

ACT AUDITOR-GENERAL'S REPORT

**COMMISSIONER FOR INTERNATIONAL
ENGAGEMENT - POSITION CREATION AND
APPOINTMENT PROCESS**

REPORT NO. 9 / 2016

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PA 16/13

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Madam Speaker

I am pleased to forward to you a report titled 'Commissioner for International Engagement – position creation and appointment process' for tabling in the Legislative Assembly pursuant to Subsection 17(5) of the *Auditor-General Act 1996*.

Yours sincerely



Dr Maxine Cooper
Auditor-General
30 November 2016

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SUMMARY

The Chief Minister announced the creation of the position of Commissioner for International Engagement to lead the new Office of International Engagement on 12 July 2016 in a media release.

On 14 July 2016, the Chief Minister agreed to the creation of the position of Commissioner for International Engagement, the Office of International Engagement and the appointment of the now Commissioner.

On 15 July 2016, the Chief Minister announced that the Australian Capital Territory's first Commissioner for International Engagement would take up the role on 1 August 2016.

A review of the creation of the position and the appointment process has been undertaken under the authority of section 10(1)(a) of the *Auditor-General Act 1996* to promote public accountability in the public administration of the Territory.

This review, which is not a performance audit, provides limited assurance. However, given the conclusions of the review it is not proposed that a performance audit be undertaken.

The Chief Minister, Treasury and Economic Development Directorate, Commissioner for Public Administration and Government Solicitor's Office were provided with a draft copy of the review report and invited to provide comments and bring matters of accuracy, completeness and fact to the attention of the Auditor-General.

Overall conclusion

Over many years, ACT governments have developed strategies to develop and broaden the ACT economy and foster business growth. International engagement has been recognised as an important feature of many of the strategies, such as *Growth, Diversification and Jobs* (2012), *The ACT in the Asian Century* (2013), and *Confident & Business Ready* (2015). In this sense, the creation of the position of Commissioner for International Engagement and the Office of International Engagement is in response to an identified need, although no specific business case (or similar) had been prepared to comprehensively present the argument for taking this course of action.

The first documented discussion regarding the creation of the position of Commissioner for International Engagement was on 4 July 2016, and eight days later (on 12 July 2016) the Chief Minister publically announced that the position had been created. This timing was influenced by the Chief Minister's desire to announce the new role at the same time that a new sister city agreement with Wellington, New Zealand was signed.

One day later (on 13 July 2016), government officials recommended the appointment of the now Commissioner as the inaugural Commissioner. The Brief to the Chief Minister made clear there had been extensive consultation with the Chief Minister's office regarding the creation of the Office of International Engagement and the position of Commissioner. The Chief Minister announced the appointment on 15 July 2016 and it was endorsed by Cabinet on 18 July 2016. An Instrument of Appointment was duly made on 29 July 2016, and the now Commissioner commenced in the role on 1 August 2016.

There is a reasonable expectation that significant appointments such as the Commissioner, should adopt a process that is transparent, without bias and fully documented.

The creation of the position of Commissioner for International Engagement and the Office of International Engagement and the selection and appointment of the now Commissioner as Commissioner for International Engagement were consistent with general powers attributed to the Executive under the *Australian Capital Territory (Self-government) Act 1988 (C'th)* (the Self Government Act). The appointment was an Executive Appointment, largely at the discretion of the Chief Minister. There are no prescribed processes or procedures for such appointments. The process used was broadly consistent with that used for appointments to ACT Government boards and committees.

In this instance, although some aspects of the process are well documented (such as the formal appointment and the employment arrangements applicable to the Commissioner), there is little documentation to indicate how potential candidates were to be identified, what skills, experience or qualifications were desirable, or how candidates were to be assessed. An open selection process was not used and the now Commissioner was approached as the sole candidate.

This is not to suggest, in any way, that the now Commissioner is not a suitable appointee.

The general paucity of documentation, however, lacks transparency.

Chapter conclusions

CREATION OF THE POSITION OF COMMISSIONER FOR INTERNATIONAL ENGAGEMENT

The creation of the position of Commissioner for International Engagement and the Office of International Engagement was broadly consistent with sound public administration, in that the position of Commissioner and the Office were created under an appropriate legislative authority in response to an identified need.

However, better practice would have been to prepare a business case (or similar) to comprehensively present arguments for the position of Commissioner and the Office, and which would outline the background, expected benefits and options considered (with reasons for rejecting or carrying forward each option).

ACCOUNTABILITY AND REPORTING ARRANGEMENTS

Accountability and reporting arrangements for the Commissioner for International Engagement and the Office of International Engagement are suitable in the circumstances.

However, better practice would be to clarify the requirements for annual reporting, particularly whether any annual report from the Commissioner is to follow directions, either whole or in-part, issued under the *Annual Reports (Government Agencies) Act 2004*, even if not required by this legislation.

APPOINTMENT PROCESS FOR THE NOW COMMISSIONER

The selection and appointment of the now Commissioner for International Engagement was consistent with general powers attributed to the Executive under the Self Government Act.

The appointment was an Executive Appointment, and there are no prescribed process or procedures for such appointments. To a large degree, the appointment was at the discretion of the Chief Minister, and in the words of the Solicitor-General 'it is open to the Executive to create the role and make the appointment in the manner in which it occurred'.

Significant appointments are often a matter of considerable public interest. For this reason, better practice would be to ensure that whatever process was adopted was transparent, without bias and fully documented. The community expects that appointees will not only be well qualified, but that the process used will be fair and appropriate.

In this instance, while some aspects of the process are well documented (such as the formal appointment and the employment arrangements applicable to the Commissioner), there is little documentation to indicate how potential candidates were identified, what skills, experience or qualifications were desirable, or how candidates were assessed.

Further, although the seniority (and thus remuneration) level of the proposed position was assessed based on 'the nature of the role', better practice would be to either refer the proposed position and remuneration to the Remuneration Tribunal, or conduct a formal position evaluation based on an accepted method.

Recommendation

RECOMMENDATION

The ACT Government should develop guidelines for significant appointments which amongst other things, set out:

- a) general principles (such as merit and equity) to be followed in filling a vacancy;
- b) requirements for preparing a business case (or similar) to support the creation of significant new positions and supporting business units, setting out the background, expected business benefits, options considered (with reasons for rejecting or carrying forward each option), expected costs, funding arrangements and expected risks;
- c) the need to define the position in terms of role, responsibilities and accountabilities, and any mandatory requirements which apply to potential candidates or nominees;
- d) how to determine remuneration, e.g. is it to be referred to the Remuneration Tribunal, or a formal position evaluation undertaken based on an accepted method;
- e) requirements for assessing the merit of potential candidates, including selection criteria;
- f) the considerations for selecting the method of appointment to be applied, e.g. direct appointment or consideration of a field of qualified candidates;
- g) requirements for performance indicators;
- h) reporting obligations for the appointee including public reporting;
- i) how to prepare an Instrument of Appointment (or similar) to define employment conditions, behaviours and obligations of the proposed appointee; and
- j) documentation requirements (full documentation is strongly recommended for all processes and material).

Responses from entities

In accordance with subsection 18(2) of the *Auditor-General Act 1996*, the Chief Minister, Treasury and Economic Development Directorate, the Commissioner for Public Administration, the Chief Minister and the ACT Government Solicitor were provided with:

- a draft proposed report for comment. All comments were considered and required changes were reflected in the final proposed report; and
- a final proposed report for further comments. As part of this process, the entities were offered the opportunity to provide comments for inclusion in the final report in the Summary chapter.

Comments from the Chief Minister

Thank you for your letter of 31 October 2016 about the Final Proposed Report for the Commissioner for International Engagement, position creation and appointment process.

Firstly, I note your conclusion that the creation of the position of Commissioner for International Engagement and the Office of International Engagement and the appointment of [the Commissioner for International Engagement] to that position were consistent with the relevant legislation.

I also note your finding that the process used to make this appointment was broadly consistent with that used for appointments to ACT Government boards and committees.

Executive appointments are based on the premise that the executive should have powers to directly appoint individuals empowered to perform specific functions as determined by cabinet. Given the reason such powers exist is to provide the executive with flexibility to exercise its discretion, in some instances quickly to respond to an identified need, it is clearly the case that the circumstances of each appointment will also be quite different.

In comparing the appointments of [the Local Industry Advocate] as Local Industry Advocate and [the Commissioner for International Engagement] as Commissioner for International Engagement, whilst the head legislation used to make the appointments is the same, the circumstances of each appointment are quite different. I consider both appointments to have been not only necessary, but have already delivered considerable benefits to the ACT.

Flexibility is a necessary feature of any powers that are deliberately designed to allow the executive to exercise its discretion, in this case to appoint individuals.

I note your report's single recommendation that guidelines be developed for significant appointments. In asking my directorate to review this recommendation and to provide advice, my overriding concern will be to ensure the flexibility of the executive to exercise its discretion is not unreasonably limited. This includes ensuring that such appointments can continue to be made swiftly.

Indeed, your report seems to infer the process to appoint [the Commissioner for International Engagement] was somehow deficient simply because it occurred quickly. Without reservation, I would say that government acting quickly to respond to a pressing need is unequivocally a good thing.

Within a matter of days of announcing the creation of the position and publicly inviting applications, a candidate with unchallengeable credentials for the job was appointed and has been delivering for Canberra since that time.

Thank you again for the opportunity to respond to this report.

1 INTRODUCTION

- 1.1 This Report has been prepared consequent to an examination of issues regarding the creation of the position of Commissioner for International Engagement and the appointment of the now Commissioner.

Background

- 1.2 The Chief Minister announced the creation of the position of Commissioner for International Engagement to lead the new Office of International Engagement on 12 July 2016 in a media release. The Chief Minister said the position would ‘support [Canberra’s] rapidly growing international engagement efforts’:

The Commissioner for International Engagement will be the first element to support the Government’s soon to be released International City Strategy – designed to enhance Canberra’s international reputation. Successful delegations to Singapore, China, the United States and Wellington have demonstrated a need for a more coordinated approach to the ACT’s international relations to better support local businesses and attract foreign investment.

The Commissioner will work with Canberra’s education and research institutions to profile Canberra as an education and investment destination.

The Commissioner will also lead a new Office of International Engagement within the Government.

The Commissioner for International Engagement will be responsible for a broad range of engagement activities and will provide advice about relevant opportunities to be pursued that enhance our competitiveness and our contribution to the region.

- 1.3 On 14 July 2016, the Chief Minister agreed to the creation of the position of Commissioner for International Engagement, the Office of International Engagement and the appointment of the now Commissioner.

- 1.4 On 15 July 2016, the Chief Minister announced the name of the appointed first Commissioner for International Engagement and advised that they were expected to take up the role on 1 August 2016.

The Commissioner will get to work immediately on finalising the strategy governing Canberra’s international engagement. This international plan will focus our efforts to build enduring international relationships, supporting jobs and cultural exchange.

Review objective and scope

- 1.5 The purpose of this review is to provide information on the establishment of the position of the Commissioner for International Engagement, and the subsequent process of appointment of the now Commissioner, with a view to considering whether further action by the Auditor-General is warranted.
- 1.6 All activity on this issue by the ACT Audit Office to date has been undertaken as a review. The approach provides a limited level of assurance regarding the matters addressed and the conclusions reached thereon. Activity undertaken was limited primarily to discussions with relevant Directorate staff, identification of relevant legislation and policy, and an examination of correspondence and documents. Advice of the Government Solicitor's Office and Commissioner for Public Administration was also sought.
- 1.7 The review considers whether:
- the creation of the position of Commissioner for International Engagement and the Office of International Engagement was consistent with sound public administration;
 - accountability and reporting arrangements for the Office of International Engagement are specified; and
 - the appointment process for the now Commissioner and was consistent with good practice and employment arrangements.

Review criteria

- 1.8 Assessments in this review have been made against the following criteria:
- whether the creation of the position of Commissioner for International Engagement and the Office of International Engagement was consistent with sound public administration:
 - creation of the position of Commissioner and the Office of International Engagement was in response to a clearly identified need and supported by an appropriate business case
 - the position of Commissioner and the Office of International Engagement were created under an appropriate legislative authority
 - funding for the Commissioner, Office and support staff was identified and available.
 - whether accountability and reporting arrangements are specified:
 - the roles of the Commissioner, Office and support staff are clearly documented
 - accountability arrangements of the Commissioner and the Office of International Engagement to government and the community are clear, and the Commissioner is subject to an appropriate performance agreement with identified key performance indicator, targets and timeframes

- accountability arrangements meet relevant legislative requirements, if applicable.
- whether processes for the appointment of the Commissioner were consistent with good practice and employment arrangements:
 - the Commissioner’s remuneration package was determined with reference to the ‘work value’ (or equivalent) of the position
 - the selection process was clear, transparent and accountable
 - the selection and appointment process meets relevant legislative requirements, if applicable
 - employment arrangements for the Commissioner for International Engagement are appropriate under the circumstances.

2 CREATION OF THE POSITION OF COMMISSIONER FOR INTERNATIONAL ENGAGEMENT

- 2.1 This chapter discusses the creation of the position of Commissioner for International Engagement and the Office of International Engagement and considers whether the processes applied were consistent with sound public administration.

Summary

Conclusion

The creation of the position of Commissioner for International Engagement and the Office of International Engagement was broadly consistent with sound public administration, in that the position of Commissioner and the Office were created under an appropriate legislative authority in response to an identified need.

However, better practice would have been to prepare a business case (or similar) to comprehensively present arguments for the position of Commissioner and the Office, and which would outline the background, expected benefits and options considered (with reasons for rejecting or carrying forward each option).

Whether the position of Commissioner was created under an appropriate legislative authority

- 2.2 Initial discussions on 4 July 2016 between the Deputy Director-General, Enterprise Canberra and the Executive Director, Innovate Canberra regarding the creation of a new position to support the government's international engagement efforts indicated that:
- the position would be a Cabinet appointment, similar to the appointment of the Local Industry Advocate (it would not be a statutory appointment);
 - the position would be full time for five years;
 - remuneration would be 'the public service equivalent of a Ministerial salary'; and
 - creation of the position would be announced by the Chief Minister during his forthcoming visit to Wellington.
- 2.3 The Director-General, Economic Development and the Deputy Director-General, Enterprise Canberra submitted a brief to the Chief Minister on 13 July 2016 recommending the Chief Minister:
- agree to the creation of the position of Commissioner for International Engagement;

- note the Office of International Affairs (sic) will be created to support the Commissioner;
- agree that the appointment of the Commissioner for International Engagement will be a Cabinet Appointment; and
- agree that the appointment of [the now Commissioner] ... of (sic) International Engagement be submitted to Cabinet for endorsement.

2.4 The Chief Minister approved the recommendations.

2.5 Cabinet subsequently endorsed the appointment of the now Commissioner at a Cabinet Meeting on 18 July 2016.

2.6 An Instrument of Appointment for the now Commissioner was signed by the Chief Minister and another Minister on 29 July 2016.

Cabinet appointment

2.7 ACT Government Cabinet Paper Drafting Guide issued in November 2009¹ by the Cabinet Office notes:

The consideration of appointments by the Cabinet is a consultative rather than determinative process. The power to make appointments that are, as a matter of information or government coordination, considered by Cabinet is in many cases determined in legislation, and rests with the ACT Executive constituted formally, or with individual ministers.

2.8 The Solicitor-General for the ACT has advised:

The Executive of the ACT from time to time has the need to create roles to assist in the discharge of the business of government that are not carried out by public servants and are not specifically created under statute. The roles are created by the Executive pursuant to authority given by the *Australian Capital Territory (Self-government) Act 1988 (C'th)* (Self-Government Act) which gives the Executive the responsibility for governing the Territory and exercising the 'prerogatives of the Crown' for that purpose. This includes creating such roles as are necessary by reason of circumstance or exigency of time.

...

... in the absence of a prohibition by statute, either expressly or by necessary implication ... the ACT Executive may engage persons to undertake such tasks as it determines on such terms and conditions as it thinks fit, in the exercise of its general executive powers.

...

There is no prescribed process within the Self-Government Act for the exercise of Executive Powers, including the Crown prerogatives ...

2.9 The *Legislation Act 2001* (Section 253) provides that 'a function given to the Executive under an Act may be exercised by any 2 Ministers acting in concert'.

¹ The 2009 issue of the Guide remains current.

Conclusion

- 2.10 The Self-Government Act gives the ACT Executive authority to exercise ‘prerogatives of the Crown’ such as the creation of positions to assist in the discharge of the business of government and the appointment of persons to such positions on such terms and conditions as it thinks fit.
- 2.11 The position of Commissioner for International Engagement was created by the Chief Minister on the recommendation of the Director-General, Economic Development. The Chief Minister also agreed with a recommendation to appoint the now Commissioner to the role, subject to endorsement by Cabinet.
- 2.12 Cabinet endorsed the appointment.
- 2.13 An instrument of appointment for the now Commissioner was signed by two Ministers ‘acting in concert’.
- 2.14 The creation of the position of Commissioner and the appointment of the now Commissioner to the position were enacted under an appropriate legislative authority, namely the *Australian Capital Territory (Self-government) Act 1988* (C’tth) (Self-Government Act), specifically Section 37 of the Act.

Whether the Office of International Engagement was created under an appropriate legislative authority

- 2.15 The establishment of the Office of International Engagement was flagged by the Deputy Director-General, Enterprise Canberra in an email to the Executive Director, Innovate Canberra on 4 July 2016 which said:
- To better coordinate and support the work of the CG, I will look to establish an Office of International Engagement within Enterprise Canberra ...
- 2.16 The Deputy Director-General Enterprise Canberra, in an email of 4 July briefly outlined administrative reporting lines for the Office of International Engagement and initial thoughts on staffing for the Office. In a subsequent email to staff in the Chief Minister, Treasury and Economic Development Directorate, the Deputy Director-General, Enterprise Canberra said:
- At present, the plan is to have three staff in the OIE [Office of International Engagement] at least for the foreseeable future. The mix of staff/levels/skills will be determined in consultation with ... [the now Commissioner] however there will be an EA position advertised immediately with two more senior positions to be filled in the next few weeks.

2.17 On 9 September 2016, the Deputy Director-General Enterprise Canberra advised that:

The 'Office of International Engagement' has no formal status and is simply the name adopted to describe that part of Economic Development that is to support the Commissioner. Staff are those within my responsibility in Enterprise Canberra and subject to the usual delegated authority held by me in relation to those staff nominated to assist the Commissioner, and the cost will be met out of my ordinary budget. The functions and responsibilities of the Commissioner are set out in the instrument of appointment.

Conclusion

2.18 The *Public Sector Management Act 1994* (PSM Act) provides that a Director-General is responsible

(a) under the relevant Minister, [for] management of the administration and business of the unit

2.19 The Director-General may delegate functions to a public sector officer (PSM Act, Section 36C). The Deputy Director-General Enterprise Canberra has appropriate delegations to manage the administration and business of Enterprise Canberra.

2.20 The establishment of the Office of International Engagement was enacted under an appropriate legislative authority, namely the *Public Sector Management Act 1994*, specifically Section 28AA.

Whether the creation of the position of Commissioner and the Office of International Engagement was in response to a clearly identified need

2.21 Over many years, ACT governments have developed strategies to develop and broaden the ACT economy and foster business growth. Various programs and policies have focused on developing capability across the economy and supporting sectors such as education and research, tourism and others where the ACT is seen to have a competitive advantage.

2.22 One aspect of the business development strategies has been the creation of 'sister city relationships' with several international cities. Sister city relationships are 'an overarching symbol of friendship that encourage and assist groups in government, business, culture and community to make contact with each other and build relationships of mutual benefit'. Government has also established 'friendship city relationships', which are less formal agreements between cities that seek to enhance economic, humanitarian and sporting links through cooperation and mutual respect.

2.23 The first sister city relationship was established with Nara, Japan in October 1993, and such relationships now extend to Beijing, China (September 2000) and Wellington, New Zealand (July 2016). Friendship city relationships have been established with Hangzhou, China (October 1998) and Dili, Democratic Republic of Timor-Leste (July 2004).

2.24 In August 2013, the ACT Government prepared a short paper in response to the Australian Government's 'Australia in the Asian Century' White Paper. The ACT paper outlined the government's approach to 'harness the opportunities of Asia's growth and use it to continue the growth and diversification of the ACT economy'. The government's approach included:

- building on Canberra's sister city relationships to develop closer economic, business and cultural ties. 'This will include strengthening existing relationships with Beijing and Nara and exploring new possibilities with cities in south-eastern China, Singapore and India.';
- working 'closely with ACT business and industry groups to strengthen and expand business-to-business links between Canberra companies and their counterparts in key markets in Asia.'; and
- continuing 'to work with Canberra Airport Group to attract direct connections from the global hub of Singapore and potentially other Asian cities'.

2.25 It is evident through these activities, and in government business development strategies such as *Growth, Diversification and Jobs* (April 2012) and *Confident & Business Ready* (May 2015) that considerable energy was being put into international engagement. For example, the latest strategy includes the following priority commitments:

Through Invest Canberra, we will engage with national and multinational companies to support their growth in Canberra and encourage reinvestment.

We will develop an International City Strategy to guide and support direct engagement efforts with international cities with aligned interests and opportunities.

2.26 In a meeting with the Auditor-General on 9 August 2016, the Deputy Director-General, Enterprise Canberra explained that:

- work on creating the Office of International Engagement commenced with a number of email exchanges around April this year between himself and the Chief Minister's Office regarding development opportunities arising from the new deal with Singapore Airlines that would see direct international flights into Canberra from Singapore and Wellington. The expectation was the new commercial arrangement would bring investment, trade, tourism and more to the ACT region and it was necessary to set up arrangements that could best coordinate and take advantage of the international engagement effort involved;
- further, the 'sister city' arrangements now recognised with Nara (Japan), Beijing (China) and Wellington (NZ) and the Memorandum of Understanding with Shenzhen (China) are expected to boost economic and cultural exchange, including business partnerships, tourism, education, cultural exchanges with national institutions, capital civic programs, biodiversity initiatives, smart city technologies, affordable housing solutions and sport;

- it had become evident that existing resources within the ACT Government were inadequate for taking full advantage of these new opportunities. Previous governments had engaged staff or contractors to promote economic and cultural exchange with Singapore, China and New Zealand, but these arrangements had ceased several years ago. The Office of International Engagement was a renewed effort; and
- the renewed effort on international relations is consistent with high level strategies such as Invest Canberra and Innovate Canberra. The document *Confident & Business Ready: Building on our Strengths* (Chief Minister, Treasury and Economic Development Directorate, May 2015) outlines broad strategies and includes the commitment to develop an International City Strategy to guide and support direct engagement with international cities. As at August 2016, this document is in draft form (after several years) and the Commissioner will be responsible for reviewing the work to date and finalising the strategy.

2.27 In responding to a request for information about the creation of the Office of International Engagement, the Deputy Director-General Enterprise Canberra has said:

The role of Commissioner for International Engagement (CIE) and the supporting Office of International Engagement (OIE) was created as part of the ACT Government's commitment to significantly enhance its international engagement efforts. This commitment follows the announcement of the commencement of the ACT's first direct international air service in September linking Canberra to Singapore and Wellington.

2.28 In a brief to the Chief Minister dated 13 July 2016 the Director-General, Economic Development and the Deputy Director-General, Enterprise Canberra supported a recommendation to create the position of Commissioner for International Engagement as follows:

- With the announcement of direct international services announced in January this year our international engagement efforts have increased substantially.
- The ACT Government has pursued a strong international engagement effort over the last three years, through numerous successful Trade Missions and engagement with like-minded international cities
- These efforts have lead to a rapid increase in exports, growth in the ACT's tertiary education sector, increased foreign investments and an increase in international visitation to Canberra.
- Canberra achieved its highest ever number of international visitors, visitor nights and expenditure in the year ending March 2016.
- This new position will play a key role in supporting and maintaining our engagement with International cities to support our rapidly growing international efforts.
- One of the key responsibilities of the Commissioner will be to finalise the International Cities Strategy and will be responsible for the implementation of that strategy going forward.
- The role will support and manage our existing sister city relationships providing a gateway into new markets and product lines. The role will ensure a level of planning, goal setting and targeted engagement which will clearly outline key objectives and deliverables.

2.29 No separate business case has been prepared to support creation of either the position of Commissioner for International Engagement or the Office of International Engagement.

2.30 A article in The Canberra Times (31 August 2016) quotes the now Commissioner:

It is very clearly a position that is required. NSW has 65 people doing this job, that's how important they see it, with staff overseas. Victoria has 25 staff based in Melbourne and other staff around the world. They're not doing it for fun or some kind of job-creation scheme, they're doing it because it has to be done.

Conclusion

2.31 The increased level of international engagement activity presents a reasonable case for the creation of a dedicated position to coordinate and manage the ACT Government's international engagement and for a small organisational unit to support the new position. There was, in this sense, an identified need.

2.32 Documentation of the business imperative is scattered across a variety of documents and strategies, and is brought together only as a simple brief to the Chief Minister.

2.33 A business case that comprehensively presents the case for the position of Commissioner and the Office, which would outline the background, expected business benefits, options considered (with reasons for rejecting or carrying forward each option), expected costs of the project, and the expected risks, was not prepared.

Whether funding for the Commissioner, Office and support staff was identified and available

2.34 Initial discussions between the Deputy Director-General, Enterprise Canberra and the Executive Director, Innovate Canberra regarding the creation of a new position to support the government's international engagement efforts indicate that:

- the Office of International Engagement would be established within Enterprise Canberra to better coordinate and support the Commissioner's work; and
- a staffing allocation would be made to directly support the Commissioner – possibly one senior officer.

2.35 In a brief to the Chief Minister dated 13 July 2016, the Director-General, Economic Development and the Deputy Director-General, Enterprise Canberra states:

The Office of International Engagement will initially be funded from existing resources.

2.36 An email to staff of the Chief Minister, Treasury and Economic Development Directorate, from the Deputy Director-General, Enterprise Canberra advises that a senior manager from Enterprise Canberra would provide support to the Commissioner and would be joined by further staff shortly.

2.37 In a meeting with the Auditor-General on 9 August 2016, the Deputy Director-General Enterprise Canberra said the Office of International Engagement would have a staffing complement of three, plus the Commissioner. Two staff had already been transferred to the new Office. Funding is through the Chief Minister, Treasury and Economic Development Directorate budget—there is no separate budget for the new Office, although a cost centre had been created to ensure appropriate accountability for operations.

2.38 The Deputy Director-General has subsequently advised that:

The 'Office of International Engagement' has no formal status and is simply the name adopted to describe that part of Economic Development that is to support the Commissioner. ... the cost will be met out of my ordinary budget.

2.39 Documentation provided to the ACT Audit Office includes no further reference to funding for either the Commissioner, the Office or support staff (other than references to the remuneration for the Commissioner).

Conclusion

2.40 It could be expected that funding requirements for the position of Commissioner for International Engagement and the Office of International Engagement would be identified in some detail in a business case supporting the creation of the position and supporting Office. A business case was not prepared, and no documentation has been provided that quantifies funding needs or their source other than identifying that up to three staff (two senior positions and an executive assistant) would be made available 'for the foreseeable future'.

2.41 It is clear, however, that all positions and costs would be met from existing (Enterprise Canberra) funding, at least initially.

3 ACCOUNTABILITY AND REPORTING ARRANGEMENTS

- 3.1 This chapter considers whether accountability and reporting arrangements for the Commissioner for International Engagement and the Office of International Engagement are specified.

Summary

Conclusion

Accountability and reporting arrangements for the Commissioner for International Engagement and the Office of International Engagement are suitable in the circumstances.

However, better practice would be to clarify the requirements for annual reporting, particularly whether any annual report from the Commissioner is to follow directions, either whole or in-part, issued under the *Annual Reports (Government Agencies) Act 2004*, even if not required by this legislation

Whether the roles of the Commissioner, Office and support staff are clearly documented

The Commissioner for International Engagement

- 3.2 Initial discussions between the Deputy Director-General, Enterprise Canberra and the Executive Director, Innovate Canberra regarding the creation of a new position to support the government's international engagement efforts outline the proposed role and responsibilities.
- 3.3 At the time the creation of the position was announced (12 July 2016) and the appointment of the now Commissioner was announced (14 July 2016) the role and responsibilities of the position had not been formally defined other than to:
- finalise and implement the International City Strategy;
 - 'support and manage existing sister city relationships'; and
 - manage and guide the ACT's international efforts generally.

3.4 An Instrument of Appointment for the now Commissioner was signed by the Chief Minister and another Minister on 29 July 2016. The Instrument of Appointment reflects the initial considerations and outlines the primary role of the Commissioner:

... to review and complete the International City Strategy. The Commissioner will then be primarily responsible for the ongoing implementation of the Strategy including:

- Provision of advice to government on relevant opportunities to extend or enhance our international engagement
- Identify opportunities to strengthen existing relationships with a focus on our sister city agreements
- Continually update the Strategy to ensure it reflects both government policy, priorities, and ensure broader international relations are current in respect to the economic, social political environments globally.

3.5 Specific duties of the Commissioner are also outlined in the Instrument of Appointment. These include:

- Supporting and maintaining our engagement with key market sectors including Canberra’s relationships with international cities ...
- Supporting the government’s investment facilitation activities currently delivered through Innovation Canberra ...
- Supporting the government’s broad development agenda with the higher education and research sector...

3.6 The Instrument of Appointment further states that the Commissioner ‘will be provided with an appropriate delegation to manage financial and human resources for the Office of International Engagement’.

3.7 A Letter of Commission to the now Commissioner was signed by the Chief Minister on 7 September 2016. The Letter of Commission notes that ‘[I]t will ... be appropriate for you to have oversight of the full spectrum of our international engagement activities on a whole of government basis’.

Conclusion

3.8 At the time the creation of the position and the appointment of the now Commissioner was announced the role and responsibilities of the position had not been formally defined.

3.9 The subsequent Instrument of Appointment and the Letter of Commission jointly provide a clear statement of the function and duties of the Commissioner.

The Office of International Engagement

- 3.10 The role of the Office of International Engagement was outlined in an email to the Executive Director, Innovate Canberra on 4 July 2016. The Office would ‘coordinate and support the work of the [Commissioner]’. This was subsequently noted by the Chief Minister on the brief that sought his approval to the creation of the position of Commissioner for international Engagement.
- 3.11 No more detailed explanation of the role of the Office has been provided to the ACT Audit Office.

Conclusion

- 3.12 The role of the Office of International Engagement to support the Commissioner in his functions is adequately documented.

Staff of the Office of International Engagement

- 3.13 The Office has a staff of three—two senior officers (Senior Officer Grade A and Senior Officer Grade B) and an executive assistant. Job descriptions and duty statements have been prepared for the positions.

Conclusion

- 3.14 The specific roles (functions, duties, skills etc) for staff of the Office of International Engagement are formally documented.

Whether accountability arrangements are clear

- 3.15 Reporting arrangements for the Commissioner and the Office of International Engagement were outlined on 4 July 2016 in initial discussions between the Deputy Director-General, Enterprise Canberra and the Executive Director, Innovate Canberra regarding the creation of a new position to support the government’s international engagement efforts.
- 3.16 Reporting arrangements were also outlined in an email to staff of the Chief Minister, Treasury and Economic Development Directorate, from the Deputy Director-General Enterprise Canberra dated 1 August 2016.
- 3.17 The Instrument of Appointment for the now Commissioner briefly outlines the reporting arrangements:

The Commissioner will report directly to the Deputy Director-General, of Enterprise Canberra and the Director-General of Economic Development.

- 3.18 The Letter of Commission from the Chief Minister, which is to be read in conjunction with the Instrument of Appointment, expands on reporting and accountability arrangements:

Given the importance of your role I would suggest you and I meet on a regular basis in addition to any specific briefing required from time to time.

In terms of reporting, a quarterly activity statement should be provided to my office which should provide a summary of the activities of you as Commissioner and the OIE. It would also be appropriate to produce an annual report which would be tabled in the Legislative Assembly and available for Assembly and public scrutiny.

This will be in addition to any reporting or other obligations you may have within the public service.

- 3.19 In a meeting with the Auditor-General on 9 August 2016, the Director-General Economic Development said he intended to negotiate a performance agreement with the Commissioner. It would include key performance indicators in much the same way as those for other senior executives. He had also considered public accountability for the Office through an annual report, possibly to be annexed to the Chief Minister, Treasury and Economic Development Directorate annual report.
- 3.20 No documentation has been provided to the ACT Audit Office regarding specific key performance indicators, targets and timeframes for either the Commissioner or the Office. It could be expected that this detail would be prepared by the Commissioner and his Office, in consultation with other parties, in due course.

Conclusion

- 3.21 Accountability arrangements for the Commissioner for International Engagement and the Office of International Engagement to government and the community are sufficiently clear. Detailed key performance indicators, targets and timeframes are yet to be determined.

Whether accountability arrangements meet relevant legislative requirements.

- 3.22 The *Annual Reports (Government Agencies) Act 2004* (the Annual Reports Act), requires directorates and specifically identified authorities to produce annual reports. Under the Act, public sector bodies must also report annually if required by an Act or if the Minister makes a declaration that the public sector body must prepare an annual report). Annual reports must comply with any applicable annual report direction issued under the Act.

- 3.23 However, the Commissioner for International Engagement is not a *statutory office-holder*,² nor is the Office of International Engagement a *public sector body*.³ As such, there appears to be no requirement under the Annual Reports Act to produce a separate annual report.
- 3.24 As a unit within the Economic Development stream of Chief Minister, Treasury and Economic Development Directorate, the Office of International Engagement would be expected to contribute to the annual report for the Directorate. However, given the Chief Minister has indicated ‘it would ... be appropriate to produce an annual report which would be tabled in the Legislative Assembly’ the Commissioner may choose to report separately, possibly as an annexed report.
- 3.25 This does not amount to a legislative requirement.
- 3.26 Financial reporting for the Office of International Engagement will be through the financial reports for Chief Minister, Treasury and Economic Development Directorate, although a cost centre has been created to ensure appropriate accountability for operations.

Conclusion

- 3.27 Other than an obligation to contribute to the annual report for the Chief Minister, Treasury and Economic Development Directorate, there does not appear to be any legislative reporting requirements for the Commissioner or Office of International Engagement.
- 3.28 However, the Chief Minister has asked the Commissioner to report regularly on activities and indicated it would ‘be appropriate’ for an annual report to be provided to the Minister for tabling in the Legislative Assembly. Better practice would be to clarify the requirements for annual reporting, particularly whether any annual report from the Commissioner is to comply with all or part of the directions issued under the *Annual Reports (Government Agencies) Act 2004*, even if not required by this legislation.

² A *statutory office-holder* is defined under the *Legislation Act 2001* as ‘a person occupying a position under an Act or statutory instrument (other than a position in the public service).’

³ A *public sector body* is defined under the *Legislation Act 2001* as ‘a body made up of public sector members; and includes a body made up of 1 statutory office-holder’. A *public sector member* is defined under the *Public Sector Management Act 1994*, Section 150 as ‘a statutory office-holder; a person employed by a statutory office-holder; and if a statutory office-holder enters into an arrangement with the head of service under a territory law for the use of the services of a public servant—the public servant’.

4 APPOINTMENT PROCESS FOR THE NOW COMMISSIONER

- 4.1 This chapter considers whether processes for the appointment of the now Commissioner were consistent with good practice and employment arrangements.

Summary

Conclusion

The selection and appointment of the now Commissioner for International Engagement was consistent with general powers attributed to the Executive under the Self Government Act.

The appointment was an Executive Appointment, and there are no prescribed process or procedures for such appointments. To a large degree, the appointment was at the discretion of the Chief Minister, and in the words of the Solicitor-General 'it is open to the Executive to create the role and make the appointment in the manner in which it occurred'.

Significant appointments are often a matter of considerable public interest. For this reason, better practice would be to ensure that whatever process was adopted was transparent, without bias and fully documented. The community expects that appointees will not only be well qualified, but that the process used will be fair and appropriate.

In this instance, while some aspects of the process are well documented (such as the formal appointment and the employment arrangements applicable to the Commissioner), there is little documentation to indicate how potential candidates were identified, what skills, experience or qualifications were desirable, or how candidates were assessed.

Further, although the seniority (and thus remuneration) level of the proposed position was assessed based on 'the nature of the role', better practice would be to either refer the proposed position and remuneration to the Remuneration Tribunal, or conduct a formal position evaluation based on an accepted method.

Whether the Commissioner's remuneration package was determined with reference to the 'work value' (or equivalent) of the position

- 4.2 On 4 July 2016, the Deputy Director-General Enterprise Canberra emailed the Executive Director, Innovate Canberra outlining the context and administrative arrangements for the proposed position of Commissioner for International Engagement (referred to at this stage

as 'Commissioner-General'). The Deputy Director-General, Enterprise Canberra stated the 'Chief Minister intends to announce the creation of a new position to support government's international engagement efforts', preferably during the Chief Minister's visit to Wellington. The point is made that the Commissioner will be 'appointed by Cabinet' and will not be a statutory appointment.

4.3 The Deputy Director-General Enterprise Canberra also said:

My current thinking is to peg this position to the public servant equivalent of a Ministerial salary. The [Commissioner] will be subject to REM tribunal decisions the same as any SES officer.

4.4 The Deputy Director-General did not document the matters considered in reaching this decision.

4.5 At that time, a 'Ministerial salary' was \$241,788 (being base MLA Salary \$142,228 plus Ministerial allowance \$99,560), plus a motor vehicle and other allowances. A 'public servant equivalent' would be an Executive Level 2.6 on a salary of \$251,761, plus employer provided benefits.

4.6 The Instrument of Appointment for the now Commissioner states:

The appointee will be remunerated at a level equivalent to the remuneration package of a public service executive level 2.6 in accordance with the relevant determination of the Australian Capital Territory Remuneration Tribunal from time to time (presently Remuneration Tribunal Determination 3 of 2016 provides a salary of \$251,761 per annum plus employer provided benefits and employer's superannuation contributions).

4.7 In response to questions from the Auditor-General regarding how the remuneration level was determined, the Commissioner for Public Administration advised:

- it is common to align a remuneration package with a standard public service executive level to ensure comparability. The terms and conditions of engagement mirror standard public service executive contracts where possible
- it was necessary to attach a remuneration package to the position commensurate with the nature of the role. The remuneration package also had to be sufficient to attract the calibre of candidates that would be suitable for the role. Factors considered were:
 - Significant amount of time spent representing the ACT in a formal capacity to foreign officials, NGOs and other overseas stakeholders;
 - Vesting the position with a level of seniority and authority appropriate for the position and title considering the likely levels of seniority of the individuals the Commissioner would be regularly engaging with on behalf of the territory;
 - Ensuring the Commissioner, as head of the Office of International Engagement (OIE) was sufficiently senior in the event of further possible appointments that may be made to support the government's international agenda and the likelihood that those appointments would also sit within the Office of International Engagement and reporting to the Commissioner;
 - The Commissioner's reporting line is in the first instance to the Deputy Director-General Enterprise Canberra, then to [Director General, Economic

Development] as Director General Economic Development with the Head of Service exercising established authority both as head of the public service and Director General of CMTEDD [Chief Minister, Treasury and Economic Development Directorate]. This reporting line informed the decision on the appropriate level for the Commissioner position inasmuch as it needed to be either at level with or below the level of Deputy Director General. The Office of International Engagement itself is established as an entity within Enterprise Canberra;

- Once the restructure, currently underway in Enterprise Canberra, is complete, the divisional leadership team will consist of two Executive Directors and a DDG [Deputy Director General]. The Commissioner, will be engaged with the division's business units
- Further as the head of the Office of International Engagement, the position needed to be senior enough within the structure of the public service to allow for the direction of staff resources both within the Office of International Engagement and beyond, effective engagement with other government agencies at appropriately senior levels and the exercising of delegations necessary to the effective operation of the OIE
- Insofar as interstate experience was relevant, this was also taken into account in sizing the position appropriately and
- All of the above was taken into account in the decision to recommend, to Government, the appointment beat the equivalent of an SES 2.6 level.

4.8 On 25 August 2016, the Solicitor-General provided advice to the Auditor-General on the creation of the role of Commissioner for International Engagement. The Solicitor-General comments that similar roles, such as advisory committees and boards often have remunerated roles:

The remuneration is often established by the Remuneration Tribunal, following a reference by the Chief Minister under the *Remuneration Tribunal Act 1995*, although that is not necessarily the case. Consultants are often engaged to assess the remuneration of particular roles and there can be roles that are recognised as warranting remuneration in a certain range or equivalent.

It is possible, based on an examination of the relativity of the seniority of the role and the time and expertise involved in the function to fix the remuneration upon appointment and for it to be addressed by the Remuneration Tribunal at a later date...

4.9 No other documentation has been provided regarding how the remuneration package for the Commissioner was set.

Better practices in assessing remuneration

4.10 For comparative purposes, this Review has briefly examined processes used to determine the appropriate seniority level and remuneration for new positions to government committees and boards, and for a new executive position in the ACT Public Service. It is important to note, however, that as a 'Executive Appointment' there was no requirement for the proposed position to be assessed in this manner.

4.11 The ACT Government's Boards and Committees Handbook notes that

Where it is appropriate for members of a board or committee to receive payment, the level of remuneration is set through a determination of the ACT Remuneration Tribunal, **or in rare cases by ministerial decision or by an agency Chief Executive.** [Emphasis added]

...

The Remuneration Tribunal is the preferred method for setting the level of remuneration for boards or committees, as it is accountable, transparent, and can ensure that remuneration levels are determined equitably across boards and committees.

4.12 In a similar way, under the Public Sector Management Standards, the classification (and thus remuneration) for senior executive positions must be decided 'in accordance with the written recommendation of an SES position evaluation; or by the SES member's engager'. An SES position evaluation is defined as 'an assessment of an SES position undertaken by a person independent of the service, in accordance with a method approved by the engager for the SES position'. It is important to note, however, that as an 'Executive Appointment' there was no requirement for the proposed position to be assessed in this manner.

4.13 Such assessments broadly involve examining the work level requirements of the proposed position, with reference to functions and responsibilities, framed against the capabilities and experience a prospective occupant would be expected to demonstrate. For example, an assessment might be made against the executive capability 'shapes strategic thinking', a key aspect of which is decision-making. The assessment could consider the extent to which the role makes decisions 'from ambiguous and rapidly changing contexts', the degree of independence required when making decisions, the degree of authority the role has to make determinations that affect the agency or the outcomes it oversees. Another aspect of the 'shapes strategic thinking' executive capability is *effective change*. An assessment could consider the extent to which the proposed role would be required to develop strategies and policies to supplement and reinforce existing policy direction and frameworks and advising and briefing at Ministerial level. The outcome of these and similar assessments would be used to evaluate the work level requirements to comparable executive positions, and thus determine an appropriate level of seniority and remuneration.

4.14 Other jurisdictions have similar requirements, although more detailed processes for 'significant appointments' are common.

Conclusion

4.15 The ACT Government does not have specific guidelines for 'significant appointments' although the policy and practical guidance offered by the *Boards and Committees Handbook* (and the *Cabinet Paper Drafting Guide*) is relevant. In accordance with the Handbook, it would be usual for the remuneration of a new member of a board or committee to be set by the Remuneration Tribunal, on recommendation by the Chief Minister, or in rare cases, by the Minister.

- 4.16 The proposed remuneration package for the Commissioner was not referred to the Remuneration Tribunal for consideration; it was approved by the Minister on the recommendation of the Director-General, Economic Development and the Deputy Director-General, Enterprise Canberra.
- 4.17 The recommended remuneration package was not determined with reference to a formal position evaluation (or similar), which would seek to establish an appropriate seniority level based a relative assessment of work level requirements. There was no requirement for it to be assessed in this manner.
- 4.18 Instead, an assessment appears to have been made based on ‘the nature of the role’, emphasising the dominant role of the Commissioner representing the ACT in senior level stakeholder engagements, and in leading the proposed Office of International Engagement. In this sense, the remuneration package for the Commissioner for International Engagement was determined with reference to the ‘work value’ of the position.

Whether the selection process was clear, transparent and accountable

- 4.19 In an email to the Executive Director, Innovate Canberra, the Deputy Director-General, Enterprise Canberra (4 July 2016) notes that ‘the Chief Minister intends to announce the creation of a new position to support the government’s international engagement efforts ... during the CM’s visit to Wellington and the signing of the sister city agreement’. This strongly implies that the Chief Minister was significantly involved in early planning for the position of Commissioner.
- 4.20 The Director-General, Economic Development and the Deputy Director-General, Enterprise Canberra submitted a brief to the Chief Minister on 13 July 2016 recommending the Chief Minister agree the appointment of the now Commissioner be submitted to Cabinet for endorsement. The Brief states:
- Subsequent to the announcement of the creation of the position, ... [now Commissioner] was identified as a suitable candidate.
- 4.21 The Brief goes on to outline the now Commissioner’s relevant experience and notes that extensive consultation had taken place with the Chief Minister’s Office regarding the creation of the Office of International Engagement and the position of Commissioner. The brief adds that given the role and responsibilities of the position, the now Commissioner is ‘uniquely qualified’. It can be assumed that at this stage the now Commissioner had been contacted informally to gauge his interest and availability.
- 4.22 On 14 July 2016, the Chief Minister agreed that the appointment of the now Commissioner be submitted to Cabinet for endorsement. Cabinet subsequently endorsed the appointment on 18 July 2016.

4.23 The Commissioner for Public Administration advised the Auditor-General that remuneration for the Commissioner role ‘had to be sufficient to attract the calibre of candidates that would be suitable for the role’, implying an open candidate selection process, either now, or envisaged in the future.

4.24 The Solicitor-General advised the Auditor-General that:

Unlike the process for appointment of officers and executives to the ACT Public Service under the [PSM Act] or the processes for the appointment of statutory office holders under relevant enabling legislation, there is no required process and it is open to the Executive to create the role and make the appointment in the manner in which it occurred.

The Executive simply has the power to create a role and appoint a person to that role, establishing the terms and conditions for that appointment. Generally, the Executive makes decisions by any two ministers (see section 253 of the *Legislation Act 2001*). That process was adopted here and that decision was evidenced by a written instrument.

4.25 No other documentation regarding the selection process has been provided to the ACT Audit Office.

Better practices in appointments

4.26 For comparative purposes, this Review has briefly examined selection and appointment processes for new positions to government committees and boards, and for a new executive position in the ACT Public Service. It is important to note, however, that as a ‘Executive Appointment’ there was no requirement for the selection and appointment to adopt these processes.

4.27 The ACT Government has not developed guidelines for Executive (or Ministerial) Appointments, although the *Boards and Committees Handbook* offers some relevant guidance and templates for Cabinet papers and correspondence. The *Boards and Committees Handbook* discusses the importance of selecting and recruiting ‘the right members’ for a particular position. It notes:

Many boards and committees require specific skills or knowledge and efforts should be made to ensure the new member is able to contribute in these areas. ...

For most appointments to ACT boards and committees, people appointed will have a connection and commitment to the ACT through their choice to live and/or work in the ACT. ...

The minister, or responsible officer, should be briefed on the impending appointment. The brief should include:

- a) terms of reference for the board or committee;
- b) details of the vacancy/ies;
- c) whether the appointment is subject to legal or other requirements and, if so, what these are;
- d) whether external bodies determine or have input into the selection or appointment of candidates;
- e) details of proposed remuneration;
- f) **proposed selection criteria**; and

- g) **the process proposed to identify and contact potential appointees.** [emphasis added] ...

Where the minister or officer is responsible for nominating appointees, he or she should be consulted to determine how suitable candidates will be identified (for example, through public advertisement, ministerial nomination, administrative processes). For ministerial appointments the officer should consult initially with the Departmental Liaison Officer or Ministerial Adviser to seek advice from the minister. ...

Candidates should be contacted informally in the first instance to:

- a) gauge their interest and availability (where applicable);
- b) explain the terms and conditions of the appointment (i.e. role, expected participation, legal obligations, any remuneration and potential liabilities); and
- c) obtain preliminary assurances that there are no apparent impediments to their appointment (conflict of interest issues, etc.)....

The minister or responsible officer considers the pool of candidates and selects preferred appointee(s). ...

4.28 The guidance in the *Boards and Committees Handbook* is broadly consistent with the stages outlined in the public service recruitment procedures.

4.29 Processes have been developed to demonstrate that recruitment and selection in the ACT Public Service is clear, transparent and accountable. Recruitment processes reflect the fundamental provisions within the PSM Act and Standards, namely that selection is based on merit and equity. The premise is that a position would be filled following a fair and open competition, without patronage or favouritism (i.e. bias or prejudice), such that the successful candidate would be a person who is best able to do the job in all the circumstances. A guide to recruitment has been developed for use in the ACT Public Service, namely *ACT Public Service Recruitment Guidelines: A Better Practice Guide 2015*.

4.30 According to the Recruitment Guidelines:

Merit is the foundation for recruitment in the ACTPS. Merit requires that:

1. job opportunities are publicised so that there is, so far as practicable, a reasonable opportunity for members of the community to apply for the position;
2. selection is fair and objective at each stage of the recruitment process so that there is no patronage or unjustified discrimination in the decision making process;
3. those appointed have the necessary qualifications, skills and competencies required for the position;
4. the best applicant is chosen for the job, taking into account potential for development; and
5. it is demonstrated that the principles of recruitment have been applied and the recruitment decision can be justified.

In accordance with Section 65 of the PSM Act, the merit principle must be applied to selection processes for all permanent appointments, engagement of executives and Directors-General for a period of over nine months, promotions, temporary transfers and acting arrangements over three months, and fixed term temporary contracts over twelve months.

As defined in Section 65 of the PSM Act, the merit principle ensures that:

1. all people who are eligible have, as far as practicable, a reasonable opportunity to apply for the appointment, engagement, transfer or promotion; and
2. the decision is made on the basis of an assessment of the relative efficiency of the applicants, having regard to –
 - o the nature of the duties to be performed; and
 - o the relevant abilities, qualifications, experience, personal qualities and potential for development of the applicants.

The merit principle is central to selecting the most suitable applicant to fill a vacant position, and ensures a comprehensive and competitive selection process.

4.31 The recruitment guidelines present a structure for recruiting (or appointing) personnel involving the following basic steps:

- Identify the vacancy—this step involves identifying the need to fill a vacancy and presents an opportunity to re-examine the duties, responsibilities and classification of a position, as well as considering alternative ways to undertake the work, including job re-design. Although ‘advertising a vacancy and conducting a competitive merit-selection process is a better practice method of filling a vacancy and attracting new talent to the ACTPS’, alternative methods are available and should be considered at this stage.
- Define the position—this involves developing (or reviewing) the position description to describe the intended duties of the position, the intended level of responsibility, the skills and/or experience required by the occupant of the position and any other mandatory or desirable qualifications required.
- Advertise the vacancy—this involves developing a strategy to encourage a wide-range of suitable applicants to apply so a competitive merit selection process may be undertaken.
- Plan and conduct the assessment—this involves determining an appropriate assessment method and considering applicants against selection criteria accordingly.
- Select the best applicant—this involves ranking applicants according to merit.
- Engage the successful applicant—this involves formally engaging the applicant and settling matters such as commencement date and remuneration on appointment.

4.32 Each step in a recruitment process should be suitably documented.

4.33 As an Executive Appointment (rather than an appointment under the PSM Act), however, the process to appoint the Commissioner for International Engagement did not follow the recruitment guidelines, nor was it obliged to notwithstanding that the Guidelines present a straightforward and transparent approach to recruitment and appointments at all levels.

4.34 Further, the position of Commissioner for International Engagement is not an appointment to a board or committee, and strictly speaking, the Handbook does not apply.

4.35 Nevertheless, it is arguable that the steps outlined above are relevant and represent sound business practice. The following table assesses the processes used to appoint the Commissioner against the recruitment process.

Table 1: Appointment of the Commissioner - assessment against recruitment practices

Recruitment stage	Comments	Reference
Identify the vacancy	Documentation of the business imperative for the position is scattered across a variety of documents and strategies, and is brought together only as a simple brief to the Chief Minister. A business case that comprehensively presents the case for the position of Commissioner and the Office, was not prepared.	2.31-33
	Early documentation (4 July 2016), noted that the Chief Minister intended to announce the creation of a new position to support the government's international engagement efforts ... during his upcoming visit to Wellington. This strongly implies the Chief Minister was significantly involved in early planning for the position of Commissioner. The brief to the chief Minister seeking approval to create the position (13 July 2016) confirms that 'extensive consultation has taken place with your Office' regarding the creation of the position of Commissioner and the OIE. Although not documented, it could be expected that such consultation would have canvassed such matters as the proposed seniority level and remuneration and the process proposed to identify and contact potential appointees.	4.2 4.21
	The proposed classification and remuneration package were not determined with reference to a formal position evaluation (or similar), which would seek to establish an appropriate seniority level based a relative assessment of work level requirements. Instead, an assessment was made based on 'the nature of the role', emphasising the dominant role of the Commissioner representing the ACT in senior level stakeholder engagements, and in leading the proposed Office of International Engagement. In this sense, the classification and remuneration package was determined with reference to the 'work value' of the position.	4.15-18
Define the position	Initial discussions dated 4 July 2016 regarding the proposed position outlined the roles and responsibilities.	3.2
	At the time the creation of the position and the appointment of the now Commissioner was announced (14 July 2016) the role and responsibilities of the position had not been formally defined.	3.3
	The subsequent Instrument of Appointment (29 July 2016) and the Letter of Commission (insert date) jointly provide a clear statement of the function and duties of the Commissioner.	3.4-7

Advertise the vacancy	<p>The position was not advertised.</p> <p>Following announcement of the creation of the position on 12 July 2016, the now Commissioner was identified as a suitable candidate. This was conveyed to the Chief Minister on 13 July 2016, and agreed on 14 July 2016.</p> <p>No documentation has been provided to the ACT Audit Office to indicate whether the Chief Minister was consulted to determine how suitable candidates will be identified. However, the brief to the Chief Minister on the establishment of the Office of International Affairs (sic) dated 13 July 2016 does state that ‘extensive consultation has taken place with your Office regarding the creation of the Office of International Affairs and the position of Commissioner of International Engagement’.</p> <p>Although not definitive, the brief information provided to the ACT Audit Office leads to the view that an open selection process was not used, and that the now Commissioner was approached before 13 July 2016 as the sole candidate.</p>	4.19-22
Plan and conduct the assessment	<p>Documentation provided to the ACT Audit Office does not include a planned assessment methodology.</p> <p>Specific selection criteria, focusing on the skills, knowledge and behaviours required for the position, were not developed.</p> <p>The brief to the Chief Minister on the establishment of the Office of International Affairs (sic) and a recommendation to agree to the appointment of the now Commissioner (13 July 2016) infers that relevant ‘criteria’ included ‘extensive political and protocol experience’, and ‘extensive experience with international engagement’ since the experience and qualifications of the recommended candidate were described in these terms.</p>	4.20
Select the best applicant	<p>The brief information provided to the ACT Audit Office does not permit a definitive conclusion to be drawn regarding the practices adopted to secure a suitable field of candidates for the position. Documentation available, however, suggests that the now Commissioner was the sole candidate, briefly citing his ‘extensive experience’ and asserting that this makes him ‘uniquely qualified’ for the role.</p>	4.21
Engage the successful applicant	<p>The Instrument of Appointment (29 July 2016) and the Letter of Commission (7 September 2016) jointly provide a clear statement of the terms and conditions applicable to the Commissioner.</p>	3.4-9

Conclusion

- 4.37 The appointment of the Commissioner for International Engagement was an Executive Appointment, and there are no prescribed processes or procedures for such appointments. To a large degree, the appointment was at the discretion of the Chief Minister, and in the words of the Solicitor-General 'it is open to the Executive to create the role and make the appointment in the manner in which it occurred'.
- 4.38 However, little documentation has been provided to the ACT Audit Office on the processes used to select a suitable candidate for the newly created position. The information available shows that:
- at the time the position was created and filled (14 July 2016) the role and responsibilities of the position had not been formally defined. The relative seniority level and remuneration had been settled;
 - specific selection criteria, focusing on the skills, knowledge and behaviours required Commissioner for International Engagement – position creation and appointment process for the position, were not developed;
 - an open selection process was not used, and the now Commissioner was approached before 13 July 2016 as the sole candidate; and
 - the formal appointment is well documented and the Instrument of Appointment and the Letter of Commission jointly provide a clear statement of the terms and conditions applicable to the Commissioner.
- 4.39 The Chief Minister's office was involved in extensive consultation regarding the creation of the position and the proposed appointment of the now Commissioner.
- 4.40 Although the selection and appointment of the now Commissioner is consistent with general powers attributed to the Executive under the Self Government Act, better practice would be to clearly demonstrate that a clear and transparent process had been adopted. The transparency of the appointment processes for any 'significant appointment' should indicate how potential candidates were identified or considered such that any appointment could be demonstrably seen as based on merit and equity.

Whether the selection and appointment process meets relevant legislative requirements.

4.41 The Solicitor-General for the ACT has advised:

The Executive of the ACT from time to time has the need to create roles to assist in the discharge of the business of government that are not carried out by public servants and are not specifically created under statute. The roles are created by the Executive pursuant to authority given by the Australian Capital Territory (Self-government) Act 1988 (C'th) (Self-Government Act) which gives the Executive the responsibility for governing the Territory and exercising the "prerogatives of the Crown" for that purpose. This includes creating such roles as are necessary by reason of circumstance or exigency of time.

...

... in the absence of a prohibition by statute, either expressly or by necessary implication ... the ACT Executive may engage persons to undertake such tasks as it determines on such terms and conditions as it thinks fit, in the exercise of its general executive powers.

...

There is no prescribed process within the Self-Government Act for the exercise of Executive Powers, including the Crown prerogatives ...

4.42 The *Legislation Act 2001* (Section 253) provides that 'a function given to the Executive under an Act may be exercised by any 2 Ministers acting in concert'. The Chief Minister and another Minister jointly appointed the now Commissioner by an Instrument of Appointment dated 29 July 2016.

4.43 The ACT Government does not have specific guidelines for 'significant appointments' although the policy and practical guidance offered by the Boards and Committees Handbook (and the Cabinet Paper Drafting Guide) is relevant.

Conclusion

4.44 The selection and appointment of the now Commissioner is consistent with general powers attributed to the Executive under the Self Government Act.

Whether employment conditions for the Commissioner are appropriate

4.45 Employment arrangements for the now Commissioner are outlined in the Instrument of Appointment.

- 4.46 The Instrument makes clear the appointment is at the equivalent to a Senior Executive level 2.6, and states:

The Appointee holds the position on these Terms of Appointment and, if applicable, any other terms that are decided by the Chief Minister to apply to the position.

The Appointee is entitled to the same conditions as to leave and other allowances and entitlements that an executive employee under the *Public Sector Management Act 1994* and the *Public Sector Management Standards 2006* is entitled ...

- 4.47 The Instrument also makes clear the Appointee must demonstrate the behaviours and exercise the degree of honesty, care and diligence expected of a senior executive under the PSM Act and Standards.

Conclusion

- 4.48 Although the Commissioner is an Executive Appointment, and is not appointed under the *Public Sector Management Act 1994*, the Instrument of Appointment specifically aligns employment conditions, behaviours and obligations to those of an executive employee engaged under the PSM Act. The terms and conditions are clear.

