

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: revenue raising in the ACT)

Members:

**MR B SMYTH (The Chair)
MS K GALLAGHER
MS K TUCKER**

TRANSCRIPT OF EVIDENCE

CANBERRA

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**Secretary to the committee:
Mr D Abbott (Ph: 62050199)**

By authority of the Legislative Assembly for the Australian Capital Territory)

The committee met at 2.11 pm.

KEN COGHILL was called.

THE CHAIR: I call the committee meeting to order. Ken, perhaps you would like to address the committee and then we will move to questions and answers and have a general discussion.

Dr Coghill: The invitation to me, as I understand it, was to talk about relations between public accounts committees and auditors-general. My paper dwells particularly on that, but the last half of the paper is a separate matter, that is, an index that is in preparation which might be a way of measuring the independence of the Auditor-General. I have just noticed that I have put the wrong heading on it, but the text is correct.

Just to recap what this project is about, I am currently a sabbatical fellow of the Australian National University and I am reviewing the relationships in which the Auditor-General is involved, on the basis that it is my hypothesis that you can't look just at what the Auditor-General does and say, if you look at his act and look at the other things which guide his action, that they define what he is actually doing. In fact, it is quite important to look at the relationship which he has with the committee, the relationship which he has with the executive and the relationships which he has with the various departments and agencies.

The whole project has been about getting information and trying to develop a better theoretical understanding of how that all operates. I think there are three different ways in which you can think about interrelationships. One is the interconnections: what are the things that are held in common by the Auditor-General and others that he deals with? Secondly, what are the things that affect his interdependence? For example, the fact that he does not appropriate his own resources means that he has an interdependence with the Assembly most formally, but the executive more informally, about the size of the appropriation.

The third area to look at is what I call interactions. In other words, if the Auditor-General takes a particular action, such as present a report, then who are the people who are affected by that and who act or react as a consequence of that and, conversely, who are the individuals and what are the institutions influencing what the Auditor-General does, who he decides to review, how he decides to conduct a review and what have you?

That, in summary, is what the project is about. The way I have proceeded is to interview people ranging from the chairmen of the respective committees at the Commonwealth and the ACT level to the auditors-general and people from the departmental side of the executive—not to the ministers, but to the departmental side—and the media, to try to get their perceptions about how these interrelationships actually work.

That brings me to the immediate issue that I have been invited to talk about today, that is, the relations between the Auditor-General and committees such as your own. I have generally taken this as a generic thing rather than, in the first instance, limiting myself to the ACT Public Accounts Committee.

In starting to look at that and starting to analyse that, as I have on page 4 of my paper, if I look at the interconnectedness, then I am looking at the extent to which there are values shared between the committee and the Auditor-General as to how the Auditor-General's function should be discharged, as to what powers he should have and as to how he should exercise those powers. On my observation, there does not seem to be a significant disparity, but, obviously, I would welcome any comment that you have on that.

On the matter of interdependence, again it seems to me that there is not a problem, but that is very much a product of not just what the legislation says, but the fact that you have a commitment at this committee to non-partisan behaviour. On a number of occasions, the Leader of the Opposition has been chairman of the committee, but the Leader of the Opposition, so far as I can determine, has not used the committee as a vehicle for pursuing his partisan responsibilities in other contexts. It would appear to me that the PAC has generally exercised quite a professional attitude in the way in which—

MS TUCKER: Here?

Dr Coghill: Yes, this PAC has generally handled its relationships and its responsibilities in a quite professional manner. But, in thinking about PACs generally, that is not something that can ever be guaranteed by legislation. It is one of those informal things which will depend on the culture of the Assembly, it will depend on the culture of the individual members who are appointed at any one time, and it will particularly depend on the approach which is taken by the chair of the moment.

As I say, my indications are that that is operating pretty well here, as it is in most jurisdictions; but one can imagine that, if there were a very partisan chair or a very partisan division within the committee, that really could have quite serious implications for the way in which the Auditor-General was able to operate and for the credibility of both the committee in the public's eyes and, presumably, in the Assembly's eyes as well as the credibility of the Auditor-General himself.

The next category—interactions between the PAC here and the Auditor-General—also seemed to me to be healthy. The impression I get from talking to the Auditor-General, as I have, and to you is that there is mutual respect for the Auditor-General's independence, that there is no tendency towards interference or attempts to influence him by political direction. Conversely, and just as importantly, the Auditor-General, without accepting direction, is sensitive to investigating matters that are raised either by the committee or by members of the Assembly. Thus, I think it is that informal aspect of the culture which is really important about the way in which it operates. If you are simply looking at the legislation, you cannot get a proper picture of the way in which any particular jurisdiction is operating.

Having said that, I have some comments here about your own committee's role. Some of my comments here are quite general, but others are quite specific to the ACT. The opening point I make is that the PAC has a role which extends beyond its relationship with the Auditor-General and you all understand that. You are a committee which is operating on behalf of the Assembly and you do have a limited capacity to act. There is not an absolute discretion in what you do. You do report to the Assembly and in lots of instances, if you propose some course of action, then it does require an endorsement by

the Assembly before you can pursue it, although there are some things on which you have a discretion. But the great strength of a committee like yours is in its potential to act at a much more detailed and a much more personal level than is possible for an Assembly, whether it is of the size of yours here or a much larger body.

A particular thing I want to comment on is the special role which you have in the auditing of what the Auditor-General does. Whether or not there has been a breakdown in trust between the Auditor-General and ACT departments as a result of the Bruce Stadium investigation, I am not in a position to make a definitive judgment. My own inquiries have been too limited and have merely raised the possibility that there may have been a breakdown and that that breakdown may still persist today.

If such a breakdown does or did exist, then you can imagine that that might be quite significant for the conduct of audits, especially performance audits, in that if departments are not confident in making information available to the Auditor-General, he could spend weeks and weeks going through filing cabinets, which would make for a much less efficient performance audit process. My research has not been designed to explore whether that is happening, but it did strike me in thinking about it that, if anything like that could be happening, it is the sort of thing that could properly be addressed in the course of a review of the performance of the Auditor-General's functions.

With performance audits of the Auditor-General, it is the responsibility of the PAC to appoint the independent auditor. But, thinking about how such a review might occur, it seems to me that by reviewing just what the Auditor-General is doing, you might only reveal half of the picture if there were such a problem. In particular, it might well fail to reveal any problems in relationships between the Auditor-General and the departments. It would tell you that the Auditor-General was doing things well or badly, but it would not tell you whether that was being frustrated or facilitated by the nature of the relationship between the Auditor-General and the auditees.

I have suggested here that if the committee were to address whether there is a lack of trust between the auditor and the auditees, it would need to examine the contribution of each to that situation and the potential role of each in overcoming any problem. In practical terms, that would indicate that, whatever riding instructions you gave, the independent auditor would investigate those matters. It seems to me that in the overall, whether or not there is a problem there, a comprehensive performance audit which did examine the behaviour of both the auditor and the auditees has the potential to extend and develop understanding of the factors which affect the effectiveness of the auditing. With that in mind, its findings could well be vital to the quality of the auditing and may, indeed, offer lessons for other jurisdictions.

That was the principal point that I wanted to make in my presentation at your invitation. I am more than happy to discuss that further or to discuss other matters which I have not already raised.

THE CHAIR: Thank you.

MS TUCKER: I am interested in the discussion. Just on your last point first, I am interested also in this question because recently there was a report on the spending by the government of \$10 million from the Treasurer's Advance. The auditor has made

comment on that. I was wondering about what happens between the auditor and the officials that we do not see. You can see what a government response is to a criticism or a qualification, obviously. It is quite coincidental that you are raising these issues, as I was seriously thinking of asking under FOI, through the committee potentially because we are going to be looking at it, for details of any written communication that occurred leading up to what we ended up seeing in the report.

I do not know whether it is a result of what happened with Bruce Stadium, which is an interesting thing you have added for us to think about, but generally a defensive posture is taken by a department when there is something as serious as this and there are slight qualifications of the language used—for example, “misuse of money” or “may be illegal” rather than “is illegal”. I imagine that those subtle differences could have been the result of some quite interesting conversations. I would like to know what those conversations were.

I was a bit uncomfortable with raising that because I was thinking that I may be implying in some way that the auditor has been compromised, and I wouldn't like to make that reflection on the Auditor-General's Office. On the other hand, it would be of concern if that happened. There is a lot of weight in a department's response if it is negative. If really good arguments are put for changing a position, fine, that is a good process, but how do we know that that is actually what has happened? It is very interesting that you have said what you said today because I have been thinking about it since the tabling of this report of the Auditor-General.

THE CHAIR: If I may butt in there, I think the auditor has accepted our invitation to come and meet and we are trying to arrange a date. He mentioned to me at Christmas drinks on Friday that he is looking for a date early in February, so that is a question that we can put to him directly. I will lend you my copy of my FOI request, which is due on 12 January.

MS TUCKER: Are you asking for those things?

THE CHAIR: I have already asked for them, yes.

MS TUCKER: How interesting; we had the same thought. It is just an example of wondering what the process has been. I just wonder whether it will be possible to really work it out, because there are probably phone conversations and so on anyway, but you can ask for the written material under FOI.

THE CHAIR: There are always file notes.

MS TUCKER: There may be file notes. With Bruce Stadium, there weren't many file notes.

Dr Coghill: I suppose what I am getting at, in part, is that one of the comments right through the Bruce Stadium report was that records were not available and presumably were never created—people said things and people agreed with things without actually formally writing them down. One of the issues, presumably, is whether that situation has changed in the intervening years and whether there is now a higher—“higher” probably

is the right word—standard of administration which does record all significant decisions and communications.

Just in terms of the formality of the particular case that you cite, I suppose the documents which certainly will exist will be the draft report which will have been provided before the final report and the full text of whatever the executive's response was to the draft report. It is not universal that the full text of the executive's response will be incorporated in the Auditor-General's report. Sometimes it will be, but it isn't necessarily there.

THE CHAIR: What led you to pose the question that there might be a lack of trust following Bruce?

Dr Coghill: I had picked up some suggestions of it from some people, but not from everyone. I would have to say that in the Commonwealth there have been similar issues, not put as strongly. Because people don't like being exposed as having done something wrong, they have got a natural tendency to withhold information which might be self-incriminating, to put it in formal terms.

Earlier in the paper—something I didn't speak directly to—I point out that there is some very interesting evidence from other circumstances of ways of handling problems like that which make a response or make people's behaviour look as if it isn't self-incrimination, but, in fact, is a more objective look at the events rather than the individual. That is something that might be taken into account in any review of how the Auditor-General's work is being undertaken.

THE CHAIR: On your charts at the rear, I assume the higher the score the more independent somebody is?

Dr Coghill: Yes, that is what it is intended to convey.

THE CHAIR: The ACT does quite well in terms of the way that we have set up the independence of the audit.

Dr Coghill: This is still very much work in progress, but on the basis of a maximum score of 100—not because it is my home state, but because of recent amendments, I think—Victoria comes out at 88, the Commonwealth at 83 and the ACT at 80, all of which are very close together and all of which are a leap and a bound ahead of the other jurisdictions.

THE CHAIR: That is reassuring.

Dr Coghill: As you will see from the weightings that I have got here, a lot of it arises from the ways in which you do things here. There is a very well-entrenched statutory independence of the Auditor-General, probably as strong here as you will find anywhere in Australia. You have got a strong relationship between your committee and the Auditor-General. I think, on balance, there is some merit in having a non-government member as the chair of a PAC, but others will argue strongly against that—the Commonwealth, for example. But what is most important is that you have got a PAC that appears, on all the evidence I have gleaned, to be functioning on a non-partisan basis.

MS TUCKER: The only comment I would make in terms of our role of scrutiny or checking on how we think the Auditor-General is working is on the question of environmental performance audits. As you know, I amended the act so that that was there.

Dr Coghill: The Assembly did at your initiative.

MS TUCKER: Yes. We put up a motion to change it and the Assembly accepted it, or we changed the legislation; I can't remember how it happened. Basically, it has never really been done. In fact, with the moving of the Canberra Tourism and Events Corporation to the Brindabella Business Park, the committee made a comment on that.

THE CHAIR: I mentioned that report to Ken.

MS TUCKER: Right.

THE CHAIR: I wonder whether yesterday's announcement that the Chief Minister is now the minister for the environment was prompted by that. Did you pick that up?

MS TUCKER: Yes. Did he say something about the Auditor-General?

THE CHAIR: No, I am posing the question here. With the Chief Minister taking on the role as minister for the environment, perhaps he sees it as having a bigger role than linking it with the Office of Sustainability.

MS TUCKER: Yes, it could be increasing the status of the environment in the government's work.

Dr Coghill: Certainly, on the face of it, if there is a statutory requirement that he take into account environmental factors, that is a legitimate thing to be reviewed as part of the performance audit.

MS TUCKER: There was also the suggestion I put at the time and was not supported. I did consult with the Auditor-General when we developed that legislation, if that is what we did, about including a social analysis in performance audits. He was not prepared to do that because he did not feel that there were indicators developed to enable him to do that. Because we now have an Office of Sustainability which is actually integrating our environmental and social sustainability and the understanding of what sustainability is about, I am hoping that that work will be done there.

There is an expert panel or reference group supporting the development of that office, particularly the indicators, so that we can see how well we are moving with sustainability. When we have developed indicators, that would enable the Auditor-General to pick up that work in a performance audit. I think that it is really important if you are serious about triple bottom line reporting, as it is called, that the auditor have a proactive role in looking at things in that way as well.

I remember a report on housing that I felt, as they do, regarded the social issues as externalities, but it was really a quite inadequate analysis in one way. Even though it was not pretending to be any different, the government at the time, as governments do, put a lot of weight on that auditor's report because it was a good financial analysis. Interestingly, we have just had a similar report on housing. An affordable housing task force was set up to produce a remedy for the lack of affordable housing options in the ACT. It was supported by a report by John Hall, a consultant who was brought in to look at different ways of managing government assistance to public housing.

The statement was clearly made in there that the stability of safe, secure housing was an externality that he could not take into account in his analysis; so, once again, the weight that is given to that is out of balance. It is an important analysis, but it needs to be balanced with the others. That is just a general comment I would make about the role of the Auditor-General. It would be fantastic if that office could actually pick up these issues, because then you would really have a picture. We talked about having accrual accounting as if somehow its introduction would be the answer to all our concerns, but it is not because it is so narrow. Sure, it picks up depreciation and liabilities, but not the liabilities that are related to these so-called external and environmental costs. That is just a general comment I would like to make.

Dr Coghill: I suppose once you have got the Auditor-General looking at those things, then he will start undertaking critical reviews of what the executive is doing, which, in turn, will force the executive to address those sorts of issues.

MS TUCKER: Yes, hopefully. Have you met Howard Pender?

Dr Coghill: No.

MS TUCKER: We will introduce you in a minute. Howard will be talking about ethical investment and the whole question of what we do with our money and whether it is ethical to put our money where we are putting it. It is another example of a consideration that I think should be brought into these questions as well.

Dr Coghill: Are they legitimate? There is no reason at all why any jurisdiction is obliged to make purely rate of return assessments. That, in itself, is a judgment as to what is important. If the Assembly or the Executive makes a decision that there are other factors which have to be taken into account and they should have a particular weighting, then that is an entirely legitimate thing for any jurisdiction to do.

THE CHAIR: Governments, with their buying power, can influence markets. Governments have picked up recycled paper and, because they were buying in volume, they were able to bring the price down. You can actually use government spending power for other goods as well, so there are a number of questions there.

Dr Coghill: I was watching the news last night and heard the comment on the success of getting people onto public transport in the ACT.

MS TUCKER: If you did a performance audit in terms of the money that we spend on roads and you took into account the costs, then we might get a really different result.

Dr Coghill: Yes. If you put a particular weighting on the generation of greenhouse gases, you would get a different result than if you just looked at the pure cost to budget of maintaining roads.

MS TUCKER: What is the process now? Will we get to see what you have written?

Dr Coghill: I have still got a small number of interviews to do, so it won't be written up before I finish on Friday, but I will be back in about November of next year for a seminar and will present a paper. I hope that you and other interested people will come along to participate in it.

MS TUCKER: I would be very interested.

THE CHAIR: Thank you very much, Ken.

Dr Coghill: It has been a pleasure. Thank you.

HOWARD PENDER was called.

THE CHAIR: I call the meeting back to order and welcome Mr Howard Pender to address the committee.

Mr Pender: Thank you very much, Brendan. I feel I should say, first of all, to Kerrie that I went to school with Brendan and so if I at all sound familiar, I don't wish to sound disrespectful. I should also say to you, Brendan, that I sent a copy of a paper—I don't know if you have seen it—

THE CHAIR: ACT government tax revenue long-run design issues.

Mr Pender: Yes. This is a sort of a derivative of a draft I wrote for a staffer of Kerrie's about five years ago. I don't know if Kerrie even knew of its existence.

MS TUCKER: Yes, I did. You did it with Natasha.

Mr Pender: Yes, that's right.

THE CHAIR: We have got copies of that.

Mr Pender: I am now a company director of two companies in particular in the ACT. I presume I have been asked to come here in regard to my former life as an academic with a particular interest in tax policy. I have two books, both of which were published by the Australian Tax Research Foundation. I have even had the pleasure of walking into AGPS and seeing them on the shelves, and not looking for them—a very unusual pleasure.

I thought I would speak today about longer-term issues in the design of tax revenue, which seemed to accord with your committee's terms of reference for this inquiry. I want to go over a few important issues to get straight when you are thinking about tax revenue, before we actually go on to some of the specific issues of the ACT.

If you would turn to the extract from the *Joy of Tax*. First of all, I want to talk about tax design rules, and if you have a read of the book you will read about that in more gory detail. But probably the most important rule in a city state is rule 5, which is to be careful of taxes whose burden falls on the owners of capital if the capital is mobile, because it will just leave. As a director of companies operating in Canberra but with offices in Sydney, I make decisions which will influence employment in Canberra and so the amount of capital—"capital" fairly broadly construed—that I choose to locate in Canberra influences the economic prosperity of the town.

Just to talk about the legal kind of restrictions on tax design, if you turn over the page you will see that I have extracted a table from the *Joy of Tax*. Table 2.1 is entitled "The Pattern of Legal Restriction on Tax Design". It is worthwhile getting on top of this because it helps you to understand any tax that you might think up. Natasha, I recall, had some weird and wonderful ideas for taxes, and some of them were perfectly possible but some of them just weren't. So it is useful to get on top of this.

I am sure you are familiar with the fact that the states can't levy excise. They used to get around that till about 1997-98 with a business franchise tax calculated on the value of the goods. That was ended by the High Court at that time. I haven't read any High Court opinions on the issue since *Capital Duplicators*, but I haven't heard of any. I haven't been an academic and keeping in touch. The decision of the majority of the High Court in *Capital Duplicators* was that the territory's power to tax is like a state government's power to tax.

I guess I presumed, not having thought about it very much, that the power to tax of the territory was like a delegated power of the Commonwealth. I think that is what you would be inclined to think, without knowing too much about it. But the majority decision was to the contrary and the power of the territory to tax is like a power of the states in Australia. That means that the ACT is constrained, like the states, in the design of its taxes and cannot levy an excise.

Unfortunately, because three judges thought to the opposite, it sort of puts the territories in the worst position. If you want to be exploratory in the design of any ACT taxes, you are going to have to be careful because you might well have people who don't like them trying to appeal to the opinion of the three judges who thought that it was a Commonwealth tax.

I think the most important issue there is that the Commonwealth power to tax on a geographically discriminatory basis is fettered. If we were in New South Wales, we can happily impose a bed tax on a hotel that is different in the CBD of Sydney as opposed to in Queanbeyan. If the ACT is thought to be like a state, then it can happily impose a tax whose burden differs between Tuggeranong and Mitchell but if it is a delegated power of the Commonwealth then it can't. So the ACT and the Northern Territory are sort of in a nasty situation in some ways, in that it is the worst place legally to experiment with taxes, because you are probably a state but you might always be, in the opinion of three of the judges—and who knows what will happen in the future—like the Commonwealth.

I have split tax bases in this table into taxes on labour income, on private wealth, on public wealth and on consumption and business inputs. The main thing to keep in mind when you are thinking about territory taxation is you can't have an excise which is a tax on a commodity—the production, manufacture or sale of a commodity. I think probably there are a few which might be at the blurry edge of that, and it is not going to be clear whether they are going to be a service or a commodity—something like water, electricity or gas are probably sort of at the blurry edge of that.

When I am thinking about any taxes I usually think about four criteria, and they are efficiency, equity, social justice and simplicity. I think the most important thing to observe about taxes in general in Australia is that the Commonwealth taxes in some of them are sort of drowning under the weight of their complexity. I don't know if you have seen the tax act recently, but when I first got involved in it, which was about 10 or 15 years ago, it was one Bible. Well now it is bigger than four Bibles and it is just impossible. You just can't understand it; nobody can possibly understand it. It is very good for one of my businesses, SoftLaw, whose business is helping government deal with complexity. But look, I would be quite happy if we just went back to one—that would be quite enough for SoftLaw. We don't have that problem at the state level. Most

of the state taxes have not gone down that sort of route of excess complexity. They are mostly relatively fairly simple taxes.

Just before I go on to the actual grouping of the taxes in the ACT, I might say that at the time I wrote the first draft I was, on a philosophical and intellectual level, anxious about the situation of the ACT because we were running quite a large deficit and it wasn't clear that anybody was going to do anything about it. This was five years ago. There was a report from the Auditor-General. I stopped writing that paper when the Grants Commission basically came to the party for the ACT. The ACT benefits quite a lot from horizontal fiscal equalisation, as I am sure you're aware. The concerns I had that the ACT really would be forced to significantly increase taxes five years ago I think are fairly substantially reduced because of the Grants Commission recognising the special situation of the ACT, and in particular the poor tax base of the ACT.

I think the main risk now is pressure. And you can't see it happening in the immediate period but, with the abolition of horizontal fiscal equalisation, the ACT would suffer fairly seriously if the Commonwealth just went to per capita divvying up of grants. We have had horizontal fiscal equalisation—I am going to call it HFE; it's too much of a mouthful—since before the Second World War; I think it goes back to the Depression. So it is hardly likely to change in a hurry, and I think that is probably a reasonable approach, although I think the intellectual justification for HFE does weaken as the size of the grants in the accounts of the states gets larger.

I think if you were starting today and you were told that the Commonwealth grants to the states are going to be a third, a half—and the way things are going it may get even larger—of the expenditures of the states, then I don't know that you would support a schema designed to ensure that a state which taxes an average base at an average level can have an average level of expenditure. I think you are more likely to say, "Look, let's just give everybody a per capita share," if you are giving out 50 per cent or 60 per cent. But I think the point of all of that is that there is a less of a concern about the ACT's quantum of tax revenue than there was five years ago.

In the second part of the paper that I have handed out I have gone through some of the major ACT tax bases and talked about some of the arguments for increasing or decreasing them. I have split them up into bases where the ACT has got a fairly strong power to make unilateral changes and others where it has got a fairly limited power. The one where the power is limited is payroll tax. And I have to say that I was concerned, Brendan, by the behaviour of your predecessors who seemed keen to compete aggressively with payroll tax some years ago. I have studied the Asian experience with tax competition and also the experience in provincial and state governments and other places in the world. Usually the base just slowly disappears. I mean, tax competition is a good idea and I can see, if I was a local politician, that I would engage in tax competition. But it isn't really a successful long-term strategy.

It is a shame that Ms Gallagher isn't here, because I would like to say the same to her. I read the other day that they are going to introduce a bill to increase the payroll, or effectively increase the payroll, tax burden to fund maternity leave and long service leave schemes—I think that is effectively what it is. I have an almost equal concern about that. I think that if you imagined yourself as the sole director of the sole business that employs all the ACT private sector employees and the ACT increased its payroll tax

levels well in excess of those applying in New South Wales, that would be more like an increase in company tax. The wages are not going to change. If I am the director of that hypothetical company, I am still going to have to pay.

The wages I pay are determined by New South Wales policy basically, perhaps with some offset for different levels in the standards of services provided in the ACT. But an increase in payroll tax, especially when we are already the highest payroll taxing jurisdiction, is likely to result in businesses choosing to hire people in New South Wales rather than the ACT. So I think payroll tax is an area where we have fairly limited power to set the rates differently to what they set in New South Wales. I mean, that is just the situation.

That view seemed to me to be well understood and is clearly articulated in quite a lot of recent ACT budget papers, but I don't know if what the bureaucrats are writing reflects what the politicians used to think. I don't know now the Labor Party has got in that they are thinking differently. But the attitude of both parties worries me. I would strongly—

THE CHAIR: So what is the answer? You go on further to talk about the moral dilemma facing ACT politicians.

Mr Pender: Look, I have got more sympathy in this case with the Liberals than the Labor Party. I just can't understand. I wouldn't do either. If I was going to do anything, I think I would fall on the side of "let's have a little bit of competition". But I wouldn't have a payroll tax waiver until three years later or something. I would enforce it fairly more rigorously than what I saw. I mean, it made me feel very uncomfortable hearing around the town that I could go and see someone and get a payroll tax exemption. It just didn't seem right at all.

THE CHAIR: It wasn't quite that simple, but we won't argue the detail at this stage.

Mr Pender: Well that's how it came across.

MS TUCKER: And it was for 10 years. I mean, that is what the contracts for multinational companies last for. You do wonder.

Mr Pender: Very similar things happen in a lot of the Asian jurisdictions and I just don't think it is a very good idea if you are trying to run an accountable Westminster system. But there is a problem. We haven't got the capacity to set payroll tax. I think that is really what you have got to recognise. You have got to say, "Okay, we're going to set payroll tax pretty much in accord with payroll tax in New South Wales. Otherwise we're going to lose business."

THE CHAIR: So it has got to be at an equal rate or better or lesser than New South Wales?

Mr Pender: I think it has got to be. I think there is only a point in being better if you can clearly demonstrate an attraction, a benefit, to the ACT and you have got to offset the loss of good will you cause for all the people who are paying their payroll tax, like me, who don't want to be a part of special deals to get payroll tax exemptions, who just prefer to pay their payroll tax. When you read that Impulse Airlines or something gets

some special deal, you think, “I’ve got employees in the ACT, why should I pay payroll tax?” That is what happens in the Asian countries. Singapore manages to do it, as only Singapore can, in a fairly aggressive and targeted fashion. But in a lot of the other countries the difference between business tax exemptions and corruption is often difficult to see. I mean, that is what happens.

If you have a look on page 8 you will see that I have categorised the taxes. In the middle there are taxes where we have got some modest power. We just had a bit of a discussion about some vehicle issues—Kerrie was talking about the Auditor-General and the GRI standards and so on. I think in that category, especially with used cars, we have got some capacity, although I think it would be worthwhile investigating going further. I think Derek or you, Brendan, was talking about the UK government thinking about going the Singapore way and actually taxing the use of the roads by trying to make a congestion tax.

The areas where we have got strong power relate to the things that can’t go away—land tax, rates, stamp duty on conveyance. I have a preference for land tax and rates over stamp duty on conveyance because stamp duty on conveyance is a tax on moving whereas the others are taxes on just being and, you know, people aren’t sort of staying in houses longer than they should.

Of course, the problem with doing the land tax up for stamp duty down swap is the asset rich/cash poor people. You have to do something at least in the short-term to deal with their situations as they have long paid their stamp duty and often haven’t got the cash to pay the land tax. I have briefly discussed a couple of potential—

THE CHAIR: You don’t actually put payroll tax in there.

Mr Pender: I have got payroll tax up the top in the limited power. It is hiding.

THE CHAIR: Yes.

Mr Pender: I suggested that the ACT government investigates a geographically variable electronic tolling on major Canberra roads. The ACT is hardly congested like a large city but it is becoming far more congested than it was 20 years ago. And those sorts of taxes are really similar but better than land taxes. The scarce roads are a resource which the government can price and have, very unusually for tax, an economic efficiency benefit as well as potentially environmental benefits.

People have talked about, if you don’t go the whole hog and you sort of stick with registration and stamp duty and so on, whether you should vary that with the emission categories of vehicles. The biggest problem that I see with that is that emissions seem to vary too much with the individual vehicle, with the state of the tune of the vehicle. So I don’t know that that is an attractive way to go although it might well be worth doing at a fairly gross level so that you only had a few categories, given that there can be so much variation in emissions with individual vehicles.

I have just briefly at the end discussed a few new taxes that I think might be considered by the ACT government, remembering that we can’t levy a tax on commodities. I think there is a strong argument for a carbon or energy tax. Energy use is such a small part of

a commercial office owner's or a building owner's costs that I don't think the arguments that apply to payroll tax that you are going to lose people are going to apply. We are not going to see Civic shift out to Queanbeyan if we imposed a tax on electricity sales in Civic. It is too inelastic.

Another tax that I think might be considered is some tax on the use of the airport. There are similar arguments to the arguments about taxing cars as they drive around the city. Some of the environmental externality obviously applies also to the use of an airport. Sorry, I have gone a little bit more than I had promised, so I will stop there.

THE CHAIR: That is fine.

Mr Pender: I am quite happy to answer any questions.

MS TUCKER: With the carbon taxes, say on electricity bills, are you talking just about the commercial area?

Mr Pender: Kerrie, it would be better if it applied to everybody obviously.

MS TUCKER: So how do you bring the questions of equity and social justice into that for poor people?

Mr Pender: Well, I think the answer to that depends on what tax you take off really, doesn't it. If you are doing it as a sort of a tax neutral swap, it depends on the equity.

MS TUCKER: What do you think you would swap it with?

THE CHAIR: Have we said we would do that?

MS TUCKER: What?

THE CHAIR: Take taxes off? I didn't think we had said that.

MS TUCKER: No. I am just interested in that general argument. It is coming up now with the water.

Mr Pender: It is difficult for a state government to do a lot in the way of progressive tax. The vast bulk of the contribution of the government to social equity in Australia is done by the Commonwealth, and it is done with expenditure. Only about one-third of the work is done with the Commonwealth's progressive income tax. If you reduced stamp duty, which has got one progression in the ACT, I think—isn't there a higher rate stamp duty on conveyance, a higher rate—

THE CHAIR: They have just changed that, so the more expensive the house the higher the tax—

Mr Pender: Yes, okay. Stamp duty is statutorily progressive—I know it was a few years ago that I looked and it was in Sydney. It is not economically progressive; it is statutorily progressive. But it is not going up fast enough. The richer people are owning a more expensive house and the stamp duty is actually a regressive tax, despite its statutory

progressive scale. So if you introduced a tax on electricity in the ACT and you take it from less stamp duty then you are probably not doing anything at all in regards to social equity—you are probably having a neutral sort of impact.

THE CHAIR: Or are you having a negative impact in—

MS TUCKER: Can you explain that again.

THE CHAIR: I think you are probably having a negative impact, assuming that people, say in public housing, who don't own houses and therefore don't pay stamp duty when they buy and sell would be caught with a carbon tax if it is charged at the same rate.

Mr Pender: You might be but the equity of taxes on housing is a pretty vexed one when you think of your benchmark and you include your public housing subsidies—there are a couple of paragraphs about this in this book. The first greatest beneficiary of both the tax treatment and public housing are the lowest quintile of public renters, as you would hope. The next greatest beneficiary are the top quintile of owners. They benefit because there is no tax on imputed rent and on capital gains on owner-occupied property. So you think of that as your benchmark, which I think is probably reasonable. It is an equity sort of thing. It is the people you think get the best and the next best are the last people you would really want to be benefiting. So you might well be right.

THE CHAIR: If I remember rightly, stamp duty was one of the taxes that should have gone with the introduction of GST?

Mr Pender: Well it should have but there was always humming and hawing about the stamp duty on conveyance, the stamp duty on insurance and all the miscellaneous stamp duties. I think it is still supposed to be reviewed in 2005, isn't it? It was supposed to go at the beginning with the GST and it never went. But stamp duty on insurance is a decent bit of ACT government revenue. You wouldn't say it is a strong power.

If I were doing five or 10-year forecasts of ACT revenue I wouldn't factor in getting as much money from those miscellaneous stamp duties. But if you wanted to, you could have the highest rate of stamp duty on conveyance, the most progressive scale, and I don't think you would suffer in the way that you would suffer if you have a payroll tax; it is only a little bit in excess of New South Wales. People just can't up and move, the land just can't go. All of those Asian governments who have very aggressive attitudes to tax competition also have this very strong Confucian tradition of high taxes on land that they don't compete with at all.

THE CHAIR: Why do you suggest we have got limited power over payroll tax?

Mr Pender: Because the businesses can move, and I think the burden of the payroll tax, if it is higher than New South Wales, falls on the business. I would think of payroll tax more like company tax, from your perspective. It is like that example I spoke of before—think that you are the sole director of the ACT company that employs all of the private sector employees in the ACT. It is limited power to act without prejudice. It is not limited power, obviously. The Assembly tomorrow can pass a resolution that doubles the payroll tax, but it is going to start getting into the spreadsheets, isn't it? I mean, as long as it is similar it just doesn't have any locational effect. But if you start pushing on it then

when I get a spreadsheet in regard to should we have more people working at the Sydney office or the Canberra office, it is going to start having a little bit of an impact.

THE CHAIR: Sure, okay. So, at the current time are the taxes we levy about right?

Mr Pender: Do you mean in quantum or how would I change them if I was the king of the ACT?

THE CHAIR: How would you change it? You're king for a day—how are you going to change it?

Mr Pender: I would have a good look at electronic road tolling. That is attractive. That is in the same sort of boat as land tax. It is a way we can improve our city. We can make it function better, and we can have an economic efficiency benefit, we can have an environmental benefit. It's not the sort of thing that I would say today "definitely do", but if I was King for a day and then I was going to be King in a year's time, I think I would have a good look at it.

What else would I do? I certainly would not compete with payroll tax. I basically set the payroll tax rate the same as in New South Wales, and every time I looked at it and I wanted a bit of money, I would say, "Don't touch that. That's just going to cause you trouble."

I think the next thing I would do would be to start looking at some environmental taxes. I would start with a small energy tax and I would try to use the revenue to reduce the payroll tax back to the New South Wales level.

I would probably reduce the stamp duty on conveyance, if I could, but I would pay for it, if I had to, with land tax. I also personally have a distaste for dependence on "sin tax" revenue, and I would push them past the point of maximum revenue.

THE CHAIR: The gaming and lotteries?

Mr Pender: Yes, but that is a personal sort of preference.

THE CHAIR: I think the Productivity Commission has already commented that we actually underachieve on gaming and lottery taxes.

Mr Pender: Yes. I would say I want to discourage these activities as well as raising revenue. So I would push the taxes to a point where the revenue is going down because you are actually discouraging the activity.

THE CHAIR: And you make the saving in other areas.

MS TUCKER: So you would increase the "sin taxes".

Mr Pender: Increase the "sin taxes", yes.

MS TUCKER: But I thought the real danger there is that you actually don't change human behaviour and the government just becomes more and more dependent on that amount of revenue. And there is still so much to be made. At what point would you tax it so that people didn't think it was worthwhile to—

Mr Pender: Look, I could possibly be swayed by an argument like that, Kerrie. I just don't like to see government's dependent on those sort of revenues, either.

MS TUCKER: I don't either.

THE CHAIR: Well, at this stage we are the least dependent, and I think that's a good thing.

MS TUCKER: But it is still too much.

THE CHAIR: Well, of course it is.

MS TUCKER: And we don't want to risk increasing it.

THE CHAIR: Yes.

MS TUCKER: I can understand that at first glance it is an attractive option.

Mr Pender: Well, I would increase the rates. I would keep the revenue low either by not taxing it much or by pushing it so hard that you would lose the revenue because you had pushed the rate so high. That would be my attitude. I would prefer not to be dependent on it.

MS TUCKER: You would go to that extreme?

Mr Pender: If you draw a picture of the revenue against the rate, it is going to go like that. So if this is the rate and this is the revenue, I would be here or here. I wouldn't be up here, where you are actually dependent on a big portion.

THE CHAIR: Whereas we are probably halfway between one of your low marks and your highpoint. My understanding is that the Productivity Commission has been critical that we actually don't, relative to the other states and territories, tax enough of the "sin taxes". They see it as an opportunity for the ACT government.

MS TUCKER: To raise money.

THE CHAIR: Yes, to raise money. But it doesn't count the social consequences.

MS TUCKER: It doesn't take into account the conflict of interest government then has to change the behaviour.

Mr Pender: And I think that is the worst sort of aspect. I think this is an issue that the ACT is going to face—and quite possibly we will get away for another five or 10 years or longer. The ACT has become very dependent on the Commonwealth.

THE CHAIR: Are we more dependent than the other jurisdictions.

Mr Pender: Yes, I think so—as a portion of expenditure, yes.

MS TUCKER: And there is less potential for raising revenue, too.

Mr Pender: We have got a 15 per cent premium. We have got relativities of 15 per cent. And mostly—well, almost entirely—it is to compensate for our poor base. We have got higher than average expenditure, and average effort, average tax rates, but a base that is shot because of the presence of the Commonwealth in the town. It might well be for a long time that the federation will be quite happy to sort of subsidise that. But you just have to see a risk that one day they will say, “Okay, we will keep doing that for half the money, but for this bucket we’re just going to divvy it up on a per capita basis.” Then the ACT is really going to have to look either at its over-average expenditure levels, or more likely at its tax bases.

I guess maybe, from my point of view, if I was you I would be thinking about having the low rates on the wider bases. If you have to do that, you can do it. If you had, say, a very low rate land tax that applied to all properties, not just to the non-residential ones, then that is a potential. If that day comes to pass then there is a place that you can get more money reasonably. If it happened soon you would be back to the situation five years ago of scratching around wondering what to do in terms of where the ACT is going to get more money.

THE CHAIR: Are there any more questions?

MS TUCKER: No, that’s fine. Thanks very much.

THE CHAIR: Thank you. And there endeth the public part of the proceedings.

The committee adjourned at 3.21 pm.