

'Strategic Review of Auditors-General'

Presentation by:

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Today we have allocated time to talk about the importance of the process of Strategic Review of Auditors-General in Australia. I have offered to talk about the ACT experience, and especially our most recent, 2016, Strategic Review of the ACT Auditor-General.

In the course of this presentation I will:

- give some background on how the Auditor-General came to be the subject of strategic review, and also touch on how the Auditor-General became an Officer of the Legislative Assembly;
- outline how the 2016 Strategic Review was developed and conducted under my leadership as the Speaker of the ACT Legislative Assembly;
- outline the Review findings and recommendations and their importance;
- look at the inquiry subsequently conducted by the Standing Committee on Public Accounts in 2016, that Inquiry's conclusions and recommendations; and
- conclude with some comment on lessons learned and the value of the Strategic Review process for the Auditor-General, the Public Accounts Committee, the legislature, and especially the voters.

I should preface this presentation by saying that this is my first term as a member, let alone Chair, of the ACT PAC, but much of what I will say will draw upon my experience as the Speaker of the ACT Legislative Assembly during the period of the Strategic Review.

Strategic Reviews of the ACT Auditor-General

The 2016 Strategic Review was not the first review of the ACT Auditor-General, but it was the first conducted as a result of legislation.

Back in 2009 the then ACT Auditor-General had a somewhat tempestuous relationship with the ACT Government, and there were a series of quite critical audit reports that raised the ire of the Executive. In response to unfavourable audit reports, the Chief Minister and other Government ministers went on the record to criticise the Auditor-General and her alleged lack of understanding of one or other particular part of government.

The last straw, from the Government's point of view, was a performance audit that was critical of ambulance response times.

The Chief Minister responded with a decision to appoint a former Auditor-General to conduct a performance audit and review of the ACT Auditor-General. The commentary at the time was that this was a thinly-veiled attempt to intimidate the Auditor-General.



The 2009 Canberra Times editorial cartoon after the Chief Minister announced a snap strategic review of the ACT Auditor-General.

Comment in *The Canberra Times* at the time also took up the case for the Auditor-General's independence:

Territory needs a rigorous auditor

The 2007-08 annual report by ACT Auditor-General Tu Pham highlights her agency's role as a watchdog of public money. "The financial audit process places the Audit Office in a unique position to make recommendations to senior management of agencies to improve agencies' accountability, governance arrangements and internal control environments," it says. However, the number of audits completed was less than planned. "It has been increasingly difficult to provide sufficient audit coverage of all ACT public offices, given the increased costs of limited resources of a small office."

Auditor in bid to bypass Stanhope

Stanhope may cut auditor's funding

By Victor Violante
Chief Assembly Reporter

ACT Chief Minister Jon Stanhope has flagged an audit and possible funding cut for ACT Auditor-General Tu Pham's office, after her request for more resources. Mr Stanhope's comments came the day after Ms Pham delivered a funding report into the territory's justice services, which found a 10 per cent increase in triple-0 calls, a 10 per cent increase in benchmarks, and a 10 per cent increase in adverse events early in the year.

Report slates slow ambulances

Assembly reviews watchdog's independence

By Ewa Kretowicz

An inquiry into the running of the ACT Auditor-General's Office will focus on maintaining its integrity free from government interference.

The reviewer appointed in 2009 was former NSW Auditor-General Bob Sendt, who gave the Auditor-General a clean bill of health.

However the sudden imposition of a review caused the Legislative Assembly to take a wider and closer look at the role and independence of the Auditor-General. Following two separate committee enquiries in 2011/12, there were two pieces of legislation that established the Auditor-General as an office holder completely independent of the executive.

The unanimous passage of the *Officers of the Legislative Assembly Act 2013* made the Auditor-General no longer accountable to the Executive, but to the Legislative Assembly as a whole.

The notion of strategic reviews of the Auditor-General was embraced, but rather than leaving their timing to the whim of the Executive, the Assembly also passed the *Auditor-General Amendment Act 2013*, which stipulated that a Strategic Review be conducted once in each term of the Legislative Assembly (*Auditor-General Act 1996, Part 5*). The first of these legislated reviews was completed in 2016.

2016 Strategic Review of the ACT Auditor-General - terms of reference

Under the *Auditor-General Act 1996* the objective of the Strategic Review consists of a 'review of the Auditor-General's functions and a performance audit of the auditor-general' (s. 23).

The 2016 Strategic Review was conducted by Mr Des Pearson AO, an experienced and distinguished public sector auditor. Mr Pearson has held appointments as the Auditor-General of Victoria for seven years, and prior to that as Auditor-General of Western Australia for 15 years.

The Strategic Review was conducted pursuant to Sections 24, 25 and 26 of the *Auditor-General Act 1996* (the Act), which require:

- The Review to be carried out once in each four year term of the Legislative Assembly
- The PAC to decide when the Review is to be carried out
- The PAC to decide the terms of reference for the Review in consultation with the Chief Minister, and
- The Speaker, on behalf of the Territory, to engage an appropriately qualified person under a contract to conduct the strategic Review.

Mr Pearson was appointed after a request for expressions of interest from a short list of recently retired auditors-general. The 2016 Strategic Review was conducted in 2015 and 2016.

The PAC, as required by section 26 of the Act, determined the terms of reference for the Review, the principal elements of which were that the Reviewer form an independent opinion on:

- whether the ACT Audit Office is achieving its legislative objectives effectively, and doing so efficiently and in compliance with the Act and the relevant professional audit and accounting standards;

- the extent to which the legislative mandate strengthens and safeguards the independence of the ACT Auditor-General;
- the extent to which the legislative mandate supports the work of the ACT Auditor-General in the contemporary public sector environment; and
- any other aspects to be determined by the PAC.¹

In accordance with the terms of reference, the approach to the Strategic Review taken by the Reviewer was to, inter alia:

- review documentation;
- hold numerous meetings and discussions with the ACT Auditor-General and her staff; and
- conduct face-to-face interviews with a large sample of the key stakeholders of the Audit Office, including the Speaker, Ministers, Members and staff of the PAC, Officers of the Legislative Assembly, directorate and agency heads, senior executives of the ACT public service, CFOs and contractors to the Audit Office.

The Review was also asked to take into account context, in particular ACT circumstances and Australian auditing standards, and to include a review of the standard and quality of service provided by the Audit Office to the Legislative Assembly.

The Reviewer paid particular attention to approaches and applied in previous comparable audits in smaller Australian and Canadian jurisdictions.

Pursuant to Section 28 of the Act, a copy of the proposed report was provided to the Auditor-General prior to its finalisation. This enables the Auditor-General to provide any written comment on the proposed report, which the Reviewer must consider in preparing a final report.

The 2016 Strategic Review Findings and Recommendations

The 2016 Strategic Review was presented to me as Speaker by the Reviewer on 26 May 2016, and was tabled in the Legislative Assembly on 8 June 2016.

¹ The full terms of reference that were for the Review are at [Appendix 4](#) of the Strategic Review report.

The principal conclusion of the Review is summarised in an Overview section as follows:

In the Reviewer's opinion, in all material respects:

- the ACT Audit Office is achieving its legislative objectives effectively, and doing so efficiently and in compliance with the *Auditor-General Act 1996* and the relevant professional audit and accounting standards;
- the legislative mandate is adequate to strengthen and safeguard the independence of the ACT Auditor-General; and
- the legislative mandate adequately supports the work of the ACT Auditor-General in the contemporary public sector environment.

The Reviewer reported findings which were predominantly positive observations of all aspects of the ACT Audit Office performance and, on most counts, on the structure and administration of the Office.

The Review made 20 recommendations, which addressed in detail the following:

- Legislative arrangements,
- Audit planning issues,
- The Financial Audit process in the ACT,
- The Performance Audit process,
- Resourcing, and
- Stakeholder engagement.

The Auditor-General's response to the recommendations forms part of the Review document. In the response, the Auditor-General acknowledges, as an overall response, the Review's recommendations, and notes:

The ACT Audit Office's responses to these recommendations are included in the report. Although most have been agreed, some have been agreed in part or agreed in principle. Accordingly, all recommendations will guide improvements the ACT Audit Office intends to make. The ACT Audit Office will give priority to implementing the improvements.

The current PAC has not yet considered how, or whether, it will monitor the Auditor-General's implementation of the Review findings and recommendations.

Of relevance to the Legislative Assembly were three recommendations that related to current issues that the Reviewer considered required legislative action. The recommendations were directed at the particular relationship the Assembly has with the Auditor-General as an Officer of the Legislative Assembly, and were that:

- the Assembly Standing Committee on Administration and Procedure consider the continued relevance and adequacy of the provisions of the *Legislative Assembly (Office of the Legislative Assembly) Act 2012* and provide recommendations relating to the Office's capacity to administratively support the Speaker in the performance of the Speaker's role and functions in relation to these independent Officers of the Legislative Assembly;
- related administrative procedures and arrangements be agreed between the Speaker and the independent Officers of the Legislative Assembly, and documented; and
- the Standing Committee on Public Accounts consider and make recommendations regarding the establishment of a term of appointment for the ACT Auditor-General.

The first two of these recommendations were reported on by the Administration and Procedure Committee of the Legislative Assembly in 2016.

It is the third recommendation I now wish to address, as this was the principal matter referred to the PAC in June 2016 for inquiry and report.

2016 Strategic Review – Inquiry by the Public Accounts Committee.

In June 2016, as Speaker I referred to the PAC the following matters:

That the PAC

- (i) consider and make recommendations regarding the establishment of a term of appointment for the ACT Auditor-General to be included in the *Auditor-General Act 1996*; and

(ii) consider and make recommendations on any other matters raised in the report the committee considers relevant according to its terms of reference.²

In speaking to the motion, I noted that

The other aspects that have been raised by the Strategic Reviewer relate to the term of the Auditor-General... The current Auditor-General is appointed for seven years and for a non-renewable term. In changing the legislation and making the Auditor-General an officer of the Legislative Assembly, those provisions were—I presume inadvertently—deleted. The next time we go to appoint an Auditor-General there are no provisions for the term of the Auditor-General or whether or not that term should be renewable. ...

The general view is that the term should be somewhere between seven—which has been the case in the ACT—and 10 years, and that the term should be non-renewable.

This is a matter that falls within the purview of the public accounts committee.

Therefore, this motion also refers those matters to the public accounts committee for investigation and report. It also gives the Public Accounts Committee the opportunity to consider the Strategic Review more broadly.

In the course of its subsequent inquiry, the PAC undertook a detailed examination of the principal matter referred to it: the term of the Auditor-General's appointment.

In doing so, the PAC considered terms of appointment of Auditors-General in all Australian jurisdictions and New Zealand, and examined the terms of appointment for the Auditor-General in each of those jurisdictions, with particular regard to the basis for enacting and applying fixed-term appointments, and the reasons for doing so.

The PAC presented its report to the Assembly in August 2016.

The PAC Report's recommendations were in two parts.

² ACT Legislative Assembly, *Hansard*, 9 June 2016, p. 1917.

The first part provided three recommendations in relation to legislative provisions raised by the Strategic Review – which I have mentioned:

- that a seven year non-renewable appointment term for the ACT Auditor-General be reinstated in the *Auditor-General Act 1996*.
- that section 8 of the *Auditor-General Act 1996* be amended to prescribe that the ACT Auditor-General is to be appointed for a term of 7 years and is not eligible for reappointment, including reappointment after the end of that term.
- that appropriate consequential provisions be drafted to ensure that any amendments made to Schedule 1—*Appointment and terms of office of auditor-general* and/or section 8—*Appointment*, of the *Auditor-General Act 1996* do not apply in respect of an appointment made before the commencement of any subsequent amendments

I note that the ACT Government responded to these PAC recommendations by agreeing to the first two and agreeing in principle to the third – although to date, no legislative amendments addressing these concerns have been presented to the Legislative Assembly.

In relation to other, specific audit recommendations made by the Review, the Committee responded and recommended:

- that the ACT Government consider reinstating the requirement that audited agencies provide a substantial response to audit findings and recommendations for inclusion in performance audit reports.
- that a funding model to support growth in the performance audit program be developed and implemented, beginning at the 2017–18 Budget.
- that a funding model to support growth in the performance audit program be developed and implemented, beginning at the 2017–18 Budget.

I note at this point that it will be one of the tasks of the current ACT PAC to examine how the Auditor-General does in fact implement the recommendations of the Review.

The value of the Strategic Review process: some lessons learned.

The 2016 Strategic Review provided a clean bill of health for the ACT Auditor-General and provided strong support for the principles of accountability followed by the PAC and the ACT Assembly.

That said, the issue of increased funding for the Auditor-General remains unresolved. Successive governments have refused to provide funding for more performance audits despite wide support from the Assembly since 2008/9.

References:

- 1 2016 Strategic Review of the ACT Auditor-General - Report - Reviewer: Des Pearson AO (26 May 2016).
<http://www.audit.act.gov.au/auditreports/Independent%20review%20of%20the%20office/2016%20Strategic%20Review%20of%20the%20ACT%20Auditor-General.pdf>
- 2 ACT Legislative Assembly, Standing Committee on Public Accounts, Inquiry into the 2016 Strategic Review of the ACT Auditor-General – Recommendations of Report
http://www.parliament.act.gov.au/_data/assets/pdf_file/0020/910055/8th-PAC-29.pdf
- 3 Government Response to the Standing Committee on Public Accounts Report 29/2016. Inquiry into 2016 Strategic Review of the ACT Auditor-General –Recommendations of Report
http://www.parliament.act.gov.au/_data/assets/pdf_file/0009/913914/8th-PAC-29-Strategic-Review-of-AG.pdf