations. The Commonwealth *Auditor-General Act 1997* states:

> *"Subject to this Act and to other laws of the Commonwealth, the Auditor-General has complete discretion in the performance or exercise of his or her functions or powers. In particular, the Auditor-General is not subject to direction from anyone in relation to:*
> - *whether or not a particular audit is to be conducted; or*
> - *the way in which a particular audit is to be conducted; or*
> - *the priority to be given to any particular matter."*

The ACT Government supports consideration of the incorporation of passages, similar to those identified in the Commonwealth *Auditor-General Act 1997* (s8-4), into the ACT *Auditor-General Act 1996*. For the reasons set out above, additional legislative provisions are not considered necessary or appropriate.

Submission to Terms of Reference 5
Any amendments which would strengthen the role of the Auditor-General as an independent officer of Parliament

ACT Government Position
The ACT Government supports consideration of the incorporation of passages, similar to that identified in the Commonwealth *Auditor-General Act 1997* (s8-1), into the ACT *Auditor-General Act 1996*. The ACT Government also supports consideration of an oath or affirmation of office.

Context
A number of jurisdictions explicitly provide independence as a requirement or obligation on the Auditor General.

The previously mentioned report, *Independence of Auditors General: A survey of Australia and New Zealand Legislation*, notes "an oath or affirmation of office is used in some jurisdictions to reinforce the Auditor General's independence and impartiality and, in some cases, to symbolically mark the special relationship with an allegiance to the Parliament".

Submission to Terms of Reference 5a[1]

The Committee would welcome your comment on the process used for the appointment of the Auditor-General in New Zealand and, in particular, whether you believe a similar process would be suitable for the ACT

ACT Government Position

The ACT Government considers that the PAC consultation and veto powers already provided under s8 of the ACT *Auditor-General Act 1996* are suitable for a small jurisdiction.

Context

The ACT Government considers that the PAC consultation and veto powers provided under s8 of the ACT *Auditor-General Act 1996* are suitable. The Government considers that the provisions under the New Zealand Procedures for the Appointment of an Officer of Parliament may present an unnecessary layer of complexity for the Territory.

Furthermore, in New Zealand the Auditor General is appointed by the Governor-General on the recommendation of Parliament. It may not be practicable to develop a similar approach in the very different constitutional context of the ACT.

Submission to Terms of Reference 6

What amendments, if any, are required to clarify the intention of sections 22 – Proposed appropriations and 22A – Additional amounts for certain audits – of the Act

ACT Government Position

The ACT Government considers that sections 22 and 22A of the *Auditor-General Act 1996* do not require any amendments to clarify their intention.

Context

The ACT Government considers that Section 22 of the *Auditor-General Act 1996* clearly outlines the process by which the presiding member of the Public Accounts Committee may provide input into the development of a draft Budget for the operations of the Auditor-General for consideration by the Treasurer.

The ACT Government considers that Section 22A of the *Auditor-General Act 1996* clearly outlines the process by which the Auditor-General and the Public Accounts Committee may seek additional amounts for certain audits through a Treasurer's Advance.

ACT Government considers that sections 22 and 22A of the *Auditor-General Act 1996* do not require any amendments to clarify their intention.

[1] Terms of Reference 5a as outlined in letter titled *Inquiry into the ACT Auditor-General Act 1996* of 26 November 2009 from Ms Caroline Le Couteur MLA, Chair, Standing Committee on Public Accounts, to Mr Jon Stanhope MLA, Chief Minister.

Submission to Terms of Reference 7
The recommendations of an independent performance audit of the Auditor-General to be conducted in accordance with Part 5 of the Act during 2009-10

<u>ACT Government Position</u>
The ACT Government suggests that, until the report and recommendations of the independent performance audit of the Auditor-General are available, the Government in unable to appropriately address this Terms of Reference and respond to such independent audit recommendations.

<u>Context</u>
On 14 October 2009 the ACT Chief Minister, Mr Jon Stanhope MLA, wrote to the Chair of the Public Accounts Committee noting the Committee's request for an independent performance audit of the Auditor-General. The ACT Government has agreed to fund this independent performance audit and settled Terms of Reference with the Public Accounts Committee's consideration.

The Public Accounts Committee has requested that the recommendations from this independent performance audit be provided to the Legislative Assembly in April 2010, well after the Committee's requested submission closing date for this *Inquiry into the Auditor-General Act 1996.*

The ACT Government suggests that, until the report and recommendations of the independent performance audit of the Auditor-General are available, the Government in unable to appropriately address this Terms of Reference and respond to such independent audit recommendations.

Submission to Terms of Reference 8
Any other relevant matter

<u>ACT Government Position</u>
The ACT Government does not have any further matters it wishes to raise in relation to the *Auditor-General Act 1996.*