**Keynote Address by Simon O'Neill**
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# An Auditor's Reflections on Significant Public Accountability Improvements Initiated by the Parliament and/or the Government

## Introduction

Thank you very much Lee Odenwalder and good morning to Public Accounts Committee Members and Officers and Auditors-General.

At the outset I would like to thank Lee for his invitation to address you this morning. I regard this as a wonderful privilege having recently vacated the Office of South Australian Auditor-General.

Within the context of the conference theme of Public Accountability, my address reflects on the positive contributions that the Parliament and/or the Government can make to enhance public accountability measures for government operations.

All too often there can be a focus on critical commentary concerning standards of parliamentary and government integrity and public accountability (included from the media and Auditors-General) without some compensating recognition that the Parliament and the Government do effect constructive contributions/improvements in public accountability mechanisms.

I have spent over 40 years as a public servant and auditor, the last seven years as Auditor-General. Auditor-General's Reports to the South Australian Parliament throughout those 40 years have frequently been critical of standards of public accountability.

The nature of the auditor's role is the emphasis of reporting to agencies and the Parliament of 'what is wrong' not 'what is right' with the expectation of 'fixing the wrong'. While not apologising for this emphasis, it is important to acknowledge at times those positive contributions to public accountability that the Parliament and/or the Government do make.

I do that today, because I have experienced during my 40 year audit service some significant accountability enhancements initiated and actioned by the Parliament and/or the Government, and also with tongue-in-cheek, as a parting gift of recognition from a recently departed Auditor-General.

**Understanding the Notion and Importance of Public Accountability**

Before talking to some of the significant Parliament and/or Government initiated enhancements to the South Australian public accountability framework, I would like to make some notable observations about the notion of public accountability. You may be aware of some or all of these matters, nonetheless they are important to recount.

Accountability is seen as a fundamental component of democratic systems and for good governance in open societies. More specifically, public accountability has been described as the obligation of persons or authorities entrusted with public resources to report on the management of such resources and be answerable for the fiscal, managerial and program requirements that are conferred.

In Australia (South Australia) public accountability is underpinned by political, financial and administrative law mechanisms.

In brief, our Westminster model of government is based on the traditional concept of a single chain of accountability passing up through the hierarchy of the public sector to a Minister, the Parliament, and finally to the citizens.

In recent decades, substantial reforms to Australian (South Australian) government structures, agencies and financial operations and service delivery mechanisms, have muddled and made more complex the accountability relationships and responsibilities traditionally involved in the model.

While governments still establish policy and are ultimately responsible for the operations of the public sector (agencies), recent decades have seen, for example, significant increased involvement of the private sector in the provision of government services. The rise in private sector contracts and partnerships have presented new and demanding challenges for the transparency and the effectiveness of accountability relationships and responsibilities for government operations and performance.

In a 1999-2000 Report to the Legislative Assembly of the Province of British Columbia, the then Auditor-General, Mr George Morfitt, posed and answered the question of 'Why Accountability is an Issue?' Mr Morfitt's answer which I contend remains highly relevant today was as follows:

> *Because, I believe, people no longer judge governments simply on the basis of how much it spends on a problem. Rather, as taxpayers, they wonder if the promise of better, more efficient government has been realized. As consumers of government services they want to know whether the policies and programs of government are effective, administrative efficient and of high quality. And as citizens, they wonder whose interests are being served, and whether the government has been able to strike the right balance among competing interests (such as protecting the environment while encouraging economic development).*

Mr Morfitt went on to stress the importance of assessing and reporting information that covers 'this broad spectrum of interests'.

Public accountability therefore demands frameworks that enable the operations and performance of governments to be adequately monitored, reported and evaluated.

## Improved Public Accountability Framework Measures Arising from Parliament and/or Government Actions

I now wish to talk to some notable actions taken in past years and recent times by the South Australian Parliament and/or Government to effect constructive contributions/improvements to the public accountability framework within this State.

The actions and framework initiatives clearly indicate that the Parliament and/or the Government can meet new demands for effective accountability mechanisms for new challenges arising from changes in government policy and program measures affecting public sector operations and service delivery outcomes.

### *Contractualisation of Government Activities and Claims as to Confidentiality*

The first accountability improvement measure that I would like to talk to relates to the rise of contractualisation (outsourcing) of government activities to the private sector in the 1990's as part of significant public sector reform programs of many governments.

In the 1990's the South Australian Government entered into significant outsourcing arrangements with private sector entities.

These included the contract management of the Modbury Public Hospital; the contract management to operate, manage and maintain the Adelaide metropolitan water and wastewater networks and treatment plans of SA Water Corporation; and the outsourcing arrangement for the provision of information technology infrastructure services to most public sector agencies. With the exception of the Modbury Hospital, the outsourcing of water and wastewater and information technology services continue under revisited and different forms of contract arrangements.

The advent of outsourcing arrangements raised the critical matter of commercial in confidence material and the public interest. As you are aware most government contracts of this nature can contain 'confidentiality clauses' that could allow the Government to claim that they would be in breach of contract if they were to disclose its terms and be liable for damages.

To address the matter of transparency and accountability for these contracting (outsourcing) arrangements, agreement was reached between the then Government and the Opposition on an accountability mechanism for these types of arrangements.

The mechanism, in appropriate circumstances, involves the preparation of a contract summary by the responsible Minister, for examination by the Auditor-General as to its adequacy, having regard to the requirements as to confidentiality affecting the contents of the contract. In addition, the Auditor-General is required to report to the Parliament. The Report is to provide an opinion on the adequacy of the contract summary that is included in the report.

The requirements of this accountability mechanism were prescribed in amendments to the *Public Finance and Audit Act 1987,* effective from August 1997. Contract summaries and reports to the Parliament by the Auditor-General on the summaries for the abovementioned contracting arrangements were prepared and submitted shortly after the new accountability mechanism came into operation.

***Disposal (Leasing) of the State's Electricity Assets***

The second accountability initiative of the Parliament and the Government that needs recounting relates to the disposal (leasing) of the State's electricity assets.

The disposal process was prompted by a number of factors, including considerations of the national competition policy and the establishment of a national electricity market and the opportunity to significantly reduce the State's debt level and interest bill.

In June 1999 the Parliament passed the *Electricity Corporations (Restructuring and Disposal) Act 1999* (the Disposal Act), to allow for the long-term lease of the State's electricity generation, transmission, distribution and retail assets. As a result, the Government commenced the process of disposing of its interest in the electricity businesses. The disposal process was essentially completed during 2000-01 financial year. Total proceeds amounted to $4.9 million with the majority of the proceeds applied to debt reduction.

The Disposal Bill that was passed by Parliament included a significant (unusual) amendment agreed to by the Government to significantly enhance the transparency and public accountability of the disposal process.

In essence, the amendment provided for the Auditor-General to audit the probity auditor engaged by the Government for the process and provide the ultimate assurance regarding the probity of all processes associated with the disposal/lease of the electricity assets.

The Auditor-General under the Disposal Act was required to examine each relevant long-term lease and related transactions and prepare a report to the Parliament on:

- the proportion of proceeds of the leases used to retire State debt
- the amount of interest on State debt saved as a result of the application of those proceeds
- the probity of the processes leading up to the making of each relevant long-term lease.

Over the period from October 1999 to March 2001 the then Auditor-General, Mr Ken MacPherson, presented five special focused reports to the Parliament relating to the disposal process of the State's electricity assets. Those reports were:

- Supplementary Report of the Auditor-General on 'Electricity Businesses Disposal Process in South Australia: Arrangements for the Probity Audit and Other Matters: Some Audit Observations' dated October 1999

- Supplementary Report of the Auditor-General on 'Electricity Businesses Disposal Process in South Australia: Engagement of Advisers: Some Audit Observations' dated November 2000

- Supplementary Report of the Auditor-General on 'Electricity Businesses Disposal Process in South Australia: Arrangements for the Disposal of ETSA Utilities Pty Ltd and ETSA Power Pty Ltd: Some Audit Observations' dated November 2000

- Supplementary Report of the Auditor-General on 'Electricity Businesses Disposal Process in South Australia: Arrangements for the Disposal of Optima Energy Pty Ltd, Synergen Pty Ltd, Flinders Power Pty Ltd, Terra Gas Trader Pty Ltd and ElectraNet SA: Some Audit Observations' dated March 2001

- Report of the Auditor-General on 'Electricity Businesses Disposal Process in South Australia: Report by the Auditor-General Pursuant to Section 22(2) of the *Electricity Corporations (Restructuring and Disposal) Act 1999* on Relevant Long Term Leases' dated March 2001. This Report included commentary on the use of the proceeds from the disposals, the estimated interest savings resulting from the use of those proceeds to retire debt, the effect of the disposals on the Public Finances, and the probity of the disposal process.

The Reports were comprehensive and provide insightful governance, process and accountability principles and practices that should guide significant asset disposal processes.

The Disposal Act represented a major jurisdictional change in the audit responsibilities of the Auditor-General. Unlike any previous audit mandate, the Disposal Act required a 'pro-active' rather than a 'post-active' audit involvement.

In relation to this enhanced accountability mechanism, the then government Minister speaking in support of the amendment stated:

> *The Government supports this amendment because the probity process should be placed before the scrutiny of the House, and via the Auditor-General's Report is one way of doing that. It adds to public accountability of the Government and that is certainly a process that we support.*

***Financial Supervision and Reporting on the Adelaide Oval Redevelopment***

Another significant and unique accountability measure initiated by the Parliament and Government relates to this very impressive sporting and entertainment facility that hosts this ACPAC Conference.

The redevelopment of this Adelaide Oval results from specific legislation, the *Adelaide Oval Redevelopment and Management Act 2011* (the Act), which came into operation in September 2011.

The Act includes specific and unique accountability measures. These measures responded to the recognition of the significant financial contribution of the taxpayer to the redevelopment, the timely requirement for the completion of the redevelopment, and the continued sustainability of the facility (both physical and financial). The Government in consultation with the Opposition agreed to certain '*accountability measures being placed around the process*'.

In essence the Act provides for the following accountability measures:

- A state financial contribution cap for the redevelopment of $535 million.
- Regular audits of the project redevelopment and six monthly reports to the Parliament on the redevelopment by the Auditor-General.
- Annual statutory audits by the Auditor-General of the Adelaide Oval SMA Limited charged with the responsibility to manage and operate the facility.
- Audits by the Auditor-General of the sinking fund established by the abovementioned entity for the maintenance of the facility, and reporting to the Parliament by the Auditor-General, if necessary, on the operations of the sinking fund.

To date seven six-monthly reports on the Adelaide Oval redevelopment project have been presented to Parliament, the latest in February 2015.

The reports include specific commentary and findings (with recommendations where relevant) for, what are essentially, three reporting terms of reference provided for in the Act. Specifically, the Act requires the Auditor-General to report on:

- the extent to which money has been made available or expended within the $535 million limit specified by this Part during the designated period

- the state of the public accounts that are relevant to the redevelopment of Adelaide Oval envisaged by the Act
- the extent to which it appears that public money made available to any entity, including an entity that is not a public authority, for the purposes of, or in connection with, the redevelopment of Adelaide Oval envisaged by the Act has been properly and efficiently managed and used during this designated period.

The designated reporting period refers to the relevant six-monthly reporting period.

The project development which is essentially complete has not exceeded the state contribution cap and achieved practical completion in March 2014.

I consider that the public accountability measures initiated for this project development and for its ongoing management and operation have influenced the positive outcomes so far achieved for this facility and its operations.

***Independent Commissioner Against Corruption***

The fourth public accountability mechanism actioned by the Parliament and the Government that I wish to briefly speak to, is the establishment of the Independent Commissioner Against Corruption (ICAC), with operational effect from September 2013.

South Australia is one of the last government jurisdictions within Australia to establish an anti-corruption body with a focus on examining matters of maladministration, misconduct and corruption.

The wide ranging nature of the statutory investigation remit of the ICAC (State and Local Government sectors), and its capacity to request examination assistance from other inquiry agencies and the Auditor-General, strengthens in a significant way the public accountability framework operating within South Australia.

It should be mentioned that concurrent with the operation of the ICAC under the *Independent Commissioner Against Corruption Act 2012*, the *Public Finance and Audit Act 1987* was amended to extend the statutory examination remit of the Auditor-General into the Local Government sector. This too represents a significant strengthening of the public accountability framework covering Local Government operations and projects.

***Unsolicited proposals***

The last public accountability enhancement initiative that I will speak to concerns the matter of Government and its agencies addressing unsolicited proposals.

Until recently there existed a transparent and accountability deficit within South Australia for such proposals due essentially to a lack of a dedicated policy and guidance framework for the consideration and assessment of unsolicited proposals, both at the State Government level and agency level.

The significance of this deficit became apparent as a result of a special focused audit examination of an unsolicited proposal relating to a government property site transaction in 2014.

I submitted a special focused report (Supplementary Report) on the results of the audit examination for tabling in Parliament in February of this year. The report is titled 'Audit of the Gillman Site transaction: Key shortcomings in assessing an unsolicited proposal: December 2014'.

The Gillman Site transaction resulted from the consideration by the Government and its urban renewal agency of an unsolicited offer from an external entity in 2013, to acquire up to 407 hectares of the Gillman site within three options over a nine year period for up to $122.1 million. The transaction was completed in December 2013.

The Gillman Site transaction represented a material financial transaction of the urban renewal agency which is subject to audit by the Auditor-General.

The unsolicited proposal effectively resulted in the disposal of a material State asset, the Gillman site. This was an event of significant public interest.

The audit examination of the transaction was undertaken pursuant to the *Public Finance and Audit Act 1987* which specifically provides for the Auditor-General to assess the controls exercised by government agencies (in this case the urban renewal agency) in relation to the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities.

The audit examination focused on the detailed processes and controls exercised by the urban renewal agency over the disposal of the Gillman site, specifically:

- the suitability of the existing policy framework in assessing unsolicited proposals

- Cabinet requirements
- government frameworks, including roles and responsibilities, risk management and probity
- the evaluation process
- sale pricing (valuation)
- recommendations and approval processes.

I noted with emphasis in my Supplementary Report to Parliament, that it is crucial that there is a policy framework to provide a transparent and consistent process for the consideration and assessment of unsolicited proposals.

Like a sale process it is important that the objectives for considering unsolicited proposals are clearly defined prior to consideration and assessment. In doing so justification should be provided that important objectives (including value-for-money and non-financial objectives) cannot reasonably be met through an open and competitive process. I had in my prior 2013 Annual Report to Parliament made comment on important elements of a sale process, which equally apply to the consideration and assessment of unsolicited proposals.

As mentioned a key deficiency of the Gillman Site transaction process was the absence of a dedicated policy framework for the consideration and assessment of unsolicited proposals, both at the State Government level and within the urban renewal agency.

Another important matter related to the valuation supporting the minimum acceptable price for the Gillman site. The urban renewal agency adopted an independent valuation dated 2010 that was used to support a compulsory acquisition transaction. Given the significance of the Gillman Site transaction and the identified risks, it is my view that the minimum acceptable price should have been supported by a current and dedicated market valuation report for the property being sold.

The audit examination also identified a number of other specific shortcomings in the process, including inadequate attention to the urban renewal agency board role and responsibilities, lack of timely and documented evidence of board consultation, the board's untimely access to expert advice, inadequate disclosure of a conflict of interest, and incomplete information on risks.

As mentioned in my Supplementary Report to Parliament, at the time of preparing the report, the Government issued a policy and guidance framework in November 2014 to cover unsolicited proposals that originate from a private entity (either for profit or not-for-profit) and are submitted to government with formally being requested.

The framework is applicable to all government agencies unless specifically excluded by the State Coordinator-General.

The process for considering unsolicited proposals and determining whether they warrant exclusive negotiations between the Government and the proponent is to be overseen by the State Coordinator-General.

The objective of the unsolicited proposals framework is to provide for the assessment of proposals that is consistently applied across all of government. The framework is to ensure a robust, transparent and easily navigated process that encourages the private sector to bring innovative ideas to government while maintaining value-for-money and probity.

Key features of the framework include:

- all unsolicited proposals submissions will be centrally coordinated through the Office of the State Coordinator-General who will oversee the assessment process
- agency expertise is to be made available to the State Coordinator-General during the assessment process through representation on the Unsolicited Proposals Steering Committee, Assessment Panel and in liaising with proponents as required
- Cabinet will be informed of the progress of submissions that have merit and give final approval for any proposals moving forward
- agencies will be responsible for the implementation of approved unsolicited proposals.

There is also an applicable financial threshold in the application of the framework. This is to ensure low cost, low risk proposals are handled directly by agencies and remove the requirement for the State Coordinator-General to be involved in proposals of a more minor nature.

Lastly, where the Government assesses that a proposal does not meet the criteria at any stage of the process of consideration of the unsolicited proposal, it reserves the right to go to market, end the proposed consideration process or withdraw from exclusive negotiations.

The proponent is to be given the opportunity to participate in any subsequent procurement process. If the Government goes to market it will respect any intellectual property owned by the proponent.

The implementation by government of the policy and guidance framework is considered a timely response to the identified concerns raised through the audit examination and my Supplementary Report to Parliament, and hopefully its diligent implementation will effectively address what was a transparent and accountability deficit.

**Continuing challenges for effective public accountability**

I now turn very briefly to the matter of continuing challenges for public accountability as this represents a specific topic for consideration and discussion in its own right.

Suffice to say, as somewhat demonstrated through this address, as changes are made to legislation and government policies, ongoing reforms are made to government structures and systems, further interaction takes place between public and private sectors in the performance of government operations and service delivery, and the fastening pace of information technology change and its impact on meeting and delivering the needs of citizens is experienced, some challenges to effective public accountability faced in the past will need to be confronted again (may be in a slightly different sense), and new emerging challenges to effective public accountability will require addressing.

Just some short comments on two such challenges.

The recent rise and rise of Public Private Partnerships (PPP) poses a challenge for effective public accountability for the procurement and subsequent management of the infrastructure and service provision projects. The legal and organisation structure of a PPP where much of the activity associated with the delivery of a public service is embedded in a private sector entity (entities) increases the risk of the likelihood that public scrutiny through the Parliament and by Auditors-General could be significantly inhibited or made more difficult.

Another challenge relates to the emerging development of cloud computing relating to the storage and processing of government and citizen data outside traditional jurisdictional boundaries which can again raise the risk of a lessening of a rigorous accountability regime being applied to data integrity and security.

## Conclusion

In concluding my address I go back to Mr George Morfitt's 1999-2000 Auditor-General's Report to the Legislative Assembly of the Province of British Columbia. He comments in the report that '*Governing requires power and resources and in a democratic society these two needs are provided – conferred upon governments – by the people. People, in turn, have a right to know what government intends to do and what it has actually done with the power and money it has been given'.*

The address this morning has reflected on the significant roles that the Parliament and/or the Government, with goodwill and deliberate intent, can play in meeting the citizens' demand to be properly informed of government actions and the consequential financial and service provision outcomes, through an effective public accountability framework.

To be effective the framework needs to be quickly responsive to the changing developments and risks relating to government activity and independent review bodies (including the Auditor-General) can diligently assess and report on the operations of the framework.

I have experienced throughout my 40 year audit career notable enhancements to the public accountability framework within the South Australian jurisdiction, that have been initiated and actioned by the Parliament and/or the Government, to improve its relevancy and effectiveness for changing government circumstances. I have elaborated on certain of these initiated enhancements.

Please enjoy the Conference and best wishes for the important work that you will undertake in the future.