

# **ACT Auditor-General's Office**

## **Performance Audit Report**

<p><b>Administration of employment issues for staff of Members of the Legislative Assembly</b></p>
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**Legislative Assembly Secretariat**

**Chief Minister's Department**

**August 2009**





## ACT AUDITOR-GENERAL'S OFFICE



PA09/02

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

Dear Mr Speaker

I am pleased to provide you with a Performance Audit Report titled '**Administration of employment issues for staff of Members of the Legislative Assembly**', for tabling in the Legislative Assembly, pursuant to Section 17(5) of the *Auditor-General Act 1996*.

Yours sincerely

Tu Pham  
Auditor-General  
7 August 2009



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## LIST OF ABBREVIATIONS

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CMD	Chief Minister's Department
Collective Agreement	ACT Legislative Assembly Members' Staff Union Collective Agreement 2007-2010
Executive Members	The Ministers of the ACT government
Executive staff	The staff who work directly for Ministers under the LAMS Act.
LAMS Act	<i>ACT Legislative Assembly (Members' Staff) Act 1989</i>
Member	Executive or non-executive Member of the Legislative Assembly
MLA	Executive or non-executive Member of the Legislative Assembly
Secretariat	The Secretariat to the ACT Legislative Assembly
Self Government Act	The Commonwealth's <i>Australian Capital Territory (Self-Government) Act 1988</i>
TOIL	Time off in lieu (of time worked in excess of 38h 45m per week). This term is used to describe a system of flexible work hours for LAMS Act staff.
WR Act	The Commonwealth's <i>Workplace Relations Act 1996</i>



# 1. REPORT SUMMARY AND AUDIT CONCLUSIONS

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## INTRODUCTION

- 1.1 As at May 2009, there were 67 full-time employees (FTE) employed by the Members of the ACT Legislative Assembly (MLAs). These staff provided support, assistance, and advice to the individual MLAs to assist them in discharging their duties to the ACT Community.
- 1.2 Staff were engaged under the *Legislative Assembly (Members' Staff) Act 1989* (LAMS Act). This legislation and the working environment of the Legislative Assembly, created an employment framework that is, in many respects, different to the general public sector environment. The employment framework for the MLAs' staff, for example, reflects the circumstances of elections and other matters. This raises a number of risks and challenges in its implementation.
- 1.3 The audit covers the following employment issues in the Legislative Assembly:
- termination payments to MLAs' staff not re-employed after elections;
  - use of staff, who have received termination payments, as volunteers; and
  - management of attendance records by MLAs' staff.
- 1.4 The ACT Legislative Assembly is central to the governance of the ACT. The administrative arrangements in place to support the work of the executive and non-executive Members of the Assembly, while small in financial scale, are significant in governance and accountability terms. There is a strong community expectation that all Members and their personal staff discharge their duties in compliance with existing Assembly policies and guidelines. This audit was conducted in recognition of the significance of the operation of the Assembly. It is considered that an Auditor-General's report would provide greater transparency to the public compared to an internal review.

## AUDIT OBJECTIVES

- 1.5 The objectives of the audit were to assess whether:
- leave and attendance management practices for all staff engaged under the *Legislative Assembly (Members' Staff) Act 1989* comply with legislation and workplace agreements; and
  - termination payments to MLAs' staff, and volunteer employment arrangements, comply with Government policy, as expressed in enacted and delegated legislation, and Legislative Assembly procedure and practice.

## AUDIT CONCLUSIONS

- 1.6 The audit conclusions drawn against the audit objective are set out below:

The employment framework, policies, procedures, and guidelines in place for the engagement of MLAs' staff were generally sound. However, the implementation of these procedures and practices needs improvement to address a number of deficiencies. In particular:

- All MLAs including Ministers are the employers, but they or their nominated supervisors have not always supervised staff compliance with legal and procedural requirements. Support services provided by the Chief Minister's Support and Protocol Unit and the Secretariat were advisory, and were not intended to enforce compliance.
- Internal control over submission of attendance and leave forms, particularly by staff of some Ministers was inadequate. There was little follow up of attendance records by the employing MLAs or other nominated supervisors.

The justification for termination payments to MLAs' staff needs review and reconsideration. Some staff who received termination payments returned as volunteers early in the 7<sup>th</sup> Assembly, and were subsequently employed as MLAs' staff. In Audit's view, MLAs' staff were employed under fixed term contracts, and therefore should not be eligible for a termination payment at the end of Assembly terms.

### KEY FINDINGS

1.7 The audit conclusions were supported by the following findings:

- Two separate organisational units, namely the Chief Minister's Support and Protocol Unit within Chief Minister's Department (CMD) and the Corporate Services Office of the Legislative Assembly Secretariat, provided a wide range of services to MLAs and their staff. In relation to the staff entitlements and related personnel matters, CMD is responsible for the executive staff, and the Secretariat for non-executive staff. The provision of essentially identical personnel services by two separate organisational units, for less than 70 staff, is inherently inefficient.
- Compliance with the employment framework was not effectively monitored by the MLAs or their nominated supervisors, or by CMD or the Secretariat. Audit noted, however, that the Secretariat and CMD were not in a position to enforce compliance by Members and their staff. Consequently, breaches of employment conditions may be neither detected nor remedied.
- Induction briefings intended to advise MLAs and staff about the terms and conditions of employment were not well attended. This may have contributed to a lack of awareness of compliance requirements.
- There was no regular structured reporting on personnel matters to assist MLAs, including Ministers, to effectively manage staff and ensure compliance with employment terms and conditions.
- The Collective Agreement appeared to prevent termination payments to employees with a fixed employment term when the fixed period has expired. However, payments of termination benefits to MLAs' staff, most of whom were engaged on fixed term contracts, were made at the end of an

Assembly in accordance with an entitlement the Secretariat understood to exist. The eligibility requirements for a termination payment need to be more clearly defined.

- Staff of three retiring Members of the 6<sup>th</sup> Assembly were overpaid a total of \$15 125 based on the Secretariat's misunderstanding regarding their entitlements.
- Neither the Secretariat nor CMD, used an exit checklist to remind staff and employers of matters to attend to at the cessation of employment. In the absence of an exit checklist, there is a risk that not all important matters will be addressed. This could lead, for example, to overpayments (if leave applications or timesheets were not submitted and finalised) or loss of property (if equipment such as mobile phones or computers were not returned).
- Although both the Secretariat and Shared Services required the terminating employee's final timesheet before a cessation payment could be made, a final payment was made in one instance without the final timesheet. Negative balances in TOIL (time off in lieu) were also noted on some final timesheets, although there was no provision for a negative TOIL balance. The overpayments may not have been recovered.
- Some non-executive MLAs engaged volunteers. Should former staffers resume work in an MLA's office as volunteers, there is room for reasonable doubt as to whether they were replacing paid staff, a practice contrary to the volunteer engagement agreement conditions, recommended by the Assembly's Administration and Procedure Committee.
- An effect of former staff being re-engaged as volunteers for the period covered by termination benefits is to shift salary costs from MLAs to the Assembly. Rather than being paid a salary by MLAs for the volunteer period, the former staff works as a volunteer for the period covered by the termination payment. The total amount of termination benefits paid by the Assembly to former staff during the period they volunteered was approximately \$54 000.
- Of the 19 volunteering agreements examined, all were in the form recommended by the Assembly's Committee on Administration and Procedure, although only one included a statement of the rights and responsibilities of parties to the agreement. There was a risk, therefore, that neither the volunteers nor their managers fully understood their respective rights, responsibilities, and obligations.
- Executive and non-executive staff were required under the Collective Agreement to record their attendance. This is normally done through the practice of completion and submission of timesheets. During the period from July 2007 to February 2009, the submission rates for timesheets ranged from 57 percent to 80 percent. Without timesheets, there are failures in control over the submission of leave applications. This may lead to errors in leave balances, with subsequent overpayments in salary and final entitlements. There are also issues related to demonstrating attendance with consequential risks to workers compensation and insurance coverage.

- For the period from 1 July 2007 to 18 February 2009, Ministers' staff recorded 39 days leave in their timesheets that were not deducted from their leave balances held by the Shared Services Centre. Given the high rate of non-compliance, there are higher risks of irregularity. The failure to account for leave taken amounts to obtaining a benefit to which the employee is not entitled.

### RECOMMENDATIONS AND RESPONSE TO THE REPORT

- 1.8 The audit made eight recommendations to address the audit findings detailed in this report.
- 1.9 In accordance with section 18 of the *Auditor-General Act 1996*, a copy of the proposed report was provided to the Speaker, other Members of the Legislative Assembly, the Clerk of the Legislative Assembly and the Chief Executive of the Chief Minister's Department for formal comments.
- 1.10 The key points of the overall responses by the Chief Minister, the Clerk of the Legislative Assembly, the Deputy Leader of the Opposition and the Chief Executive of the Chief Minister's Department are shown below.

#### The Chief Minister

*The ACT Government agrees with the audit's general findings that improvements can be made in the overall administration of staff employed by Members of the Legislative Assembly.*

*The Government is supportive of the audit's recommendations, with the exception of recommendation one, which is not supported. Because of the political nature of the Legislative Assembly, we do not believe it would be appropriate to consolidate administrative support for staff into one specific area. The audit correctly points out that the current practice in the ACT reflects what is common practice across most Australian parliaments.*

#### The Clerk of the Legislative Assembly

*It is clear that the report addresses a number of issues associated with the administration of staffing arrangements for MLAs that were in need of review. I would expect that most of the recommendations can be adopted and, as this occurs, it will contribute to improved administration of these entitlements.*

#### Deputy Leader of the Opposition

*I note that you propose that there should be a review and reconsideration of termination payments. Such a review is warranted, as it will enable the peculiar requirements that attach to the staff of Members to be identified and appropriate remuneration and termination arrangements to be implemented.*

#### Chief Executive of the Chief Minister's Department

*As an overall comment, the proposed report generally provides a comprehensive and useful examination of issues associated with the administration of employment arrangements for MLAs' staff. The report however, does not*

*effectively recognise the differences in the corporate support services provided by the Chief Minister's Department for the Executive and their staff, the processing services provided by Shared Services within Territory and Municipal Services for the Executive and their staff, and the corporate support services provided by the Assembly Secretariat for non-Executive Members and their staff. CMD does not consider that arrangements between the Chief Ministers Support and Protocol area and Shared Services are inefficient.*

- 1.11 In addition, the Chief Minister, the cross bench Members of the ACT Greens and the Clerk of the Legislative Assembly provided responses to specific recommendations, as shown below. CMD did not respond to any audit recommendations.

### **Recommendation 1**

The Chief Minister's Department and the Secretariat should consider the merit of consolidating the processing of human resources functions within one organisational unit.

#### **Clerk of the Legislative Assembly's response:**

*Agreed in part.*

*The Secretariat agrees that the merit of consolidating the function within one organisational unit should be explored but notes that, should the consolidation occur, both the Chief Ministers' Department and the Secretariat would continue to carry out an HR advisory and co-ordination role for their respective Executive and non-Executive member clients. Any consolidation would relate to the HR processing function which is currently spread between the Secretariat (for non-Executive Members and their staff) and the Shared Services centre (for the Executive Members and their staff).*

*The Secretariat would argue that consolidating personnel services for both groups of Members' staff within the Shared Services Centre is not the only option and that an alternative could involve the consolidation of the function within the Assembly Secretariat.*

#### **The Chief Minister's response**

*Not supported.*

*Because of the political nature of the Legislative Assembly it would be inappropriate to consolidate administrative support for staff into one specific area.*

### **Recommendation 2**

The Chief Minister's Department and the Secretariat should report regularly, say monthly, to Ministers and non-executive Members respectively on key areas of compliance within the employment framework, such as the lodgement of timesheets, seeking specific attention to any areas of non-compliance.

**Clerk of the Legislative Assembly's response:**

*Agreed.*

*The Secretariat intends to report to non-Executive members on a quarterly basis.*

**The cross bench Members of the ACT Greens' response:**

*Agreed, although perhaps quarterly would be sufficient.*

**Recommendation 3**

The Secretariat and the Chief Minister's Department should:

- (i) review the practice of paying termination benefits to MLA's staff at the end of each Assembly term;
- (ii) clarify the circumstances under which staff employed under the LAMS Act should be eligible for a termination payment; and
- (iii) incorporate results of the review into these matters when re-negotiating the MLA Staff Collective Agreement (the current Agreement nominally expires on 31 March 2010).

**Clerk of the Legislative Assembly's response:**

*Agreed in principle.*

*The Secretariat notes that the recommendation is directed jointly to it and the Chief Minister's Department. While the Secretariat supports, and would be willing to participate in and contribute to, such a review, it nonetheless observes that responsibility for any such review must rest with the Chief Minister's Department as the agency that administers the Legislative Assembly (Members' Staff) Act 1989.*

*To enable the results of any such review to be incorporated into the replacement MLA Staff Collective Agreement, such a review should ideally be completed before the end of 2009.*

**The cross bench Members of the ACT Greens' response:**

*Agreed.*

**Recommendation 4**

The Secretariat should:

- (i) inform staff that the deeming period does not apply to the staff of MLAs who retire on election day; and
- (ii) disseminate this information in all relevant guidelines and general information.

**Clerk of the Legislative Assembly's response:**

*Agreed.*

*The Secretariat notes that the recommendation is confined to the Secretariat*

*because the same deeming periods and arrangements do not apply to Ministers' staff. However, the Secretariat suggests that the scope of any review conducted in response to Recommendation No 3 should also incorporate a review of the deeming period(s) and arrangements for Ministers and non-Executive staff.*

**The cross bench Members of the ACT Greens' response:**

*Agreed.*

*This clarification that the deeming period should not apply to staff of MLAs who retire on election day should be made clear for current and future staff, but should not apply retrospectively.*

**Recommendation 5**

The Secretariat and the Chief Minister's Department should use formal exit checklists to ensure that staff and employers are aware of the need to submit final timesheets, and attend to other matters prior to the end of employment.

**Clerk of the Legislative Assembly's response:**

*Agreed in principle.*

*The Secretariat has some existing exit procedures which serve the same purpose as an exit checklist. These procedures include an e-mail notification of the impending departure of staff to relevant officers such as IT, security and facility management staff.*

*Because there is no provision for a negative TOIL balance and also because of difficulties in managing the submission of timesheets for Members' staff (which is dealt with elsewhere in this report), the Secretariat has not made the submission of a final timesheet a pre-requisite to payment of final monies. However, the Secretariat will now modify its procedures to mitigate the risk that final payments are in excess of entitlements due to attendance and leave issues not reported.*

**The cross bench Members of the ACT Greens' response:**

*Agreed.*

**Recommendation 6**

The Secretariat and, if necessary, the Chief Minister's Department should request Members to certify that volunteers are not performing the work of paid staff, or occupy vacant paid staff positions, as recommended by the Administration and Procedures Committee report of August 2004.

**Clerk of the Legislative Assembly's response:**

*Agreed.*

*The Secretariat intends to recommend to the Speaker some revised procedures and guidelines for the engagement of volunteers addressing issues raised in this report.*

**The cross bench Members of the ACT Greens' response:**

*Agreed to volunteers not occupying vacant paid staff positions.*

**Recommendation 7**

- (i) MLAs should ensure that volunteer engagement agreements are consistent with templated volunteer agreements that include relevant documents such as a copy of the Assembly's IT usage policy and a statement of the rights and responsibilities of managers and volunteers; and
- (ii) The Secretariat should prepare guidance to assist MLAs in this issue.

**Clerk of the Legislative Assembly's response:**

*Agreed.*

*The Secretariat intends to recommend to the Speaker some revised procedures and guidelines for the engagement of volunteers addressing issues raised in this report. In practice, MLAs can only engage volunteers in accordance with the agreed arrangements so any changed arrangements addressing this recommendation will bind Members.*

**The cross bench Members of the ACT Greens' response:**

*Agreed.*

**Recommendation 8**

The Chief Minister's Department should:

- (i) advise Ministers' offices of the need to follow up missing leave applications as identified in this audit;
- (ii) where necessary, arrange for the recovery of overpayments in salary and LAMS allowance from staff on leave; and
- (iii) assist Ministers' offices to implement new procedures to ensure that leave recorded on executive staff timesheets is supported by an approved leave application and forwarded to Shared Services for processing through the Chief Minister's Department.

**The cross bench Members of the ACT Greens' response:**

*Agreed.*

## 2. STAFFING IN THE LEGISLATIVE ASSEMBLY

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### INTRODUCTION

- 2.1 This chapter describes the legal and regulatory framework governing the entitlements of staff employed by Ministers and MLAs.
- 2.2 As at May 2009, 67 staff were employed by Ministers and other MLAs under the *Legislative Assembly (Members' Staff) Act 1989*. Employment conditions are detailed in a collective agreement for MLA staff.

### KEY FINDINGS

- Two separate organisational units, namely the Chief Minister's Support and Protocol Unit within Chief Minister's Department (CMD) and the Corporate Services Office of the Legislative Assembly Secretariat, provided a wide range of services to MLAs and their staff. In relation to the staff entitlements and related personnel matters, CMD is responsible for the executive staff, and the Secretariat for non-executive staff. The provision of essentially identical personnel services by two separate organisational units, for less than 70 staff, is inherently inefficient.
- Compliance with the employment framework was not effectively monitored by the MLAs or their nominated supervisors, or by CMD or the Secretariat. Audit noted, however, that the Secretariat and CMD were not in a position to enforce compliance by Members and their staff. Consequently, breaches of employment conditions may be neither detected nor remedied.
- Induction briefings intended to advise MLAs and staff about the terms and conditions of employment were not well attended. This may have contributed to a lack of awareness of compliance requirements.
- There was no regular structured reporting on personnel matters to assist MLAs, including Ministers, to effectively manage staff and ensure compliance with employment terms and conditions.

### FRAMEWORK FOR EMPLOYMENT

#### Legislation

- 2.3 The ACT Legislative Assembly was created by the Commonwealth's *Australian Capital Territory (Self-Government) Act 1988*<sup>1</sup> (the Self Government Act). The Act gives the Assembly the power to make laws relating to the peace, order and good government of the Territory.<sup>2</sup>

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<sup>1</sup> Section 8

<sup>2</sup> Section 22

- 2.4 The Self Government Act creates an ACT Executive, which is collectively the Chief Minister and other Ministers he or she appoints.<sup>3</sup>
- 2.5 The ACT's *Legislative Assembly (Members' Staff) Act 1989* (the LAMS Act) provides for the employment of staff, and engagement of consultants and contractors, by the Members of the Assembly.<sup>4</sup>
- 2.6 A number of sections in the LAMS Act provide for the Chief Minister to make determinations. These determinations are listed in the ACT Legislation Register. Among other things, these determinations specify the arrangements for the exercise of the power of Members, on behalf of the Territory, to employ staff, subject to conditions in the determination. The determinations are disallowable instruments.

### The Collective Agreement

- 2.7 Employment under the LAMS Act is regulated by the *ACT Legislative Assembly Members' Staff Union Collective Agreement 2007-2010* (the Collective Agreement), which was made under section 328 of the Commonwealth's *Workplace Relations Act 1996* (WR Act). The parties to the agreement are the Chief Minister on behalf of the ACT, and unions.
- 2.8 The Collective Agreement sets out a range of employment conditions including types of employment, hours of work, pay and classifications and leave.
- 2.9 Selected extracts from the LAMS Act and the Collective Agreement are in Appendix A.

## STAFF TYPES AND COST

### Employment

- 2.10 Office-holders and Members are able to employ staff under the LAMS Act.<sup>5</sup> In general, office-holders are the ACT Executive, created by the Self Government Act, and the Speaker of the Assembly. Commonly, the staff of the ACT Executive are called executive staff, and those of other Members, including the Speaker, are known as non-executive staff.
- 2.11 Members and office-holders have a cap on funding available to employ staff. The salary cap is a proportion of the amount in Table 2.1 below, adjusted for any carry over from the previous period, and transfers to or from other Members. The proportion is the ratio of working days per year that the Member holds office. If the Member holds office all year, the proportion is one.

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<sup>3</sup> Section 39

<sup>4</sup> Sections 5, 10, 17, 20

<sup>5</sup> Sections 5 and 10

**Table 2.1: Annual salary caps for staff of non-executive Members, from 30 October 2008**

<b>Member</b>	<b>Annual salary cap, from 30 October 2008 (amount order) MLAs excluding Ministers.</b>
Leader of the Opposition	\$427 371
ACT Greens' Parliamentary Convenor	\$291 674
Crossbench (ACT Greens) Member (2 MLAs)	\$194 449
Speaker	\$193 280
Deputy Leader of the Opposition	\$150 231
Other Members (6 MLAs)	\$134 604
Total for a full year for all staff of non-executive MLAs, <u>excluding</u> carryovers to following financial years.	\$2 259 078

Source: Chief Minister's Determinations Legislative Assembly (Members' Staff) Speaker's Salary Cap Determination 2008 (No 2) DI2008-301, and Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2008 (No 2) DI2008-300

2.12 Typically, non-executive Members employ two or three staff each. There is no specific salary cap for staff of Ministers, other than the amounts appropriated to the ACT Executive in the budget process. Ministers employ up to eight staff. Table 2.2 below shows the number of staff (full-time equivalent) and cost in 2008-09.

**Table 2.2: Full-time equivalent staff, and total staff cost for 2008-09, executive and non-executive**

	<b>Number of Staff (FTE) 2008-09</b>	<b>Total staff cost-salary, allowances, superannuation, insurance and other direct salary costs 2008-09</b>
Executive	33.6 (at 11 June 2009)	\$4.889m (est)
Non-executive	33.5	\$3.319m (est)
<b>TOTAL</b>	<b>67.1</b>	<b>\$8.208m (est)</b>

Source: CMD and Secretariat data

## Contracts

2.13 The form of contract used for the employment of staff was promulgated by a determination of the Chief Minister. The agreement consists of a standard set of terms and conditions, and a schedule setting out specific details for the employment. The agreement is authorised by the Chief Minister or his nominee for Executive staff. For staff of the Speaker and non-executive staff, the Clerk or his nominee authorises the agreements.

## ADMINISTRATION OF STAFF ENTITLEMENTS

### Two personnel services for one group of employees

- 2.14 Two separate organisational units provided a wide range of services to MLAs, including the administration of LAMS staff entitlements. The Chief Minister's Support and Protocol Unit of the Chief Minister's Department (CMD) administers entitlements for executive staff, while the Assembly's Corporate Services Office of the Secretariat is responsible for non-executive staff.
- 2.15 CMD uses the ACT Government's Shared Services Centre to process leave, pay salaries, and maintain some personnel records for executive staff.
- 2.16 The Secretariat pays salaries and maintains leave and other personnel records in-house. Shared Services provides salary packaging services to non-executive staff, and accounts payable and receivable services.
- 2.17 Audit questioned why executive and non-executive staff were supported by separate personnel areas, given that these staff work under identical employment conditions.
- 2.18 According to the Secretariat, there are some significant reasons, and some relevant history, as to why the functions are separated. The Secretariat advised that it established its own payroll function in approximately 1998 when the Executive agency then providing that service notified the Assembly that it was no longer prepared to provide that service. At the time, the Assembly's Standing Committee on Administration and Procedure Committee considered alternative options and resolved that the Assembly create its own personnel function for non-executive Members and staff. Given this resolution, the Secretariat's advice was that the Administration and Procedure Committee would need to consider any proposal to alter that arrangement. The Secretariat observed that the Assembly had, in recent time, endorsed several broad principles and agreements supporting the maintenance of the separation between the Executive and Parliamentary arms of government.
- 2.19 The Secretariat further pointed out that, in its opinion, the cost of maintaining its own function was significantly lower than the cost of having the function performed by the Shared Services Centre. In addition, the Secretariat felt that its continual exposure to LAMS Act staffing matters has resulted in the development of staff who have specific knowledge and appreciation of MLAs and LAMS Act employment arrangements. The Secretariat observed that it would be concerned about the dilution or loss of that specialised knowledge if the function was performed by an agency where the LAMS Act staff, with their peculiar conditions, were a minor and unfamiliar client compared to the predominant and more typical public service employee.
- 2.20 The Secretariat surveyed other Australian parliaments for information with which to compare the ACT's situation. The ACT's dualism is the norm amongst Australian parliaments – ministerial staff are managed by executive government, and electorate staff by the parliaments themselves. However, in the Queensland

Parliament, Ministerial and Opposition staff are managed by a unit within the Premier's Department.

- 2.21 Audit acknowledges the Assembly's need to maintain an in-house service to MLAs and their staff, but notes that other services to the Assembly, principally accounts payable and receivable, are provided by Shared Services Centre. On the face of it, there are no compelling reasons why the Secretariat cannot engage Shared Services similarly - as an outsourced provider - for personnel processing. The Secretariat would retain responsibility for personnel services to MLAs' staff, but would use Shared Services under a service agreement for processing payroll and leave matters.
- 2.22 Audit considers that maintaining two separate organisational units to provide essentially identical services to the small number of MLA staff - less than 70 in total - is inherently inefficient. With reasonable confidentiality provisions in place, the consolidation of personnel services for executive and non-executive MLA staff would offer efficiencies in scale, process, and expertise.

### **Recommendation 1**

The Chief Minister's Department and the Secretariat should consider the merit of consolidating the processing of human resources functions within one organisational unit.

### **Role of the Secretariat and CMD**

- 2.23 Under the LAMS Act, and the Collective Agreement, MLAs employ staff on behalf of the ACT.<sup>6</sup> They have the responsibility, therefore, to apply the legislative framework to their staff. Where appropriate, MLAs may choose to use the services of their Chiefs of Staff or senior staff members to help administer this legislative framework. This framework consists of the LAMS Act and determinations, the Collective Agreement, and the Commonwealth's *Workplace Relations Act 1996*. There is also a raft of other legislation and requirements, such as insurance, equal employment opportunity and occupational health and safety.
- 2.24 Neither the Secretariat nor CMD are employers of LAMS Act staff. The Secretariat and CMD see themselves as advisors, facilitators and service providers, rather than exercising delegated authority to ensure compliance with the legislative framework. The Secretariat and CMD consider their role is to persuade, inform and remind, but not to have a direct role in compliance.
- 2.25 In this context, Audit found that staff, Ministers and other MLAs were well-supported and informed by the Secretariat and CMD, who were highly regarded for their expertise, accessibility and responsiveness.
- 2.26 Notwithstanding that the Secretariat and CMD were confirmed in their roles of advisors and facilitators, Ministers and other MLAs may have expected that in

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<sup>6</sup> LAMS Act Sections 5 and 10; Collective Agreement - definition of 'employee'

providing support services, the Secretariat and CMD had a more overt role in ensuring compliance. Thus, without the employing Members (or other nominated supervisor) or the Secretariat and CMD ensuring compliance, there was a risk that breaches of employment conditions would not be detected or remedied.

- 2.27 Under the current legislative framework, Ministers and other MLAs are responsible to determine how the risks relating to compliance with the employment framework are best managed. One option is to work more closely with the support services units in detecting and correcting non-compliance, and encouraging compliance. By building on existing contact with MLAs, Ministers and their staff, and introducing regular reporting to Ministers and other MLAs (discussed in the next section), the Secretariat and CMD can facilitate better compliance by staff with employment conditions.

### **GUIDANCE MATERIAL FOR MINISTERS AND OTHER MLAs**

#### **Guidance material**

- 2.28 LAMS staff, and their employing Members (or other nominated supervisor) need to be familiar with the particulars of the employment framework.
- 2.29 To that end, the Secretariat publishes a *Members' Guide* to services, facilities and entitlements for members and their staff in hard and soft copy. The Guide was updated regularly and was comprehensive in its coverage of the working environment, including staffing, of the Assembly.
- 2.30 Each corporate area distributed advice on other occasions. For example, at the end of the 6<sup>th</sup> Assembly in 2008, detailed information was provided to MLAs (including Ministers) and their staff on termination entitlements. As well, in August 2006, during the 6<sup>th</sup> Assembly, the Chief Minister wrote to Ministers and other MLAs regarding compliance with attendance and leave provisions.

#### **Induction material**

- 2.31 Induction is important in disseminating information and encouraging compliance with employment conditions.
- 2.32 Induction material, covering the terms and conditions of employment, was made available to all staff, executive and non-executive, at the beginning of the Assembly's term. This material remained on the intranet for reference. Induction material included instructions on completing timesheets and leave forms, and other employment procedures.
- 2.33 The Secretariat organised induction briefings early in the 7<sup>th</sup> Assembly, but they were not well attended by LAMS Act staff. Audit was advised that Assembly staff did not regard such briefings as a priority. At one such briefing, only two staff attended. If required, MLA staff could ask personnel from the corporate areas to guide them through leave and attendance requirements, particularly the electronic timesheet.
- 2.34 Audit noted that while sessions for staff were not well attended, all eight new

members of the 7<sup>th</sup> Assembly attended inductions briefings in October and November 2008.

- 2.35 The cross bench members of the ACT Greens suggested that:
- these induction briefings should probably be undertaken with each MLA and their staff separately. If Corporate Services has it in their list to brief each office once during the early part of the term, this could be helpful. Offering a briefing to all MLAs at once, especially when they haven't yet employed their staff, is unlikely to be conducive to high attendance.
- 2.36 Not all MLA staff were engaged at the beginning of the Assembly. Audit was advised for example, that the length of employment for staff can be short – often less than 12 months. This suggests there is a need for supplementary induction sessions during the term of the Assembly.
- 2.37 It is a significant risk to efficient and effective staff management if staff and their employers are unfamiliar with the employment conditions and their responsibilities under legislation or industrial agreement. These risks have materialised, as demonstrated elsewhere in this report, notwithstanding the efforts of the Secretariat and CMD to explain the employment framework to staff, Ministers and other MLAs. This suggests that alternative arrangements may be needed, in terms of providing information and training, and in governance of the employment of MLA staff. Some options are discussed in this report.
- 2.38 While continuing to deliver services through seminars and personal one-to-one sessions, there may be opportunities for the Secretariat and CMD to introduce means to disseminate relevant information electronically and improve awareness of the employment framework, and the rights and responsibilities of all parties.

### **Reporting to Ministers and other MLAs**

- 2.39 Regular reporting against requirements of the employment framework would assist employing Ministers and other MLAs to manage staff and identify and remedy non-compliance.
- 2.40 There was no regular structured reporting of personnel matters to Ministers and other MLAs. Regular monthly reports could cover the range of personnel matters, and other administrative matters handled for Ministers and other MLAs by corporate areas, including summaries of:
- leave applications outstanding;
  - timesheets outstanding;
  - excess leave credits (Collective Agreement, clause 58.12);
  - negative TOIL balances; and
  - zero personal leave balances.

2.41 The report could also include a payroll report (total numbers of payees), and a headcount of staff.

**Recommendation 2**

The Chief Minister's Department and the Secretariat should report regularly, say monthly, to Ministers and non-executive Members respectively on key areas of compliance within the employment framework, such as the lodgement of timesheets, seeking specific attention to any areas of non-compliance.

### 3. TERMINATION PAYMENTS

#### INTRODUCTION

- 3.1 The MLA Staff Collective Agreement sets out a range of employment conditions for staff employed under the LAMS Act and provides for a termination payment to an employee whose employment is terminated under certain conditions. Termination payments have been made to a number of staff when the employing MLA ceased to hold office at the end of an Assembly.
- 3.2 This chapter examines the termination payment to staff of the Assembly upon the termination of employment.

#### KEY FINDINGS

- The Collective Agreement appeared to prevent termination payments to employees with a fixed employment term when the fixed period has expired. However, payments of termination benefits to MLAs' staff, most of whom were engaged on fixed term contracts, were made at the end of an Assembly in accordance with an entitlement the Secretariat understood to exist. The eligibility requirements for a termination payment need to be more clearly defined.
- Staff of three retiring Members of the 6<sup>th</sup> Assembly were overpaid a total of \$15 125 based on the Secretariat's misunderstanding regarding their entitlements.
- Neither the Secretariat nor CMD, used an exit checklist to remind staff and employers of matters to attend to at the cessation of employment. In the absence of an exit checklist, there is a risk that not all important matters will be addressed. This could lead, for example, to overpayments (if leave applications or timesheets were not submitted and finalised) or loss of property (if equipment such as mobile phones or computers were not returned).
- Although both the Secretariat and Shared Services required the terminating employee's final timesheet before a cessation payment could be made, a final payment was made in one instance without the final timesheet. Negative balances in TOIL (time off in lieu) were also noted on some final timesheets, although there was no provision for a negative TOIL balance. The overpayments may not have been recovered..

#### FRAMEWORK FOR THE TERMINATION PAYMENTS

- 3.3 Under the Self Government Act, section 10, a Member ceases to hold office if he or she resigns or is disqualified; the Assembly dissolves or, most commonly, contests an election. In the circumstances of contesting an election, the MLA's

## Termination payments

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term ceases on polling day. Members of the 6<sup>th</sup> Assembly ceased to hold office on 18 October 2008.<sup>7</sup>

- 3.4 Generally, MLAs engage their LAMS Act employees ‘until the end of my current term’. Thus, the employee’s period of employment ceases when the employing MLA or Minister ceases to hold office. The ‘termination of employment’ is defined by the LAMS Act, sections 8 and 13.
- 3.5 Termination of employment triggers a termination benefit to staff, under clause 13 of the Collective Agreement, other than if the termination is by resignation or dismissal for serious misconduct. But termination benefits are not payable when:
- an employee has a right of return to secure employment in the public sector;
  - an employee is engaged for a fixed period, where the fixed period has expired;
  - an employee is engaged for a specified project, where the project has been completed;
  - an employee is a probationary employee; or
  - an employee is a casual employee.
- 3.6 Although staff employment is terminated on election day when their Member’s term of office ends, the Chief Minister by determination under the LAMS Act (DI2005-291), extends staff employment beyond polling day to the declaration of the polls, or two weeks after election day, whichever is later. The reason for this determination is to provide employment continuity to staff of Members who stand for re-election.
- 3.7 Thus, the effective date of termination for Members’ staff in the 6<sup>th</sup> Assembly was 31 October 2008. Members and staff employment ceased pursuant to the Self Government and LAMS Acts on 18 October 2008, but the effect of the Chief Minister’s Determination was to extend the employment of staff to 31 October 2008.
- 3.8 Arrangements for staff of office-holders (Ministers and the Speaker) differ slightly from those for other MLAs. All staff of the executive and the Speaker are employed until their Minister or the Speaker ceases to hold office.<sup>8</sup>
- 3.9 Under the Self Government Act, Ministers cease to hold office immediately before a new Chief Minister is elected at the first meeting of the new Assembly.<sup>9</sup> Correspondingly, the Speaker ceases when a new Speaker is elected.<sup>10</sup> By force of a determination of the Chief Minister (DI 2005-292), staff of the executive and

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<sup>7</sup> Section 100 of the ACT’s *Electoral Act 1992* provides that general elections are on the 3<sup>rd</sup> Saturday in October in the 4<sup>th</sup> year after the year when the last ordinary election was held.

<sup>8</sup> LAMS Act, section 8.

<sup>9</sup> Self Government Act, Section 46.1A.d

<sup>10</sup> Self Government Act, Section 11.1

the Speaker are then deemed to be employed for a further two weeks following the first meeting of the new Assembly, and the election of a new Chief Minister and the Speaker. Staff whose employment is not being terminated are offered continuing employment through an employment agreement.

- 3.10 The Secretariat is of the view that staff engaged under the LAMS Act whose employment ceased by virtue of a general election have always had a prima facie entitlement to a termination payment, subject to certain exclusions, although these entitlements have changed over time.
- 3.11 Similarly, the Chief Minister's Department (CMD) advised that the payments are termination payments that recognise that the employment has been terminated by the operation of the LAMS Act and the associated employment agreement under that Act, and as such differ from redundancy payments in the ACT Public Service where an employment contract was terminated because the work performed by the employee is no longer required to be performed. The method of calculating the quantum of the termination payment is similar to that used to calculate a redundancy payment in the ACT Public Service.
- 3.12 Audit noted that typically an employee engaged under the LAMS Act is engaged on a fixed term contract that expired when the employing MLA ceased to hold office. This is discussed in some detail in the following section of this report. There would seem to be a significant difference between a situation where employment ceases because the employment contract has come to an end, and one where the contract is terminated because the work performed by the employee is no longer required to be performed. Audit considers that, all other things being equal, the payment of a termination benefit simply because a contract has reached its agreed expiry date appears to be generous.
- 3.13 A notable feature of the termination benefit provisions is that staff who leave after an election of their own volition are still entitled to termination benefits.
- 3.14 Although an employee may be re-employed at any time after receiving a termination payment, the employee must repay the termination payment to the extent the employee's employment covers the same period of time as the termination payment. Staff who are re-employed after receiving a termination package are eligible for a termination payment at the close of the next Assembly for the period of employment since their last termination.
- 3.15 The law and practice for the payment of termination benefits varies between Australian parliaments. The provisions of the LAMS Act are very similar to those in the Commonwealth's *Members of Parliament (Staff) Act 1984*, upon which they were modelled. Staff employment terminates when the Senator or Member of the House of Representatives no longer retains a seat in the Parliament. The employee is then entitled to a termination benefit, with similar exclusions to those in clause 13.4 of the Collective Agreement.
- 3.16 The Secretariat surveyed other parliaments, and of the four respondents (Queensland, WA, Victoria and Tasmania), only one (Tasmania) terminated staff employment with expiration of the parliament. In the other parliaments,

## Termination payments

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termination payments were made if the Member resigned, died, retired, or was not re-elected. Termination benefits were paid to staff in those circumstances.

### TERMINATION PAYMENTS TO EMPLOYEES ON FIXED TERM CONTRACTS

- 3.17 Under clause 13.2.b of the Collective Agreement, termination payments will not be payable to an employee whose employment term is fixed, and the fixed period has expired. Clause 13.2.e of the Agreement prevents termination payments to casual employees.
- 3.18 The Collective Agreement (clause 10) specifies that employees are either fixed term employees engaged for a specified period of time or for a specified task, or casual employees engaged on an irregular and non systematic basis. 'Fixed term employee' is also defined at clause 6.1 of the Agreement.
- 3.19 The Chief Minister's determination DI2008-101 *Legislative Assembly (Members' Staff) Hiring Arrangements Approval 2008 (No 1)* (and the corresponding Office-holders determination DI2008-102) includes a pro-forma employment agreement. The employment agreement requires the type of employment to be specified, as well as the period of the agreement. These matters are listed in Items 3 and 4 respectively; there are only two types of employment available - fixed term or casual.
- 3.20 The recognition of a fixed term of employment for MLA staff is consistent with the LAMS Act, which provides that staff are employed for the term of office of the employing MLA or Minister. And, since the ACT has a fixed term for each Assembly, the expected maximum 'term of office' for any MLA is known with a degree of certainty.
- 3.21 Notwithstanding that termination payments were not available to employees with a fixed employment term when the fixed period has expired, the payment of termination benefits to Members' staff at the end of an Assembly was consistent. Table 3.1 shows the number of staff receiving termination payments, and the total amount of such payments, subsequent to the dissolution of the 6<sup>th</sup> Assembly.

**Table 3.1: Termination payments at the close of the 6<sup>th</sup> Assembly**

	Number of Staff	Total termination payments
Executive	9	\$137 166
Non-executive	26	\$332 540
TOTAL	35	\$469 706

Source: CMD and Secretariat data

- 3.22 The Secretariat and CMD considered the provisions preventing termination payments to 'fixed term' employees were intended to capture shorter employment contracts, which typically terminated before the end of the Assembly (that is, before the employing MLA or Minister ceased to hold office). In the view of the administering agencies, termination payments are payable to employees whose employing MLA either retires or dies, and whose employment ceased at the end

of the Assembly when the employing MLA ceases to hold office (in accordance with the LAMS Act and the Chief Minister's Determination).

- 3.23 The Audit Office acknowledged that termination payments have been made consistently on this basis, but considered that the situation was not clear. In short, given the fixed terms of the Legislative Assembly in the ACT, and that staff are employed under fixed term contracts, it was not clear to Audit why termination benefits were paid at the termination of employment when the Collective Agreement appeared to specifically exclude such circumstances.
- 3.24 In response to this issue raised during the audit, the Secretariat subsequently sought advice from the ACT Government Solicitor's Office. The GSO considered the nature of the termination payments, the current and previous industrial agreements, and the legal meaning of the term 'fixed period' in employment circumstances. The GSO's opinion was inconclusive on the issue of whether staff terminated under sections 8 and 13 of the LAMS Act (termination of employment when the Member ceased in the Assembly) were eligible for a termination payment under the Collective Agreement. Nevertheless, while the GSO said an argument could be made to support the termination payments, the **preferred opinion** was that MLA staff employed under the LAMS Act were employed for fixed terms, and on that basis, employees were excluded from the entitlement to a termination payment.
- 3.25 The GSO noted, in conclusion, that the nominal expiry of the current Collective Agreement on 31 March 2010 presented an opportunity 'to correct any deficiencies in its wording'.

### **Recommendation 3**

The Secretariat and the Chief Minister's Department should:

- (i) review the practices of paying termination benefit to MLA's staff at the end of each Assembly term;
- (ii) clarify the circumstances under which staff employed under the LAMS Act should be eligible for termination payment; and
- (iii) incorporate results of the review into these matters when renegotiating the MLA Staff Collective Agreement (the current Agreement nominally expires on 31 March 2010).

### **PAYMENTS TO STAFF OF MEMBERS WHO RETIRED AT THE 2008 ELECTION**

- 3.26 As mentioned, the Chief Minister by determination under the LAMS Act extends staff employment beyond polling day to the declaration of the polls, or two weeks after election day, whichever is later. Under the Determination, staff of Members who do not stand for re-election are not deemed to continue in employment past polling day.

## Termination payments

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- 3.27 The Secretariat found in October 2008, just before the election, that staff of three retiring Members had been previously advised by the Secretariat that they would be paid for the deeming period (to take account of the possibility of their Members being re-elected) despite their Members not seeking re-election. The payments were made, notwithstanding that the Chief Minister's determination did not provide for such entitlements, because the Secretariat took the view that previous advice created an entitlement. The Secretariat did not seek legal advice on the validity of the payments.
- 3.28 Audit is of the view that payments over and above those provided by the Chief Minister's Determination are overpayments, and are therefore recoverable. The total amount was \$15 125.
- 3.29 The cross bench members of the ACT Greens commented that:
- the clarification that the deeming period should not apply to staff of MLAs who retire on election day should be made clear for current and future staff, but should not apply retrospectively. Given that the advice from Corporate Services at the time was that staff were eligible, relevant staff made arrangements accordingly. It would thus seem highly unfair and unethical to turn around ten months later and ask for recovery of these payments.

### **Recommendation 4**

The Secretariat should:

- (i) inform staff that the deeming period does not apply to the staff of MLAs who retire on election day, and
- (ii) disseminate this information in all relevant guidelines and general information.

### **EXIT CHECKLIST AND FINAL TIMESHEETS**

- 3.30 Staff ceasing employment with Ministers and other MLAs at the conclusion of the 6<sup>th</sup> Assembly were entitled to payments for unused leave, salary and, possibly, termination benefits.
- 3.31 Personnel sections usually require a final timesheet from staff before final payments are released, because the timesheets could indicate the need for adjustments to the payments. For example, any deficit of time against standard hours represents a salary overpayment and is usually deducted from final payments. Personnel sections will also circulate an 'exit checklist', which serves to remind supervisors and staff of all the loose ends to tie up, such as submission of the final timesheet, and the return of office equipment, keys, and security passes. Exit checklists also typically remind supervisors to cancel IT access, and to ensure the terminating employee hands over all work-related material.
- 3.32 In the absence of an exit checklist (or similar arrangement) there is a risk that not all important matters that should be attended to at the cessation of employment will be addressed. This could lead, for example, to overpayments (if leave applications or timesheets are not submitted) or loss of property (if equipment is not returned) and security risks with IT access.

- 3.33 Neither the Secretariat, nor CMD, used an exit checklist, although each has intentions to introduce one; the approach instead was to brief staff on exit requirements, including the final timesheet. Although both the Secretariat and CMD required the final timesheet before final moneys are paid, Audit noted one instance where the final payment was made without the final timesheet.
- 3.34 LAMS Act staff on fixed contracts usually work more hours than they are paid for. They are compensated for this additional effort by a LAMS Allowance (in lieu of overtime) and Time Off in Lieu (TOIL) up to a maximum of 140 hours (about four weeks). Many employees have reached the maximum TOIL allowed to be carried forward. TOIL credits cannot be cashed out either during the term of employment or on separation.
- 3.35 There is no provision for a negative TOIL balance. Nevertheless, Audit noted some deficits in TOIL balances on final timesheets. It was unclear from information sighted by Audit whether the corresponding overpayment was recovered.

**Recommendation 5**

The Secretariat and the Chief Minister's Department should use formal exit checklists to ensure that staff and employers are aware of the need to submit final timesheets, and attend to other matters prior to the end of employment.



## 4. ENGAGEMENT OF VOLUNTEERS

### INTRODUCTION

- 4.1 Members of the ACT Assembly sometimes use volunteers to work in their offices. At the commencement of the 7<sup>th</sup> Assembly, following the general election of October 2008, ten former staff returned as volunteers. There were no volunteers engaged in Ministers' Offices.
- 4.2 The Assembly's Standing Committee on Administration and Procedure reported on the status of volunteers in Members' offices in August 2004. The report contained a pro-forma agreement for the engagement of volunteers and discussed access by volunteers to IT systems, and the clarification of the rights and responsibilities of managers and volunteers. This agreement has been adopted to manage the engagement of volunteers.
- 4.3 This chapter considers matters arising from the engagement of volunteers at the commencement of the 7<sup>th</sup> Assembly.

### KEY FINDINGS

- Some non-executive MLAs engaged volunteers. Should former staffers resume work in an MLA's office as volunteers, there is room for reasonable doubt as to whether they were replacing paid staff, a practice contrary to the volunteer engagement agreement conditions, recommended by the Assembly's Administration and Procedure Committee.
- An effect of former staff being re-engaged as volunteers for the period covered by termination benefits is to shift salary costs from MLAs to the Assembly. Rather than being paid a salary by MLAs for the volunteer period, the former staff works as a volunteer for the period covered by the termination payment. The total amount of termination benefits paid by the Assembly to former staff during the period they volunteered was approximately \$54 000.
- Of the 19 volunteering agreements examined, all were in the form recommended by the Assembly's Committee on Administration and Procedure, although only one included a statement of the rights and responsibilities of parties to the agreement. There was a risk, therefore, that neither the volunteers nor their managers fully understood their respective rights, responsibilities, and obligations.

### FORMER STAFF RETURNING AS VOLUNTEERS

- 4.4 The ten former staff engaged as volunteers for non-executive Members at the beginning of the 7<sup>th</sup> Assembly had previously received termination payments as their employment terminated with the close of the 6<sup>th</sup> Assembly. All ten staff were subsequently re-employed once a period equal to their termination payment had elapsed. Under the Collective Agreement, clause 13.4, an employee who returns to Assembly employment after receiving a termination benefit must repay

- the benefit to the extent that the person's re-employment covers the same period of time.
- 4.5 By way of example, a staff member with four years service who ceased on 31 October 2008, following the election on 18 October and the extra two week 'deeming' period would have received twelve weeks' termination benefit for his or her Assembly service. If that person is subsequently re-employed under the LAMS Act, the two weeks paid deeming period is set off against future TOIL or recreation leave credits.
- 4.6 If the staff member returned to LAMS Act employment after ten weeks from 31 October 2008 (9 January 2009), he or she would have to repay two weeks of the termination payment. If the staff member returned to paid Assembly employment after twelve weeks (23 January 2009), he or she would not have to repay any of the termination payment.
- 4.7 Audit noted that where former staff became volunteers and were later re-employed, the recommencement of employment date in all cases was after the exclusion period of clause 13.4 of the Collective Agreement. That is, no former staff member gained a personal advantage and no repayment of termination payment was necessary.
- 4.8 Under the volunteer agreement, managers should not place volunteers in roles that were previously held by paid staff or that were identified as paid jobs. If a former staffer, now a volunteer, resumes work in an MLA's office, he or she may not be able to avoid doing their old job, or another job formerly held by a paid staffer.
- 4.9 The cross bench members of the ACT Greens pointed out that performing the potential work of paid staff is often unavoidable for volunteers, as almost all work done in the Assembly could potentially be done by a paid staff member. Further clarification is needed as to what defines 'the work of paid staff.' Nonetheless, the ACT Greens agreed that for volunteers to occupy vacant paid staff positions would be in breach of the recommendations of the Administration and Procedures Committee, and would be therefore inappropriate.
- 4.10 Audit considers that subsequent re-employment of staff in their old jobs implies that they continued to be employable, that is, not redundant. It is anomalous therefore that they can receive a termination payment designed to ease financial stress while they look for another job.
- 4.11 An effect of former staff being re-engaged as volunteers for the period covered by termination benefits is to shift salary costs from MLAs' staff salary allocation to the Assembly. As noted in Table 2.1 (paragraph 2.11), each non-executive MLA has a specific budget for staff salaries. This budget is effectively increased by using termination benefits, which are paid by the Assembly rather than from MLA's staff salary allocation, for the period covered by the termination payment. At the beginning of the 7<sup>th</sup> Assembly, the total amount of termination payments by the Assembly to former staff during the period they volunteered was approximately \$54 000.

### **Recommendation 6**

The Secretariat and, if necessary, the Chief Minister's Department should request Members to certify that volunteers are not performing the work of paid staff, or occupy vacant paid staff positions, as recommended by the Administration and Procedures Committee report of August 2004.

### **VOLUNTEER AGREEMENTS**

- 4.12 Audit examined 19 volunteering agreements for the period October 2007 to January 2009. These were agreements made for persons who worked without payment in MLAs' offices. All agreements were in the recommended form. However, only three included a policy on the acceptable use of technology, although all agreements referenced the policy. One only included a statement of the rights and responsibilities of parties to the agreement.
- 4.13 Inclusion of relevant ancillary documents such as the rights and responsibilities statement and the IT usage policy is an important part of the engagement agreement to address the risk that volunteers may not be aware of what is expected of them, or of their managers.
- 4.14 Audit noted that the IT usage policy was already directed at LAMS Act staff, and those of the Secretariat. The intent statement should be broadened to also include volunteers.
- 4.15 The Secretariat advised that the volunteer agreement was to be reviewed and revised.

### **Recommendation 7**

- (i) MLAs should ensure that volunteer engagement agreements are consistent with templated volunteer agreements which include relevant documents such as a copy of the Assembly's IT usage policy and a statement of the rights and responsibilities of managers and volunteers; and
- (ii) The Secretariat should prepare guidance to assist MLAs in this issue.

### **INSURANCE**

- 4.16 The Assembly's Administration and Procedure Committee report recommended that MLA's insure against liability for injuries in the course of the voluntary engagement. Subsequently, the Secretariat took out volunteer insurance cover through the ACT Insurance Authority for a nominal amount (\$10 per volunteer).
- 4.17 The Secretariat advised that for insurance purposes volunteer agreements should specify the volunteering period or pattern, particularly where volunteers are engaged on a less than full-time basis. The Secretariat intends to include a new requirement for MLAs to establish and maintain time records for all volunteers.



## 5. LEAVE AND ATTENDANCE

### INTRODUCTION

- 5.1 Human resource management and systems require control over salary expenditure and employee entitlements. Recording attendance and submission of timesheets was one of the key controls in managing payroll and leave entitlements. A timesheet certified by an employer is evidence:
- that a person was at all relevant times at work, and entitled to salary and other entitlements;
  - of the employee's accumulated time at work; and
  - of leave taken by the employee.
- 5.2 This chapter considers matters arising from the management of leave and attendance for executive and non-executive staff.

### KEY FINDINGS

- Executive and non-executive staff were required under the Collective Agreement to record their attendance. This is normally done through the practice of completion and submission of timesheets. During the period from July 2007 to February 2009, the submission rates for timesheets ranged from 57 percent to 80 percent. Without timesheets, there are failures in control over the submission of leave applications. This may lead to errors in leave balances, with subsequent overpayments in salary and final entitlements. There are also issues related to demonstrating attendance with consequential risks to workers compensation and insurance coverage.
- For the period from 1 July 2007 to 18 February 2009, Ministers' staff recorded 39 days leave in their timesheets that were not deducted from their leave balances held by the Shared Services Centre. Given the high rate of non-compliance, there are higher risks of irregularity. The failure to account for leave taken amounts to obtaining a benefit to which the employee is not entitled

### RECORDING ATTENDANCE

- 5.3 All LAMS Act staff must keep records of their attendance in a timesheet to comply with current policies and legislation. The Collective Agreement:
- requires the MLA or Minister to keep records relating to the employees' work, including records about attendance and pay (clause 22.1). Compliance with these requirements will mean that Ministers and other MLAs comply with the Commonwealth's *Workplace Relations Regulations 2006*, regulation 2.19.9;

## Leave and attendance

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- states that ‘an employee will record the time of commencing and ceasing duty each day’ (section 22.2). These records should be certified by the MLA or other nominated supervisor; and
- states that an MLA will not approve TOIL (time off in lieu) where the employee has failed to keep suitable records of attendance for duty and absence from duty (section 20.8).

5.4 Further, the employment agreement under which MLA staff are engaged includes the following:

You are required to maintain a record of your attendance for duty and absence from duty in accordance with the Collective Agreement. (Section 12);

You will ... obey all lawful directions reasonably incidental to your position or the performance of your duties (Section 7.1(e)); and

You will ... comply with the terms and conditions of your employment (Section 7.1(f)).

5.5 All LAMS Act staff share a standard template for recording work times and TOIL. There are forms and instructions to assist staff in using the timesheet and in complying with the Collective Agreement.

### Rates of submission of timesheets

5.6 Audit compared the number of timesheets lodged with the number that were required under section 22 of the Collective Agreement, for 2007-08, and 2008-09 to 18 February 2009. The results are in the Table 5.1 below:

**Table 5.1: Rate of submission of timesheets, executive and non-executive, 2007-08 and 2008-09 to pay 17 (18 February 2009)**

Staff type	Rate of submission 2007-08	Rate of submission 2008-09 to pay 17 (18 February 2009)
Executive	72%	57%
Non – executive	80%	74%

Source: AGO analysis of data provided by CMD and Secretariat

5.7 Rates of lodgement were affected by those staff who normally did not lodge timesheets.

5.8 For the period of the 7<sup>th</sup> Assembly to 18 February 2009:

- of the 43 non-executive staff, 19 (including casuals) lodged all timesheets; and
- of the 46 staff of the Executive, 15 (including casuals) lodged all timesheets.

5.9 The Secretariat, the Chief Minister’s Department (CMD), and staff commented that the reasons for low submission rates were cultural and environmental. The

Assembly is an unusual and busy work environment. Staff are allied to the compact political team they work for and with, and have less regard for administrative requirements such as attendance recording. Audit recognised the atypical nature of the Assembly workplace, but did not consider that the environment or the culture justified the widespread failure to meet legal requirements and sound administrative practice.

- 5.10 Audit noted that CMD and the Secretariat made considerable efforts to ensure that timesheets were lodged. The Secretariat, which deals with the staff of non-executive MLAs, knew when timesheets had not been lodged because MLAs submitted them to the Secretariat after certification. The Secretariat had the function of following up missing timesheets by phone or email to the employee, and if necessary, contacted the employing MLA or other nominated supervisor.
- 5.11 The Chief Minister's Support and Protocol Unit of CMD, which supported the staff of executive MLAs, received some timesheets, but not all. Some Ministers retain staff records in their offices, notwithstanding the requirement of clause 22 of the Collective Agreement to send the timesheets to corporate services.
- 5.12 CMD facilitated Audit's access to time records held in Ministers' offices, and made them available for audit testing.
- 5.13 In correspondence to the Auditor General, the Chief Minister advised that the 57 percent rate of submission of timesheets in 2008-09 did not take account of a number of staff who 'maintain and retain excellent records, as is required under the Collective Agreement, but who lodge timesheets with CMD irregularly or at long intervals.'
- 5.14 CMD has provided reminders, through the Chief Minister's Chief of Staff, of the requirement under the Collective Agreement for staff to lodge timesheets with their corporate area; all new staff were also directly advised of this responsibility. Should staff lodge timesheets with CMD, it would be in a better position to manage timesheet completion and lodgement. Outstanding timesheets could then be followed up by CMD or Ministers' Offices, and reports on timesheet lodgement (amongst other things) could be forwarded to Ministers' offices for their (or their nominated supervisor's) information and action.
- 5.15 The ability of CMD and the Secretariat to insist on the submission of timesheets is limited by their role – that of advisors, facilitators and administrators. They do not have, nor do they seek, the authority to require staff to comply with standard human resource management practice, or clause 22 of the Collective Agreement; this is the employer's responsibility – that is, the employing MLAs.
- 5.16 Management and oversight of this relatively straightforward personnel requirement has been complicated in the Assembly by the employer-employee relationship, that two separate administrative agencies are involved (as well as the employing MLAs), and varying administrative practices. As well, there was an apparent lack of interest on behalf of the employees and employers in gaining a full understanding of their respective roles and responsibilities (as evidenced by low attendance at relevant briefing sessions). Audit considers that introduction of

a simplified, consistent, approach to Human Resource functions (as recommended in chapter 2 of this report), will improve management oversight and minimise the risks associated with a breakdown in controls over attendance reporting.

- 5.17 At the very least, CMD should ask Ministers' offices to provide the information needed to oversee the attendance records and thus assist these Ministers to meet their responsibilities as employers. Recommendation 2 has called for provision of regular reports to MLAs including Ministers on areas of compliance seeking their attention to any areas of non-compliance.

## LEAVE

### Missing leave applications

- 5.18 Any leave taken by an employee should be approved by the appropriate delegate (which in this case is the employing MLA) and recorded against the employee's leave entitlements. A leave application should be submitted by the employee to the delegate, and the leave taken should be recorded on the employee's timesheets. Timesheets include a certification by the employee that the details therein are correct and leave forms have been submitted. The reviewing supervisor/manager also certifies the timesheet to the effect that details are correct and leave forms have been submitted and approved.
- 5.19 As a matter of course, the Secretariat checks timesheets received from non-executive staff to ensure that any leave marked on timesheets is matched by a leave application. Audit testing of non-executive staff in the Secretariat found that controls over leave submission were sound. No instances were noted where leave applications did not cover absences noted on timesheets.
- 5.20 CMD, on the other hand, does not have access to all executive staff timesheets, some of which are kept in Ministers' offices. Executive staff can submit their leave forms either to the Chief Minister's Support and Protocol Unit or to Shared Services.
- 5.21 Audit tested attendance and leave for executive staff, comparing timesheets for staff (obtained from Ministers' offices) to leave that was recorded in Shared Services records. Audit found that in the period from 1 July 2007 to 18 February 2009, 44.39 days leave were recorded on timesheets, but were not deducted from leave balances held by Shared Services. Based on an average salary for Ministerial staff of \$90 000 pa, the value of this leave is estimated at \$15 300.
- 5.22 Subsequent to the audit's completion, some misplaced leave forms were uncovered that accounted for five days of the leave that was on timesheets, but was not deducted from leave balances. The revised total of leave undeducted from leave balances was 39.39 days.
- 5.23 It is also possible that the amount of leave not properly applied for was higher than 39.39 days as not all timesheets for the period were lodged.
- 5.24 It is not clear from the information available to Audit whether leave forms have not been prepared and submitted for approval, or whether approved forms have

been misplaced or lost.

- 5.25 Given the high rate of non-compliance, there are higher risks of irregularity. The failure to account for leave taken amounts to improperly obtaining a benefit to which the employee is not entitled. Although the amount involved may not be significant, the integrity of the employment processes of the Assembly should be improved to maintain public confidence.
- 5.26 The undeducted leave was an overpayment to staff. The amount of LAMS allowance (which is paid to all employees other than casuals in lieu of overtime), was also overpaid, as the LAMS allowance was not payable during any period of paid or unpaid leave of any type.
- 5.27 There was an obvious need for procedures to be improved to ensure attendance records are maintained by employees and submitted to the delegate for certification, and that all absences were properly accounted for. For example, an authority, be it CMD acting for Ministers, or the Ministers' Offices themselves, should check timesheets and ensure that leave applications are submitted to Shared Services. As well, employees and managers should have higher regard for their responsibilities, and recognise the fundamental importance of these control processes in managing to minimise risk.
- 5.28 The introduction of the employee self-service module of the payroll system, HR21, will also serve to reduce the risk that leave applications are lost in transit, but this needs to be supported by good administrative practice in the Ministers' offices.

### **Recommendation 8**

The Chief Minister's Department should:

- (i) advise Ministers' offices of the need to follow up missing leave applications as identified in this audit;
- (ii) where necessary, arrange for the recovery of overpayments in salary and LAMS allowance from staff on leave; and
- (iii) assist Ministers' offices to implement new procedures to ensure that leave recorded on executive staff timesheets is supported by an approved leave application and forwarded to Shared Services for processing through the Chief Minister's Department.



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## **APPENDIX A    AUDIT CRITERIA AND APPROACH**

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### **AUDIT CRITERIA**

#### ***Severance payments***

There are clear guidelines and procedures for:

- employment termination;
- calculation of severance payment;
- deemed continuation of employment; and
- any subsequent re-employment and repayment of severance payment.

Termination of staff is aligned with the declaration of the election result or a ‘deemed’ date provided in the LAMS Act.

Termination payments are calculated in accordance with the Collective Agreement or other provisions governing severance payments.

Repayment of all or part of the severance payment occurs when staff are re-employed within the prescribed period.

Co-ordination and separation of functions between the Assembly Secretariat and Shared Services for the payment of severance payment is efficient and effective.

Provisions for the payment of severance payments are benchmarked to other jurisdictions and better practice.

#### ***Use of terminated staff as volunteers***

Clear guidelines and procedures exist for the engagement of volunteers.

Engagement of volunteers is consistent with legislation, guidelines and recommendations of the Standing Committee on Administration and Procedure.

Provisions for the engagement of volunteers are benchmarked to other jurisdictions and better practice.

#### ***Leave and attendance***

There are guidelines and procedures for:

- attendance recording; and
- requesting, approving and managing planned and unplanned absences.

Efficient and effective controls exist over the administration of leave and attendance practice, to ensure:

- where possible, all staff maintain and submit timesheets;

## Audit criteria and approach

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- timesheets that support the payment of allowances, such as overtime, are approved and submitted on time.
- all absences are covered by properly completed and approved requests for leave; and
- all requests for leave are recorded and leave credits adjusted.

A number of controls over time recording (such as edit checks) may be system-based. Audit work includes assessment of overall controls; this may require consideration of broader issues including information system controls.

### **AUDIT APPROACH**

The audit approach will include:

- identification of the legislative and administrative framework, and business rules governing engagement of voluntary staff, payment of severance moneys, and leave and attendance.
- for payment of severance pay, comparison of the Legislative Assembly's control framework with the framework, policy and practice in other Australian jurisdictions, including the Commonwealth;
- testing for compliance with the regulatory framework and business rules, and against the audit criteria.

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## APPENDIX B EXTRACTS FROM THE LAMS ACT AND FROM THE COLLECTIVE AGREEMENT

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### EXTRACTS FROM THE *LEGISLATIVE ASSEMBLY (MEMBERS' STAFF) ACT 1989*

#### 5 Office-holders may employ staff

- (1) An office-holder may, on behalf of the Territory, employ, under an agreement in writing, a person as a member of the office-holder's staff.
- (2) However, an office-holder must not employ a person who is a family member of the office-holder.
- (3) The power conferred on an office-holder by subsection (1) is not exercisable otherwise than in accordance with arrangements approved, in writing, by the Chief Minister, and the exercise of that power is subject to such conditions as are determined, in writing, by the Chief Minister.
- (4) An approval or determination under subsection (3) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

#### 8 Termination of employment

- (1) The employment of a person under this part terminates if the office-holder by whom the person was employed dies.
- (2) The employment of a person under this part terminates if—
  - (a) in the case of a person employed by an office-holder—the office-holder ceases to hold office; or
  - (b) in the case of a person employed by a member of the Assembly in respect of whom a determination by the Chief Minister under section 4 is in force—the member ceases to be a member of the Assembly or the determination is revoked.
- (3) For subsection (2) (b), a member of the Assembly shall be deemed not to have ceased to be such a member while he or she continues to be entitled to an allowance that was payable to him or her as such a member.
- (4) An office-holder may at any time, by notice in writing given to a person employed by the office-holder under this part, terminate the person's employment.
- (5) A person employed by an office-holder under this part may at any time, by notice in writing given to the office-holder, terminate the person's employment.
- (6) Where the employment of a person under this part is terminated by subsection (1) or (2), the Chief Minister may by writing direct that the employment of the person shall be deemed—
  - (a) not to have been so terminated; and
  - (b) to have continued, or to continue, until a specified date;and, where the Chief Minister so directs, the employment of the person under this part shall for all purposes be deemed to have continued, or to continue, until that date.
- (7) A direction under subsection (6) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

**10 Members may employ staff**

- (1) A member of the Assembly may, on behalf of the Territory, employ, under an agreement in writing, a person as a member of the staff of the member.
- (2) However, a member of the Assembly must not employ a person who is a family member of the member.
- (3) The power conferred on a member of the Assembly by subsection (1) is not exercisable otherwise than in accordance with arrangements approved, in writing, by the Chief Minister, and the exercise of that power is subject to such conditions as are determined, in writing, by the Chief Minister.
- (4) An approval or determination under subsection (3) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

**13 Termination of employment**

- (1) The employment of a person under this part terminates if the member of the Assembly by whom the person was employed—
  - (a) dies; or
  - (b) ceases to be a member of the Assembly.
- (2) For subsection (1) (b) a member of the Assembly shall be deemed not to have ceased to be such a member while he or she continues to be entitled to an allowance that was payable to him or her as such a member.
- (3) A member of the Assembly may at any time, by notice in writing given to a person employed by the member under this part, terminate the person's employment.
- (4) A person employed by a member of the Assembly under this part may at any time, by notice in writing given to the member, terminate the person's employment.
- (5) Where the employment of a person under this part is terminated by subsection (1), the Chief Minister may, by writing direct that the employment of the person shall be deemed—
  - (a) not to have been so terminated; and
  - (b) to have continued, or to continue, until a specified date;and, where the Chief Minister so directs, the employment of the person under this part shall for all purposes be deemed to have continued, or to continue, until that date.
- (6) A direction under subsection (5) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

**17 Office-holders may engage consultants and contractors**

- (1) An office-holder may, on behalf of the Territory, engage, under an agreement in writing, a consultant or contractor for the provision of services necessarily incidental to the performance of his or her ministerial or parliamentary duties.
- (2) However, an office-holder must not engage a consultant or contractor who—
  - (a) if the consultant or contractor is an individual—is a family member of the office-holder; or
  - (b) if the consultant or contractor is a corporation—has a director or other officer who is a family member of the office-holder.
- (3) An agreement under subsection (1) shall be taken to be a contract for services.

- (4) The power conferred on an office-holder by subsection (1) is not exercisable otherwise than in accordance with arrangements approved, in writing, by the Chief Minister, and the exercise of that power is subject to such conditions as are determined, in writing, by the Chief Minister.

- (5) An approval or determination under subsection (4) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## 20 Members may engage consultants and contractors

- (1) A member of the Assembly may, on behalf of the Territory, engage, under an agreement in writing, a consultant or contractor for the provision of services necessarily incidental to the performance of his or her parliamentary duties.

- (2) However, a member of the Assembly must not engage a consultant or contractor who—

- (a) if the consultant or contractor is an individual—is a family member of the member; or

- (b) if the consultant or contractor is a corporation—has a director or other officer who is a family member of the member.

- (3) An agreement under subsection (1) shall be taken to be a contract for services.

- (4) The power conferred on a member of the Assembly by subsection (1) is not exercisable otherwise than in accordance with arrangements approved, in writing, by the Chief Minister, and the exercise of that power is subject to such conditions as are determined, in writing, by the Chief Minister.

- (5) An approval or determination under subsection (4) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## EXTRACTS FROM ACT LEGISLATIVE ASSEMBLY MEMBERS' STAFF UNION COLLECTIVE AGREEMENT 2007-2010

### 6. Definitions

- 6.1 In this Agreement:

...

**Employee** means a person who is employed by a Member on behalf of the Territory under Section 5 or Section 10 of the LAMS Act in a classification set out in Annexure A.

...

**Employer** means the Australian Capital Territory and includes a Member acting on behalf of the Territory.

**Fixed term employee** means a person employed by a Member under the LAMS Act for a specified period of time or for a specified task, on a full time or part time basis.

...

### 13. Termination Payment

- 13.1 An employee whose employment is terminated, other than by resignation or dismissal for serious misconduct, is entitled to be paid:

- (a) a sum equal to four weeks salary irrespective of length of service; plus

(b) a sum equal to two weeks salary for each completed year of continuous service, plus a pro-rata payment for additional completed months of service, up to a maximum of forty-eight weeks salary.

13.2 The payments set out in clause 13.1 will not be payable to:

- (a) an employee who has a right of return to secure employment in the public sector;
- (b) an employee who is engaged for a fixed period, where the fixed period has expired;
- (c) an employee who is engaged for a specified project, where the project has been completed;
- (d) a probationary employee;
- (e) a casual employee.

13.3 An employee whose employment is terminated by resignation, or dismissal for serious misconduct, is not eligible for payment under this clause.

13.4 An employee, who is in receipt of a termination payment under clause 13.1 and who is subsequently re-employed under the LAMS Act, will repay the termination payment received to the extent that the person's re-employment covers the same period of time as the termination payment.

...

20.8 A Member will not approve TOIL where the employee has failed to keep suitable records of attendance for duty and absence from duty.

...

## **22. Record Keeping**

22.1 The employer will keep records relating to the employees' work, including records about attendance and pay, in accordance with the requirements of the WR Act and the Workplace Relations Regulations.

22.2 The employee will record the time of commencing and ceasing duty for each day. These records will require certification by the employing Member, or other nominated supervisor, and lodgement with the relevant corporate area in a timely fashion.

...

### Reduction of Excess Annual Leave Credits

58.12 An employee who accrues in excess of two and a half years annual leave credits will, unless exceptional operational circumstances exist, be expected to reduce the employee's annual leave balance to two and a half years of entitlement or below within a reasonable period. In such circumstances, what constitutes a reasonable period will be agreed between the employee and the relevant Member.

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