

Auditing for the Australian Capital Territory

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PA97/07

24 November 1998

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

Dear Mr Speaker

In accordance with the Authority contained in the *Auditor-General Act 1996*, I transmit to the Legislative Assembly my Report titled "*Assembly Members' Superannuation and Severance Payments to Former Members' Staffers*".

This audit was managed by Kurt Munro and conducted by Vicky Kapota and Katie Marini of this Office.

Yours sincerely

John A Parkinson

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1. REPORT SUMMARY

1.1 INTRODUCTION

This Report presents a summary of results of a performance audit on superannuation payments made to Members of the Legislative Assembly who retired during the term of the Third Assembly, and also superannuation payments to Members who were not re-elected at the February 1998 election to serve in the Fourth Assembly.

The audit also covered severance payments made to the staff of Members who were not re-elected at the February 1998 election, as well as a severance payment to a staffer of a former Minister.

1.2 BACKGROUND

Members' Superannuation

Elections for the Legislative Assembly were held on 21 February 1998. One Member did not seek re-election while several other Members were not successful in being re-elected. Additionally during the term of the last Assembly three Members resigned and were replaced.

All the Members not continuing in the Assembly became entitled to receive superannuation payments under the *Superannuation (Legislative Assembly Members) Act 1991*.

In accordance with the legislation Members' superannuation is administered by the ACT Legislative Assembly Members' Superannuation Board.

Severance Payments to Staff

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FORMER MEMBERS' STAFFERS**

Members' staff who are terminated as a result of their employing Member not being returned to the Assembly are entitled to severance payments in accordance with the *Legislative Assembly (Members' Staff) Act 1989* and relevant Determinations made by the Chief Minister under *Sections 6(2) and 11(2)* of that Act.

Members' staff cease employment on polling day, however their employment is deemed to continue for another two weeks or until the result of the election is declared, whichever occurs first. The employment of staff of Members not re-elected is then terminated.

1.3 AUDIT OBJECTIVE

The objectives of the audit were to provide independent opinions to the Legislative Assembly on whether:

- superannuation payments made to former Members of the Legislative Assembly, who retired during the term of the Assembly, were in accordance with applicable legislation, guidelines and policies and the payments were correctly calculated;
- superannuation calculations for Members retiring following the February 1998 election were calculated in accordance with applicable legislation, guidelines and policies; and
- severance payments made to terminated staff of Members were in accordance with applicable legislation, guidelines and policies and the payments were correctly calculated.

The independent opinions formed as a result of the audit are set out in the shaded box on *page 3* of this Report.

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AUDIT OPINIONS

Superannuation payments to Former Members of the Assembly

Superannuation payments to three former Members of the Assembly who retired during the term of the Assembly were not calculated in accordance with applicable legislation, guidelines and policies; as a consequence superannuation payments made to the three former Members were overpaid.

Superannuation Calculations for Retiring Members of the Assembly

Superannuation calculations for the five retiring Members of the Assembly following the election were not calculated in accordance with applicable legislation, guidelines and policies; as a consequence superannuation calculations for four of the five retiring Members were incorrect. (Payment of the entitlements had not been made at the time the audit was conducted.)

Severance payments to Staff of Former Members of the Assembly

Severance payments to the staff of former Members, with the exception of a severance payment to a staff member of a former Minister, were generally calculated in accordance with relevant legislation.

1.4 BASES FOR AUDIT OPINIONS

The basis on which each audit opinion was formed is set out following.

1.5 SUPERANNUATION PAYMENTS TO FORMER MEMBERS OF THE ASSEMBLY

The opinion that *superannuation payments to three former Members of the Assembly who retired during the term of the Assembly were not calculated in accordance with applicable legislation, guidelines and policies* is based on the following findings:

- Superannuation payments to three Members who retired during the Third Assembly but prior to the 1998 election, were incorrectly calculated; these three Members have been overpaid their superannuation entitlements by; \$3,833, \$3,941 and \$4,976; and
- The overpayments occurred because in calculating Members' superannuation entitlements allowances paid to Members were incorrectly included as salary for the purpose of calculating the entitlements.

Audit Comments

Superannuation payments made to Members who retired during the Third Assembly but prior to the 1998 election were incorrectly calculated. The audit found that a component of Members remuneration had been incorrectly included in salary of Members for the purpose of calculating the superannuation entitlements.

The relevant legislation requires Members to make regular superannuation contributions equivalent to a

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percentage of their salary. Under the part of the legislation which governs the superannuation entitlements, only the salary on which Members regular contributions were based is to be taken as salary for the purpose of calculating Members' superannuation entitlements. A legal opinion was obtained by the Legislative Assembly Members' Superannuation Board which agreed with the Audit's interpretation of the legislation.

Following receipt of the legal opinion the superannuation entitlements were recalculated by Chief Minister's Department on the Boards behalf. The Audit reviewed these new calculations and found that all three calculations were incorrect.

The process by which the payments were recalculated was poor from an internal control point of view. The workpapers to support the calculations did not agree to amounts used in the calculations, nor was there any evidence that the workpapers had been subject to any type of review.

Audit has been advised that action has been initiated for recovery of the overpaid amounts relating to the three Members.

**1.6 SUPERANNUATION CALCULATIONS FOR RETIRING
MEMBERS FOLLOWING THE FEBRUARY 1998 ELECTION**

The opinion that *superannuation calculations for the five retiring Members of the Assembly following the election were not calculated in accordance with applicable legislation, guidelines and policies* is based on the following findings:

- the calculation of superannuation entitlements payable to Members retiring as a result of the February 1998 election were incorrect;

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- for four of the five Members the entitlement calculated were incorrect by amounts ranging from a potential underpayment of \$1,690 to an overpayment of \$646.

Audit Comments

The retiring Members superannuation payments had been calculated by the Chief Minister's Department, on the Board's behalf. After a lengthy delay the Audit obtained the workpapers supporting these calculated amounts and reviewed the calculations. The Audit found there were errors in the calculations as salary figures used in the calculations were incorrect.

The errors found in the Chief Minister's Department's calculations reflects a poor process by which the amounts were calculated. There was no audit trail to support the calculations, no evidence that any calculations had been subject to checking, nor could the Audit initially identify any officer willing to take responsibility for the calculations.

**1.7 SEVERANCE PAYMENTS TO STAFF OF FORMER MEMBERS
OF THE ASSEMBLY**

The opinion that *severance payments to the staff of former Members, with the exception of a payment to a staff member of a former Minister, were generally calculated in accordance with relevant legislation* is based on the following findings:

- Thirteen former staff of Members whose employment was terminated as a result of the February 1998 election received severance payments; these payments were made in accordance with relevant legislation and were calculated correctly;

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- Severance payments to a staffer of a former Minister were made by the Chief Minister's Department; three payments had to be made to this officer as it appears the Chief Minister's Department had difficulty in deciding what should be the officer's last date of service; and
- The Audit recalculated payments made to the officer and found that an incorrect last day of service had been used to calculate the officer's severance payment; as a result the officer had been underpaid \$530.

Audit Comments

The severance payments to Members' staff terminating as a result of the election were calculated by the Legislative Assembly Secretariat. The Audit found that payments were correct and that supporting workpapers were of a high standard and had been subject to review by a second officer.

The termination payments to the staff member of a former Minister were calculated by an area of the Chief Minister's Department. The difficulties encountered arriving at the correct entitlement for this staff member are consistent with the quality of the Chief Minister's Department performance in the calculation of Members' superannuation entitlements.

1.8 FUTURE ACTIONS

The following general actions should be considered for implementation to address the negative findings from the Audit:

- The ACT Legislative Assembly Members Superannuation Board needs to accept responsibility for ensuring that all superannuation

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payments made to retiring Members are calculated on the correct basis and are arithmetically correct;

- In fulfilling its responsibility the Board needs to regularly confirm that the process by which Members superannuation payments are calculated includes adequate internal controls to ensure the correctness of calculations;
- Officers involved in calculating Members' superannuation entitlements need to ensure they have a sound knowledge of the relevant legislation, guidelines and policies which effect the calculation of these entitlements; and
- The process by which severance payments are calculated for the staff of Ministers needs to include adequate internal controls to ensure the such payments are calculated on the correct basis and are arithmetically correct.

1.9 MEMBERS SUPERANNUATION BOARD RESPONSES

Responding to a draft of this Report the Speaker of the Legislative Assembly, as Chairman of the members Superannuation Board, advised:

“Upon receipt of your report I convened an urgent meeting of the Board to discuss what action should be taken in respect of the overpayments made to three Members who retired from the Assembly prior to the 1998 election.

The Board unanimously agreed that “consequent on advice from the Auditor-General of these overpayments the Members Superannuation Board had made a new determination and has written to the three Members explaining the reasons for our decision.”

In effect, the new determination confirms the overpayments and the individual amounts overpaid, and seeks restitution.”

1.10 CHIEF MINISTER'S DEPARTMENT RESPONSE

In a response to a draft of this Report the Chief Executive of the Chief Minister's Department advised that a complete review had been undertaken of the processes involved in assessing superannuation entitlements of Members and severance payments to Members' staff. The response included the following:

Superannuation Payments

“With regard to the review of process, the review has established correct, checked data to 30 June 1998 for all existing members. The two primary uses of the data are the provision of information statements to members and the calculation of future payments of entitlements. The working papers to support the past data and the copies or descriptions of the source documents are held on the superannuation file for each member.

The actual salaries and contributions data for periods after 30 June 1998 will be obtained from personnel and salaries systems and recorded on each Member's superannuation file. Separate details will be obtained from the Legislative Assembly for each period, e.g. financial year 1998-99 or the part-year period to a member's cessation, to identify all members during that period and the dates of any periods as an office holder. Using the Remuneration Tribunal Determinations applicable to the period, a projected superannuation salary will be calculated for each Member and compared with the actual data. Any discrepancies will be resolved before issuing statements or recommending amounts for determination by the Board.

As indicated in your draft Report, the primary source of errors was the incorrect inclusion of the general allowance as part of salary for superannuation purposes. This potential source of error is no longer relevant following the Remuneration Tribunal Determination 30 of 1998 which rolled the general allowance into the salary component of Assembly remuneration with effect from 24 April 1998.

Severance Payments to Staff of Former Assembly Members

The problems relating to the calculation of the severance payment for a staff member of a former Minister are noted. Instructions have been prepared to ensure the correct date of termination is used for the calculation of severance payments and that all calculations are checked for accuracy.”

Audit Comments

If the procedures outlined in the Chief Executive's response are systematically implemented and subjected to appropriate internal control the errors and the difficulties encountered in this Audit should not reoccur in the future.

In addition, since it is the Member's Superannuation Board which has legislative responsibility, the Board should regularly obtain written confirmation from the Chief Minister's Department that effective procedures are operating and that the procedures are being subjected to appropriate internal control.

2. SUPERANNUATION PAYMENTS MADE TO MEMBERS OF THE LEGISLATIVE ASSEMBLY

2.1 BACKGROUND

Member's superannuation entitlements are governed by the provisions of the *Superannuation (Legislative Assembly Members) Act 1991*.

Members are entitled to a superannuation payment when they cease to hold office on the grounds of non re-election, death, resignation, or retirement on the grounds of invalidity, disqualification or expulsion.

Superannuation payments are based on a Member's final salary multiplied by 29% for each full year of service. This percentage increases if the Member has been an Office-Holder for any part of the year, as well as being pro-rated for any part-years of service. For example, if a Member retires after three years of service on a final salary of \$65,250, their superannuation payment is calculated as follows:

$$\$65,250 * (29% * 3 \text{ years})$$

$$= \$65,250 * 0.87$$

$$= \$56,768$$

2.2 SIGNIFICANT FINDINGS

- *Superannuation payments to three Members who retired during the Third Assembly but prior to the 1998 election, were incorrectly calculated; these three Members have been overpaid their superannuation entitlements by; \$3,833, \$3,941 and \$4,976;*

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- *The overpayments occurred because in calculating Members' superannuation entitlements allowances paid to Members were incorrectly included as salary for the purpose of calculating the entitlements;*
- *The calculation of superannuation entitlements payable to Members retiring as a result of the February 1998 election were incorrect; and*
- *for four of the five Members the entitlements calculated were incorrect by amounts ranging from a potential underpayment of \$1,690 to an overpayment of \$646.*

2.3 MEMBERS' SUPERANNUATION ENTITLEMENTS

As stated previously the calculation of retiring Members superannuation entitlements is governed by the *Superannuation (Legislative Assembly Members) Act 1991*.

Section 15 of the Act defines how superannuation entitlements are to be calculated.

Section 13 of the Act states on which components of a Member's remuneration their superannuation contributions are required to be based on, and the rate at which their contributions are to be made (currently 5%).

A Members' remuneration can comprise; Basic Salary, General Allowance and Additional salary for Office Holders or Members who are Chairpersons of Assembly Committees.

Section 13 of the Act states:

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“A contributing member shall contribute 5% of his or her salary, including additional salary but not including allowances.....”

Members who hold no other Office were receiving a General Allowance of \$3,269 per annum.

**2.4 PAYMENT OF SUPERANNUATION ENTITLEMENTS TO
FORMER MEMBERS WHO RETIRED DURING THE THIRD
ASSEMBLY**

A review of the basis on which superannuation entitlements had been calculated found that General Allowances were incorrectly being included in Members' salary for the purpose of calculating superannuation entitlements.

This issue was raised with the Legislative Assembly Members Superannuation Board to determine if they agreed with the Audit's interpretation of what comprises Members' salary for the purpose of calculating their superannuation entitlements. The Board obtained a legal opinion from the Government Solicitors Office which agreed with the Audit's interpretation of salary for the purposes of calculating superannuation entitlements.

As a result of the incorrect treatment of allowances previously mentioned the three Members who had retired from the Assembly during the term of the Third Assembly have been overpaid their superannuation entitlements.

The overpayments totalled \$12,750 and ranged from \$3,833 to \$4,976. The aggregate amount paid to the three Members was \$327,468.

Audit has been advised that action has commenced to recover these overpaid amounts.

Audit Comments

After a lengthy delay the Audit was provided with the workpapers supporting the calculations of entitlements for the former Members. A review of the workpapers provided found that there was no trail of where amounts used in calculations had been obtained, and no evidence that the workpapers had been subject to any type of check.

Audit reperformed the calculations of the entitlements from source data and identified that the three Members superannuation entitlements were incorrectly calculated.

The Chief Minister's Department has now agreed with the Audit's recalculations of these entitlements.

The Audit believes the salary amounts used were incorrect as a result of the poor process by which the entitlements were calculated. As previously stated, a trail of how the payments were calculated did not exist, nor was there any evidence that the calculations had been subject to any checking process.

**2.5 CALCULATION OF SUPERANNUATION ENTITLEMENTS
FOLLOWING THE FEBRUARY 1998 ELECTION**

A review of calculated superannuation entitlements for the Members retiring from the Assembly as a result of the February 1998 election found that four out of five of these entitlements had been incorrectly calculated. The reason for these errors occurring is similar to the three Members who retired from the Third Assembly, ie. incorrect salary amounts were used on which to base the calculations of superannuation entitlements.

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Fortunately the entitlements had not been paid prior to the Audit, so recovery action does not need to be taken.

The aggregate amount calculated by the Chief Minister's Department for the five members who retired as a result of the February 1998 election was \$329,304. The correct amount was \$328,345. The net potential total overpayment was therefore \$959 with individual amounts ranging from an underpayment of \$1690 to an overpayment of \$646.

3. SEVERANCE PAYMENTS MADE TO MEMBERS' STAFF

3.1 INTRODUCTION

All severance payments made to Members' staff following the February 1998 election were audited to ensure they were correctly calculated in accordance with the requirements of the *Legislative Assembly (Member's Staff) Act 1989*. This Chapter presents the results of the audit of severance payments.

3.2 SIGNIFICANT FINDINGS

- *Thirteen former staff of Members whose employment was terminated as a result of the February 1998 election received severance payments; these payments were made in accordance with relevant legislation and were calculated correctly;*
- *Severance payments to a staffer of a former Minister was made by the Chief Minister's Department; three payments had to be made to this officer as it appears the Chief Minister's Department had difficulty in deciding what should be the officer's last date of service; and*
- *The Audit recalculated payments made to the officer and found that an incorrect last day of service had been used to calculate the severance payment; as a result the officer had been underpaid \$530.*

3.3 SEVERANCE PAY ARRANGEMENTS

Member's staff are employed under the *Legislative Assembly (Member's Staff) Act 1989*. Under Sections 6(1) and 11(1) of this Act, the terms and conditions of these staff are to be the same as those of ACT Public Service employees. However, under Section 6(2) and 11(2) the Chief Minister can make Determinations which can vary the terms and conditions of employment.

The Chief Minister issued a Determination on 26 June 1997. This Determination states the circumstances in which Members' staff receive severance pay, and the basis on which severance pay is to be calculated. Under the Determination, Members' staff are entitled to severance pay benefits when their employment is terminated other than through resignation or for an offence that would have led to dismissal from the ACT Public Service. An officer's employment is automatically terminated if their member does not seek re-election or is not successful in being re-elected.

Severance payments are based on years of service and calculated on the basis shown on the following page.

Members' staff accrue recreation leave and leave bonuses on the same basis as ACT Public Service employees. Members' staff are also entitled to be paid long service leave on a pro-rata basis where their periods of employment are more than one year but less than 10 years.

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SEVERANCE PAY ENTITLEMENTS

Length Of Service With A Member	Severance Pay
Less than 1 year	2 weeks gross annual salary
1 year or more but less than 2 years	6 weeks gross annual salary
2 years or more but less than 3 years	8 weeks gross annual salary
3 years or more but less than 4 years	10 weeks gross annual salary
4 years or more but less than 5 years	11 weeks gross annual salary
5 years or more but less than 10 years	12 weeks gross annual salary
10 years or more	15 weeks gross annual salary

3.4 SEVERANCE PAYMENTS MADE

Thirteen severance payments totalling \$144,306 were made to Members' staff who were terminated as a result of the election. The payments ranged from \$579 to \$29,253.

One payment was made to an officer who was terminated as a result of a Member ceasing to be a Minister.

Audit Comment

The severance payments to Members' staff were calculated by the Legislative Assembly Secretariat. The Audit found that the payments were correctly calculated and the workpapers supporting the payments were of a high standard and had been subject to review by a second officer.

The Former Minister's staff member had to be paid on three separate occasions before receiving the correct total amount of entitlement. The officer concerned was terminated when the Member ceased to be a Minister and so had available funding for staff reduced.

The amount paid was affected by the date of the officers' termination of which there was initially some question. On the first occasion it was determined that the officer's employment terminated when the Member ceased to be an Office Holder on 18 February 1998. The second time the entitlement was calculated used a termination date of 1 April 1998 which was the date on which the Chief Minister was declared Chief Minister plus a two weeks formal notice period. It was eventually determined that the correct date was 18 March 1998, the date that the Chief Minister, was declared as Chief Minister and therefore the date on which all former Ministers ceased to hold their positions.

The payments to the staff member of a former Minister were calculated by the Chief Minister's

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Department. The difficulty encountered with the calculation of the correct entitlement for this staff member is consistent with the quality of the Chief Minister's Department performance in the calculation of Members' superannuation entitlements.

Annexure

Reports Published in 1992

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

Reports Published in 1993

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

Annexure (continued)

Reports Published in 1994

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

Reports Published in 1995

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

Reports Published in 1996

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

Annexure (continued)

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

Reports Published in 1997

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

Annexure (continued)

Reports Published in 1998

- 1 Management of Preschool Education**
- 2 Lease Variation Charges - Follow-up Review**
- 3 Major IT Projects - Follow-up Review**
- 4 Annual Management Report for Year Ended 30 June 1998**
- 5 Management of Housing Assistance**
- 6 Assembly Members' Superannuation and Severance Payments to Former Members' Staffers**

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