

### **Auditing for the Australian Capital Territory**

The Auditor-General is head of the Auditor-General's Office. He and his Office act independently of the Government. The Office assists the Auditor-General to carry out his duties, which are set out in the Auditor-General Act 1996, by undertaking audits of management performance and the financial statements of public sector bodies. The aim is to improve public sector management and accountability by firstly, ensuring the Legislative Assembly and the electorate are provided with accurate and useful information about the management of public sector resources and secondly, by providing independent advice and recommendations for improving the management of public resources.

PA97/07

10 December 1998

The Speaker  
ACT Legislative Assembly  
South Building  
London Circuit  
CANBERRA ACT 2601

Dear Mr Speaker

In accordance with the Authority contained in the *Auditor-General Act 1996*, I transmit to the Legislative Assembly my Report titled "*Overtime Payment To A Former Legislative Assembly Member's Staffer*".

This audit was conducted by Kurt Munro and Fiona Nairn of this Office.

Yours sincerely

John A Parkinson

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**OVERTIME PAYMENT TO A FORMER LEGISLATIVE ASSEMBLY  
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**1. REPORT SUMMARY**

**1.1 INTRODUCTION**

In 1997 it was brought to the attention of the Auditor-General that a termination payment of over \$20,000 had been made to a person who had been employed by a Member under the *Legislative Assembly (Members' Staff) Act 1998* (LAMS Act).

Because of the size of the payment it was decided that an audit should be performed. This Report presents the outcome of the audit. The Report's content is similar to a Report provided to the Speaker on 17 October 1997 and subsequently released publicly by the Speaker.

Procedures in place at October 1998 were reviewed to evaluate whether the procedures currently in place would prevent the situation described in this Report from reoccurring. The outcomes of this review are included in the Report.

Suggested procedural improvements have been included in this Report.

Composition of the total termination payment which initiated this audit is shown in the following table.

<b>Composition of Total Termination Payment</b>	
	\$
Overtime	19,691.51
Severance Pay	4,707.03
Leave Entitlements	4,106.76
Unpaid Salary	1,190.54
<b>Total</b>	<b>29,695.84</b>

The audit concentrated on the overtime component of the payment.

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### **1.2 AUDIT APPROACH**

The audit was conducted by addressing the following matters:

- Employee's right to be paid for excess hours worked;
- Arrangements for compensating excess hours worked;
- Approvals for excess hours to be worked;
- Reliability of start and finish times recorded on overtime claim forms;
- Quality of record keeping;
- Late claiming for the overtime;
- Availability of funds to make the overtime payment;
- Approval of the claim for the overtime payment; and
- Accuracy of the calculation of the overtime payment.

Comment on each of these matters is provided in the body of this Report.

Each of the matters was addressed by examining available documentation and other evidence and interviewing and obtaining written statements from those involved.

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### **1.3 CONCLUSION ON OVERTIME PAYMENT**

On the positive side the audit has concluded that the employee was entitled to claim the overtime and there

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is sufficient evidence to also conclude that the employee has not been overpaid.

On the negative side the audit revealed inadequate documentation and recording of actions in the former Member's office. Of serious concern was the failure by the Chief Minister's Department's Personnel Section to exercise the level of care and skill which would reasonably be expected to be exercised when dealing with transactions of a type in which they should be "expert".

As can be seen from the body of the Report, the audit was more complex than it should have been and in some areas the audit has not been able to provide fully conclusive results. This was because of the standard and in some instances the absence of documentation in the Former Member's office and the failure by the Chief Minister's Department Personnel Section to exercise a reasonable level of skill and care in their handling of the overtime payment.

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#### **1.4 REVIEW OF CURRENT PROCEDURES**

The review of current procedures revealed that although some procedural changes had been implemented there were still aspects which could be improved. Notable among these was the quality of attendance records being maintained by some Member's staff. Other findings which should be addressed are mentioned in the body of the Report. A summary of suggested procedural changes is provided following.

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#### **1.5 FUTURE ACTIONS**

To address the findings of this Audit it is suggested that the following actions need to be implemented to

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ensure similar difficult situations do not occur in the future:

- employment contracts for staff of Members should include clear descriptions of any arrangements by which staff are to be compensated for excess hours worked through time off in lieu or some means other than payment of overtime;
- attendance records maintained by Member's staff should contain similar information to the standard ACT Government Time Sheet. Of course the information can be modified to suit the requirements of individual offices and seniority of staff. The attendance records need to be signed by staff as well as being reviewed by a more senior officer to ensure the time sheets are a reliable record of all hours worked including excess hours;
- a general requirement should be implemented that Member's staff submit claims for overtime within a month of the end of the month in which the overtime was worked;
- the Secretariat should devise an efficient method to regularly inform Members of the extent to which their salary and any other allocations have been spent. Information provided, if possible, should include projections of expenditure to the year; and
- the Secretariat should ensure that appropriate internal controls are in place to ensure payments for overtime are accurate.

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## **2. AUDIT RESULTS AND CURRENT PROCEDURES**

### **2.1 EMPLOYEE'S RIGHT TO BE PAID FOR EXCESS HOURS WORKED**

The employee was employed pursuant to the *Legislative Assembly (Members' Staff) Act 1989* (LAMS Act). *Section 10(1)* of the LAMS Act provides that a Member may, on behalf of the Territory, employ under an agreement in writing, a person as a member of the Member's staff.

*Section 11* of the LAMS Act then provides that the terms of conditions of LAMS Act employees are to be the same as the terms and conditions of employment applicable in relation to an officer performing the duties of an officer in the ACT Public Service having a classification specified in the agreement for the employment for the person.

Pursuant to a *Section 10* written agreement, the former Member employed a staff Member in 1996. The agreement remained current until the staff Member's employment was terminated from 29 August 1997.

Although the LAMS Act provides for the Chief Minister to make determinations varying the terms and conditions of Members' employees terms and conditions, no such determination had been made in respect of an employee's eligibility to receive overtime payments. As the employee was employed as an ASO5 level and since ASO5 level ACT Public Servants are eligible to be paid overtime the employee was eligible to be paid overtime.

#### ***Audit Comment***

There is no reason why the employee would not be eligible to receive overtime payments.

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**Current Situation**

There have been some changes to procedures since the overtime payment was made to the former Member's employee. From 1 July 1997 new employment contracts were introduced for Members staff.

Existing Members' staff were given the option of entering into the new contracts or retaining their existing employment conditions. All but three of the staff have now entered into the new contracts.

The new employment contracts are compulsory for all staff employed by Members after 1 July 1997. Therefore all new staff have been employed under the new contracts.

Under the new employment contracts Members have the option of determining whether or not their employees will be entitled to overtime payments. A review however of the employment contracts by Audit found that all staff remain entitled to overtime as the contracts state that paid overtime can be worked "*as required*".

Members' staff remain entitled to be paid overtime for excess hours worked. Effectively the new contracts have made no change.

***Audit Comment on Current Situation***

Staff of Members are now employed via individual employment contracts, which allow Members the option of either compensating or not compensating staff for excess hours worked.

Audit reviewed current contracts and found that all such contracts allow staff to be compensated for excess hours worked. Effectively, although new contracts have been introduced, the current arrangements are unchanged from the previous arrangements.

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## **2.2 AGREED ARRANGEMENTS FOR COMPENSATING EXCESS HOURS WORKED**

The employee in a response to the Audit Office stated:

*“I agreed to work overtime on the following basis:*

- *excess hours worked between 8am and 6pm would be compensated by time off in lieu;*
- *excess hours worked after 6pm would be paid as overtime, if the funds were available;*
- *if funds were not available for overtime worked after 6pm then an alternative arrangement would be made such as future time off in lieu”.*

The former Member advised in his response to my Office that;

*“In my experience in the Australian Public Service, it was common practice to only pay overtime for excess hours worked after 6pm on normal working days and for excess hours worked before 6pm to be dealt with by way of time off in lieu. My office operated according to this practice.*

The arrangement between the employee and the Member was not documented.

In relation to the employee's nature of duties and need to work excess hours the Member advised:

*“The employee was an effective member of my staff and was available to work overtime on a regular basis. Her availability to work overtime allowed me to extend her responsibilities and increase the effectiveness of Labor's scrutiny of the government. I am totally satisfied that the employee in working overtime, produced work of a high quality which justified the use of overtime as an efficient and effective way of organising my office.*

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*The employee was not only my Treasury adviser but was also responsible for advising me in my capacity as Chair of the Standing Committee on Public Accounts. Her workload in respect to these duties were extremely onerous and time consuming, especially during budget weeks and estimates. The employee was also required to develop and work on initiatives such as the Financial Management Act, Labor's Gaming Machine Policy, industry policy, competition policy, trading hours as well as day to day political issues as they arose."*

### ***Audit Comment***

Although there was no documentation the audit is satisfied that there were agreed arrangements between the former Member and the employee regarding compensation for excess hours worked. These arrangements were a combination of overtime payments and time off in lieu. Given the nature of the employee's duties the arrangements do not appear unreasonable.

It is the audit opinion that in instances where unusual circumstances apply which could result in high payments and/or long periods of time off in lieu, full documentation should be made of the agreed arrangements.

### **Current Situation**

There have been no changes to the procedures existing at the time of the overtime payment to the employee of the former Member.

Members negotiate arrangements for compensating staff for hours worked directly with their staff. There is no requirement for Members to inform the Secretariat of these arrangements. Arrangements which may exist include the payment of overtime or hours off in lieu, or a combination of both.

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*Audit Comment on Current Situation*

Arrangements between Members and their staff regarding compensation for excess hours worked, are negotiated directly between Members and their staff. Such arrangements vary from Member to Member.

While there is documentation relating to compensating staff via overtime for excess hours worked as detailed in employment contracts, the employment contracts are silent on any arrangements relating to compensation via time off in lieu for excess hours worked..

To ensure there can be no doubt as to the arrangements between Members and their staff it is recommended that the employment contracts for staff of Members include clear explanations of any arrangements relating to staff being compensated for excess hours worked via time off in lieu or some other method other than by payment of overtime.

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**2.3 EXISTENCE OF APPROVALS FOR THE EXCESS HOURS TO BE WORKED**

The former Member advised in his response to my Office that all instances of excess hours being worked were approved in advance by either himself or his Chief of Staff. The Member's stated:

*"I can confirm that all overtime was approved in advance by either myself or my Chief of Staff. My practice was to discuss with the employee each day her work program, her availability to work overtime and what tasks would be undertaken when she worked overtime. If I was unavailable, this was done by my Chief of Staff, but as a general rule the employee worked directly to me, particularly on Public Accounts and Treasury matters."*

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As stated approvals were given verbally, therefore no documentation of these approvals could be provided to the Audit Office.

***Audit Comment***

The former Member stated that all excess hours worked by the employee were approved prior to being worked, however the approvals were given verbally and therefore no documentation of the approvals exist. The audit therefore cannot conclude on whether the standard procedure of pre-approving the working of the employee's excess hours has occurred.

**Current Situation**

There have been no changes to procedures since the overtime payment to the former Member's employee. Members' staff need their Members approval to work excess hours.

The Secretariat does not become aware that a staffer of a Member has worked excess hours until they receive a "*Claim for Payment of Overtime - Members' Staff*".

On the claim form Members certify that they authorised overtime duty for the staffer on the dates and times shown.

***Audit Comment on Current Situation***

Audit was advised that where overtime is required to be worked, approval to claim overtime is given verbally by the Member. No documentation relating to approval for this overtime to be worked is prepared.

It is reasonable to accept that formal written approval in advance for the working of excess hours is not necessarily appropriate for Members' staff working excess hours. In the absence of pre approvals Members should arrange for procedures to be in place to provide reasonable assurance that records of attendance kept by staff are a reliable record of all hours worked including excess hours.

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## **2.4 RELIABILITY OF START AND FINISH TIMES RECORDED ON CLAIM FORMS**

The Audit Office was provided with the employee's 1997 official diary. In this diary the employee recorded start and finish times for each day.

Both the former Member and his Chief of Staff have advised that the Chief of Staff regularly reviewed the start and finish times recorded in the employee's diary. The Member and the Chief of Staff have stated they are satisfied as to the accuracy of the times.

The Audit Office checked the time recorded in the diary to the Overtime/Extra Duty Approval and Claim Forms completed by the employee. The hours recorded on the Forms agreed with the diary records.

### ***Audit Comment***

The employee maintained a record of hours worked in a diary. There was however no evidence of these diary entries having been reviewed for reliability by any person.

The start and finish times recorded on the Overtime/Extra Duty Approval and Claim Forms agreed to the diary entries of hours worked.

Although it cannot be concluded with certainty the audit view is that the start and finish times recorded are generally reasonable. This view is based on the contents of the diary, the nature of the work undertaken, and the assertions of the former Member's and his Chief of Staff.

### **Current Situation**

There have been no changes to procedures since the overtime payment to the former Member's employee

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was made. At that time there was an existing requirement that attendance records should be maintained for all staff below the senior officer level. This requirement is still in place. Comment on attendance records being maintained is provided under the heading "*Quality of Record Keeping*".

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### 2.5 QUALITY OF RECORD KEEPING

During the period the overtime was being worked Chapter 5 of the *Guide to Services and Facilities for Non-Executive Members and Their Staff* produced by the Secretariat of the Legislative Assembly for the information of Members and their staff dealt with Staffing Entitlements. The section which dealt with Hours of Duty and Records of Attendance states that "staff below the Senior Officer level are required to maintain an attendance record".

The section also stated that "senior officers are not required to complete an attendance record, but are expected to keep a diary/journal". From this it could be reasoned that the Secretariat was advising that a diary/journal is not an attendance record, and therefore staff below the level of senior officer need to maintain more than a diary or journal as their attendance records.

The records of attendance kept by other staff employed by the Member were also provided to my Office. The format of these attendance records varied from officer to officer. One officer maintained detailed Flextime Attendance Records, while other officers maintained diaries of various standards.

#### *Audit Comment*

The format and standard of attendance records kept by the employee could and should have been improved.

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While there were no specific instructions given to Members of the Assembly regarding the attendance records their staff should maintain, it would reasonably be expected that staff's attendance records would be of a similar standard to those required to be maintained by ACT public servants. That is, staff should be required to certify in formal records times worked and that these records should be subject to periodic reviews by Members, or where applicable Chief of Staffs, for accuracy and completeness.

### **Current Situation**

Members were reminded in a Minute issued by the Clerk of the Legislative Assembly on 24 December 1997 of the need to ensure that their staff maintain attendance records of an acceptable standard.

In this Minute the Clerk stated that:

*“Employees are required to keep a record of their attendance in a form agreed with the relevant Member”* and

*“Members are to keep copies of the employee attendance records. These attendance records will be made available for audit at the direction of the Chief Minister”.*

The *Guide to Services and Facilities for Non-Executive Members and their staff* has been revised since the overtime payment was made. The content of the guide in relation to records of attendance, flexible working hours and overtime is reproduced as *Appendix 1* to this Report.

The audit requested the attendance records for Members' staff for two pay periods in August 1998. Audit found that attendance records in a variety of formats are being maintained. Some staff simply record start and finish times in a diary, other staff maintain standard ACT Government Time Sheets, while other staff simply produced typed start and finish times for the fortnight on a piece of paper.

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The majority of attendance records were unsigned by staff and bore no evidence of having been reviewed by an appropriate officer.

If claims for overtime were made by a number of Members' staff the reliability of start and finish times recorded on the overtime claim form could not be established based on the quality of many attendance records currently being kept.

Audit has recommended to each Member where it is appropriate that their staff should maintain attendance records using the standard ACT Government Time Sheet modified as necessary. The Time Sheets should be signed by staff and be subject to review by an appropriate officer.

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### 2.6 LATE CLAIMING FOR OVERTIME

The employee in a response to the Audit Office stated:

*“The overtime claim I submitted for January to August was not done progressively throughout the year as (the former Member) was unsure of the availability of funds under his staffing allocation. Given the circumstances I chose to hold submitting any claims. I believe that this was consistent with our agreement. I did, however, keep a record of the hours I worked as required should the opportunity arise to make a claim.”*

The former Member in his response to the Audit Office stated:

*“The Chief Minister only determined Members' staffing allocations and staff conditions at the end of June. Staff conditions of employment including the pay increase are still in dispute. The recruitment of a new office manager was not resolved until May and until then I was unsure of what it would cost to fill. By that time there were other office staff changes in*

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*prospect. While I was conscious of the accumulating unpaid overtime, I was reluctant to expend funds from my allocation while these uncertainties remained.*

*The employee was aware of my concerns about my staff allocation and agreed not to submit her claim until I was more confident of my budget position. She understood that not all the overtime worked might ultimately be able to be paid because expenditure could not exceed my staff allocation. I indicated to her that if the full amount could not be paid, I would consider alternative arrangements such as time off in lieu. However, this was always regarded as the second best option because of the impossibility of fully compensating her in this way.”*

### ***Audit Comment***

The reason given to the Audit Office by both the employee and the former Member's as to why the employee did not claim payment for excess hours progressively as they were worked, was because of the uncertainties that existed regarding Members staffing allocations in the first half of 1997.

The Chief Minister issued a Determination under subsection 6(2) of the *Legislative Assembly (Members Staff) Act 1989* on 26 June 1997 titled “1996/97 Financial Year Interim Staff salary Allocation To Non-Executive Members”. Thus it is true to say that uncertainty existed until the end of 1996-97 regarding the final amount of each Member's salary allocation and it was prudent not to pay while the uncertainty existed..

The uncertainty regarding Members 1996-97 salary allocations was however resolved on 26 June 1997 with the issuing of the Chief Ministers Determination. The employee's claim for payment of excess hours worked was not submitted until near the end of August 1997, two months after any uncertainty regarding Members salary allocations had been resolved.

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There have been no formal changes to procedures since the overtime payment. There continue to be no formal limitations applying to the timeframe in which overtime can be claimed. As long as a Member has authorised the working of excess hours, a staffer is entitled to claim payment for excess hours worked no matter how much time has passed since the work took place. The option to make large and late claims remains available.

The Audit reviewed overtime payments made recently to ascertain whether the claims were made significantly later than the time was worked. A review of overtime payments made since December 1997 revealed that, except in one instance, claims for overtime were made in the same month the overtime was worked. In the one instance where this was not the case, the overtime was claimed in the month after the overtime was worked.

A reason given to Audit explaining why overtime was not claimed progressively as worked, was that there were continuing uncertainties relating to each Members' salary allocation which were not resolved until well into the financial year.

No similar uncertainties currently exist. Early in 1997-98 the Chief Minister wrote to the Speaker of the Legislative Assembly detailing staff salary allocations for non-Executive Members for the 1998-99 financial year.

### *Audit Comment on Current Situation*

The possibility still exists that significant time may elapse between when overtime is worked and when a claim for payment of this overtime is made. There is no time limit as to when a claim for overtime may be made.

It should however be noted that audit testing of overtime payments made in 1998 found that the claims were being made within a short period of the overtime having been worked. Nevertheless it should be made

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a general requirement that overtime be claimed within a reasonable time of the work being performed.

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### 2.7 AVAILABILITY OF FUNDS FOR THE OVERTIME PAYMENT

The Secretariat of the Assembly closely monitors each Member's expenditure of their salary allocation. Indeed the Secretariat see it as their role to ensure that no Member overexpends their salary allocation.

The former Member's office enquired of the Secretariat the amount of funds available prior to the employee submitting the claim for payment of overtime.

From discussions held with the former Member and the Secretariat, it is clear that the availability of funds for the overtime claim to be paid was an issue that was clarified with the Secretariat prior to the overtime claim being certified by the former Member's.

The former Member in his response stated:

*“the overtime forms were submitted on the understanding that payment would not be authorised in excess of my allocation. I believe that the Clerk proceeded on the same basis. At no time was it ever suggested to me or my Chief of Staff that by submitting the forms I would be creating a liability that would have to be paid regardless of my salary allocation. The advice which we were receiving from the Assembly Secretariat supported the contrary view.”*

The Clerk of the Assembly confirmed the former Member's statement.

#### ***Audit Comment***

Some funds were available for an overtime payment to be made from the former Member's salary allocation although it was understood by all parties that the funds

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available may not be sufficient to meet the entire value of the hours recorded on the claim forms.

The availability of these funds was checked with the Secretariat by the former Member's Office prior to the overtime forms being submitted. The audit opinion is that there was no intention that a payment would be made in excess of the available allocation.

### **Current Situation**

There have been no formal changes to procedures since the overtime payment to the former Member's employee. The Secretariat of the Legislative Assembly monitor available Members salary funds on an ongoing basis. The Secretariat has advised that Members are made aware if they have nearly spent available funds and also if changes to expected expenditure patterns begin to emerge. Members are prevented from employing new staff if there are insufficient funds to pay staff.

Members' staff may still claim overtime which will exceed a Members available funds. If there are insufficient funds to meet an overtime claim, the employment contract of the staff states that where there are insufficient funds to pay a claim, the claim will be paid subject to the limitations of the Members salary allocation.

### ***Audit Comment on Current Situation***

Availability of Members' funds for overtime claims is closely monitored by the Secretariat. However Members are not regularly advised by the Secretariat of the extent of spending from their salary allocations. There remains the possibility that a Member may not know when authorising overtime to be worked that payment of the overtime will result in his or her salary allocation being overspent.

The Audit therefore suggests that Members be informed by the Secretariat on a monthly basis of the extent to which their salary allocations have been

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spent. Information provided should include, if possible, projections of expenditure to the end of the year.

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### 2.8 APPROVAL OF THE CLAIM FOR PAYMENT

At the instruction of the Assembly Secretariat, the employee prepared standard ACT public service Overtime/Extra Duty Approval and Claim forms and lodged these forms with the Secretariat. The employee signed these forms as the officer performing the duty. The forms were then signed by the former Member as supervisor. The former Member was certifying that the extra duty recorded on the form was actually performed. At this point dollar values of the claim had not been calculated. The certification therefore related only to hours worked and not to dollar values.

Under the requirements of the *Financial Management Act 1996*, Members of the Assembly do not have the power to approve expenditure. It is the Clerk of the Assembly who is required to approve overtime claims for Members' staff.

The Clerk of the Assembly forwarded a minute to the Assistant Manager, Personnel in the Chief Minister's Department with the employee's Forms. The Clerk's minute stated:

*"My approach to such claims is therefore to only consider claims that have been certified by the relevant Member and then, to only approve claims that would remain within the relevant Member's salary allocation, as approved by the Chief Minister under section 10 of the LAMS Act.*

*Accordingly, the attached claims are authorised only to the extent that they can be paid from within the above figure. For the purposes of determining which claims can, and which claims cannot, be paid from*

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*within this remaining allocation, the claims should be processed in date order.”*

The Clerk's approval was made in the terms in which it was as, at the time he was making the approval, no dollar values had been calculated for each form. Therefore the Clerk did not know which claims could be paid without exceeding the available allocation and which could not.

It is clear from a reading of the Clerk's minute that the Clerk only ever intended and in fact only did approve payment up to the amount of funds available. The former Member and the employee were both aware of this and agreed with it.

***Audit Comment***

The claim for payment was correctly approved. The payment was approved by the Clerk of the Assembly as required by the Financial Management Act.

**Current Situation**

There have been changes to procedures since the overtime payment to the former Member's employee. Payment of overtime is now claimed via a form specifically designed for staff of Members the "*Claim for Payment of Overtime-Members' Staff*". This Form is required to be authorised by both the relevant Member and the Clerk of the Legislative Assembly.

The Member certifies that they authorised the working of excess hours on the dates and at the times shown on the Claim .

The Clerk is certifying that the cost of the overtime can be met from the Member's staff salary allocation. The procedure is unchanged from when the overtime payment to the former Member's staff member was made.

***Audit Comment on Current Situation***

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The use of a specifically designed Form the “*Claim For Payment of Overtime - Members Staff*” clearly ensures each signatory to the Form understands what they are authorising. There now can be no confusion over the process by which overtime claims are approved for payment.

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## **2.9 CALCULATION OF THE OVERTIME PAYMENT**

The amount of overtime paid to the employee as part of the termination payment was a gross amount of \$19,691.51. Subsequent advice from Chief Minister’s Department Personnel Section was that the value of the unpaid amount of claimed overtime was \$7,579.69, making the value of the total claim as calculated by the Chief Minister’s Department \$27,271.20.

No workpapers supporting how, and on what basis, the amount paid of \$19,691.51 was calculated could be provided to the Audit Office by the Chief Minister’s Department.

The Chief Minister’s Department’s calculations were based on paying overtime on weekdays from 4.51pm, ie. the end of a “standard” working day.

As stated previously the former Member and the employee’s arrangement was that overtime would only be claimed from 6pm on weekdays. Consistent with the arrangement the employee’s initial overtime claim worksheet, prepared on 22 August 1997, calculated her claim for overtime hours from 6pm. However as this overtime claim worksheet was not the standard ACT Public Service form the employee was instructed by the Secretariat of the Assembly to complete the overtime claim using the standard Overtime/Extra Duty Approval and Claim Forms. The employee completed the forms showing start and finish times recorded in her diary.

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Unfortunately this method of entry was incorrect. The employee should have only entered the times for which overtime was being claimed, eg. from 6pm on the weekdays worked. The reason why the Secretariat and the Chief Minister's Department did not identify that an incorrect method of entering the forms had been used could not be ascertained by the Audit Office.

When the Chief Minister's Department received the claim forms an incorrect assumption was made that the employee was claiming overtime from the end of the "standard day" for ACT employees. A standard day is generally 8.30am to 4.51pm. Apparently the Chief Minister's Department did not take any action to either return the claim forms for clarification or to verify that their assumed 4.51pm start for overtime was correct.

Using the same assumptions as the Chief Minister's Department used, the Audit Office recalculated the value of the overtime claims at \$27,559, a small difference to the Chief Minister's Department calculations of \$288.

On the basis of the employee's actual arrangement for excess hours, ie. that overtime only be paid from 6pm on weekdays, the Audit Office calculated the value of the total overtime claim made by the employee as \$21,944. As the employee was paid \$19,692 the difference between this amount and what the employee was paid is \$2,252.

***Audit Comment***

The overtime payment was not correctly calculated.

Using the same basis as used by the Chief Minister's Department, calculations made by the Audit Office differ from Chief Minister's calculations by an amount of \$288. Why there is a difference in calculated amounts cannot be explained as there are no workpapers to support how the original amount was calculated by the Chief Minister's Department

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The basis on which the Chief Minister's Department calculations were made however was incorrect. Overtime was calculated as payable from 4.51pm on weekdays, yet the former Member's and the employee's arrangement was that overtime was only to be paid from 6pm on weekdays. On this basis the value of the total overtime worked reduces to \$21,944. As well the value of the unpaid overtime is now only \$2,252 not the larger amount of \$7,579 as calculated by Chief Minister's Department.

The initial cause for the incorrect calculation of the overtime amount lies with the employee using an incorrect method of entering times on the standard claim forms. It is considered however that the major contribution to the incorrect calculation rests with the Chief Minister's Department Personnel Section. This section should be "expert" in the area of overtime payments and should have readily recognised that the claim forms had been prepared incorrectly. They clearly should not have been processed without checking that their 4.51pm assumption was correct.

### **Current Situation**

Since the overtime payment to the former Member's employee there has been a major change in procedure. All claims for overtime are now calculated and processed by the Secretariat of the Legislative Assembly.

An Audit review of overtime payments processed by the Assembly in 1998 found that there are effective internal controls operating at the Secretariat to ensure all overtime claims are correctly calculated. All overtime claims reviewed by audit had been correctly calculated. There was however no evidence that these calculations had been subject to review or check by another officer.

### ***Audit Comment on Current Situation***

Overtime payments are now calculated by the Secretariat. All overtime payments made in 1998

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were reviewed by audit and found to have been correctly calculated. There was however no evidence that the calculations had been subject to normal internal control procedures of check or review by a second officer.

The Secretariat should ensure it has in place appropriate internal controls to ensure that all payments for overtime are correct.

\*\*\*\*

**2.10 WILL THE UNPAID PORTION OF THE EXCESS HOURS BE  
REQUIRED TO BE PAID?**

At the time the initial payment of overtime was paid to the employee it appears that the Personnel Section of Chief Minister's Department did not consider whether or not the unpaid portion of the overtime was legally required to be paid, either then or sometime in the future. This issue only appears to have become a consideration in early October 1997.

On 3 October 1997 the Chief Minister's Department wrote to the Clerk of the Assembly seeking his authorisation to pay the balance of overtime money due to the employee.

The Clerk of the Assembly wrote back to the Chief Minister's Department on 9 October 1997 in reply. The reply stated:

*"I have considered the advice in the context of previous advice received on related matters and the advice provided to the Member's office at the time the claims were lodged. I have concluded that it would be inappropriate for me to provide the authorisation requested.*

*By way of summary I believe that all parties were aware of the monetary restriction on the Member's power to authorise payments to staff imposed by the arrangements made by the Chief Minister pursuant to*

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*Section 10 of the Legislative Assembly (Members' Staff) Act and that these parameters preclude me from authorising the payments as requested."*

The employee in a letter to the Clerk of the Assembly on 8 October 1997 stated:

*"I have already been paid an amount for overtime which I understand was paid from the (former Member's) allocation. I do not want to be paid any further amount and hereby revoke any claim to it."*

Written advice to the Secretariat and the Audit Office from both the former Member and the employee make it clear that neither expected at any time that any portion of the overtime claim which exceeded the available salary allocation would be paid.

***Audit Comment***

The employee has revoked any claim to the unpaid portion of her overtime.

Whether this unpaid portion would ever have been required to be paid appears to be a matter of contention between the Chief Minister's Department and the Clerk of the Assembly. As the employee has revoked any claim to the money this need no longer be regarded as an issue.

\*\*\*\*

**EXTRACTS FROM “GUIDE TO SERVICES AND FACILITIES FOR  
NON-EXECUTIVE MEMBER’S AND THEIR STAFF”**

**7.2.3 Records of Attendance**

Current arrangements and determinations require staff to keep a record of their attendance in a form agreed with their employing Member.

Members are to keep copies of the employees attendance records and these will be made available for audit at the direction of the Chief Minister.

The Auditor-General wrote to the Speaker on 17 October 1997 in relation to a matter connected with attendance and, amongst other things, commented that while no specific instructions had been given to Members regarding what attendance records their staff should maintain, it was reasonably expected that they would be similar to those maintained by ACT Public Servants, which included a formal record which is certified by the staff member and subject to periodic review by Members or Chiefs of Staffs for accuracy and completeness.

**7.2.4 Flexible Working Hours**

It is difficult to provide advice on access to flexible working hours arrangements. The LAMS Act provides a link back to the ACT Public Service for any terms and conditions not the subject of a determination and, in the past, a common flexible working hours regime has applied throughout the ACT Public Service, making it possible for Members and their staff to use those arrangements.

However, more recently, many ACT Public Service agencies have, through enterprise bargaining arrangements, adopted flexible working hours arrangements that are tailored to their agency and, as a consequence, there are now a wide range of differing schemes, making it difficult to provide a model on which Members and staff could base their arrangements.

Advice obtained from the Chief Minister’s Department is that Members are free to develop their own flexible working hours arrangements however, Members

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may wish to discuss the details of any proposed arrangements with the Corporate Manager.

### **7.2.5 Overtime**

For staff employed under the current contract for employment, overtime is only payable if provided for in the contract of employment. For staff employed under contracts prior to July 1997, overtime can only be paid to staff who are employed at ASO 6 level or below.

Members can authorise the performance of overtime, but any payment for that overtime must be authorised by the Clerk and funded from the Members' staff salary allocation.

Member's staff overtime claim forms which provide for the various certifications by a Member and approval of the Clerk, can be obtained from the Corporate Services office.

## **Annexure**

### *Reports Published in 1992*

- 1 Information Technology Management Policies in the ACT Government Service**
- 2 Financial Audits with Years Ending to 30 June 1991**
- 3 GAO Annual Management Report for Year Ended 30 June 1992**
- 4 ACT Board of Health - Management of Information Technology**
- 5 Budget Outcome Presentation and the Aggregate Financial Statement for the Year Ended 30 June 1992**
- 6 Financial Audits with Years Ending to 30 June 1992**

### *Reports Published in 1993*

- 1 Management of Capital Works Projects**
- 2 Asbestos Removal Program**
- 3 Various Performance Audits Conducted to 30 June 1993**
  - **Debt Recovery Operations by the ACT Revenue Office**
  - **Publicity Unaccountable Government Activities**
  - **Motor Vehicle Driver Testing Procedures**
- 4 Various Performance Audits**
  - **Government Home Loans Program**
  - **Capital Equipment Purchases**
  - **Human Resources Management System (HRMS)**
  - **Selection of the ACT Government Banker**
- 5 Visiting Medical Officers**
- 6 Government Schooling Program**
- 7 Annual Management Report for the Year Ended 30 June 1993**
- 8 Redundancies**
- 9 Overtime and Allowances**
- 10 Family Services Sub-Program**
- 11 Financial Audits with Years Endings to 30 June 1993**

Annexure (continued)

*Reports Published in 1994*

- 1 Overtime and Allowances - Part 2
- 2 Department of Health - Health Grants  
- Management of Information Technology
- 3 Public Housing Maintenance
- 4 ACT Treasury - Gaming Machine Administration  
- Banking Arrangements
- 5 Annual Management Report for Year Ended 30 June 1994
- 6 Various Agencies - Inter-Agency Charging  
- Management of Private Trust Monies
- 7 Various Agencies - Overseas Travel - Executives and Others  
- Implementation of Major IT Projects
- 8 Financial Audits with Years Ending to 30 June 1994
- 9 Performance Indicators Reporting

*Reports Published in 1995*

- 1 Government Passenger Cars
- 2 Whistleblower Investigations Completed to 30 June 1995
- 3 Canberra Institute of Technology - Comparative Teaching Costs and Effectiveness
- 4 Government Secondary Colleges
- 5 Annual Management Report for Year Ended 30 June 1995
- 6 Contract for Collection of Domestic Garbage/Non-Salary Entitlements for Senior Government Officers
- 7 ACTEW Benchmarked
- 8 Financial Audits With Years Ending to 30 June 1995

*Reports Published in 1996*

- 1 Legislative Assembly Members - Superannuation Payments/Members' Staff - Allowances and Severance Payments
- 2 1995 Taxi Plates Auction

Annexure (continued)

- 3 VMO Contracts
- 4 Land Joint Ventures
- 5 Management of Former Sheep Dip Sites
- 6 Collection of Court Fines
- 7 Annual Management Report For Year Ended 30 June 1996
- 8 Australian International Hotel School
- 9 ACT Cultural Development Funding Program
- 10 Implementation of 1994 Housing Review
- 11 Financial Audits with Years Ending to 30 June 1996

*Reports Published in 1997*

- 1 Contracting Pool and Leisure Centres
- 2 Road and Streetlight Maintenance
- 3 1995-96 Territory Operating Loss
- 4 ACT Public Hospitals - Same Day Admissions  
Non Government Organisation - Audit of Potential Conflict of Interest
- 5 Management of Leave Liabilities
- 6 The Canberra Hospital Management's Salaried Specialists Private Practice
- 7 ACT Community Care - Disability Program and Community Nursing
- 8 Salaried Specialists' Use of Private Practice Privileges
- 9 Fleet Leasing Arrangements
- 10 Public Interest Disclosures - Lease Variation Charges  
- Corrective Services
- 11 Annual Management Report for Year Ended 30 June 1997
- 12 Financial Audits with Years Ending to 30 June 1997
- 13 Management of Nursing Services

Annexure (continued)

*Reports Published in 1998*

- 1 Management of Preschool Education**
- 2 Lease Variation Charges - Follow-up Review**
- 3 Major IT Projects - Follow-up Review**
- 4 Annual Management Report for Year Ended 30 June 1998**
- 5 Management of Housing Assistance**
- 6 Assembly Members' Superannuation and Severance Payments to Former Members' Staffers**
- 7 Magistrates Court Bail Processes**
- 8 Territory Operating Losses and Financial Position**
- 9 Financial Audits with Years Ending To 30 June 1998**
- 10 Management of Schools Repairs and Maintenance**
- 11 Overtime Payment To A Former Legislative Assembly Member's Staffer**

**Availability of Reports**

Copies of Reports issued by the ACT Auditor-General's Office are available from:

ACT Auditor-General's Office  
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BRADDON ACT 2601

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