

SUBMISSION 69.4

CHIEF MINISTER'S DEPARTMENT
Chief Executive



Senator Kate Lundy MP
Chair
Joint Standing Committee on the National Capital and External Territories
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Senator ~~Lundy~~ *Kate*

Thank you for your letter dated 26 May 2008 in which you requested additional assistance from the ACT Government in developing your recommendations regarding your inquiry into the role of the National Capital Authority (NCA).

You specifically raised the question as to whether the ACT has any additional information or unpublished material in relation to the Commonwealth Grants Commission's (CGC) 2004 Review regarding a range of expenses incurred by the ACT Government in relation to National Capital matters.

I am informed by the Department of Treasury that there is no additional information readily available other than that outlined in the ACT Government submissions listed on the CGC website for the 2004 Review, which I understand you have already accessed.

In stating this, I should put this response into context, and take the opportunity to explain why, and also provide a way forward for the Committee to consider when framing their recommendations.

Before doing so, I believe it is important to provide the Committee with a definitive statement on exactly what, and how, the ACT is currently reimbursed by the Commonwealth for all National Capital impacts at both the Local and State level of government. This is regardless of whether or not they specifically arise from the roles and responsibilities of the NCA.

For this purpose, the Department of the Treasury has prepared a statement that is provided in the Attachment to this letter.

As you are aware, the former Joint Standing Committee Inquiry into the Role of the National Capital Authority in July 2004, released its report titled '*A National Capital, A Place to Live*' that included eleven recommendations, aimed at simplifying the planning regime and improving the NCA's transparency and accountability.

The former Commonwealth Government in responding to the Report agreed to only one of the Committee's recommendations, namely, to adopt an integrated approach by the Territory and the Commonwealth in relation to future planning projects.

Unfortunately, from an ACT Government perspective, there was no clear indication that the Commonwealth Government intended to do anything different in relation to consulting the Territory.

Importantly, there was never any suggestion of developing a mechanism whereby the Commonwealth could be held accountable for its decisions that impact on ACT Government responsibilities, nor any acceptance of financial responsibility.

The ACT continues to experience difficulty in progressing major planning projects in the Territory. There are countless examples whereby the ACT Government has been stonewalled by the NCA over proposed developments.

To illustrate the point, one example that comes readily to mind was the lengthy delays for the Civic Library and Link Project. This project was originally intended to be a 5-storey facility that would replace the existing single storey foyer between the Canberra Theatre and The Playhouse. The facility was to house the theatre foyer and box office, and become the new, permanent home for the Civic Library.

Due to a lengthy consultation process that included a review of the design by the NCA, it took four years before construction could commence on the project. The final link design was reduced to 2-storeys, so that the Mt Ainslie/City Hill corridor was preserved.

Though additional costs were kept to a minimum, the long delays to this development disrupted interim plans for the Civic Library, wherein the ACT Government had to negotiate to extend leases and organise temporary accommodation for the library if needed.

Other prominent examples include:

- the Gungahlin Drive Extension; and
- the Pierces Creek redevelopment.

In these circumstances, the Territory Government suffered from increased costs, lengthy delays and community frustration due to the NCA refusing to entertain, or at the very least compromise on, planning proposals.

The only mechanism available to the ACT was to seek some form of recompense through the CGC and the application of the fiscal equalisation principle, whereby, the ACT's special circumstances are partly recognised in the distribution of the GST. As you are aware, the ACT has had only limited success in respect of this avenue.

For its part, the CGC continues to recommend National Capital allowances as illustrated in the Attachment. These allow for extra costs incurred by the ACT and stem directly from influences that were unavoidable consequences of Canberra's status as the National Capital and the Seat of Government.

As alluded to in your correspondence, in its 2004 Review the CGC assessed that the Territory receive National Capital allowances totalling \$27.57 million (commencing in 2004-05 and indexed annually) from a total claim developed by the ACT of \$86.36 million, a shortfall of some -\$58.79 million.

Importantly, of the total claim of \$86.36 million, \$51 million was either directly, or indirectly, attributed to the National Capital Plan (NCP) and its agent—the NCA, in a variety of areas that the CGC assessed at \$13.4 million only.

Unfortunately, the CGC did not agree that the ACT should receive compensation for a range of NCA related activities, including:

- costs for foregone development opportunities because of national capital plan circumstances, estimated at approximately \$26.5 million; and
- tourism, and the restrictions and additional costs of NCA requirements at approximately \$5.7 million.

Other important non-NCA related national capital claims rejected by the CGC included:

- Diplomatic Students—the ACT successfully campaigned the CGC, during the 1999 Review, for a disability allowance recognising that the ACT houses a disproportionately large amount of diplomatic students. The CGC accepted that such students imposed additional costs, including access to the English as a Second Language program:
 - the total allowance translated to approximately \$4 million per annum up till 2003-04. Unfortunately, this decision was reversed during the 2004 Review when the CGC concluded that students from diplomatic families did not have a material impact on the ACT's Budget, and that the previous allowance was based on unreliable data; and
- Housing—the ACT argued that at self-government, there existed a backlog to maintenance and repairs to public housing due to decisions made by the Commonwealth and that the ACT did not receive any transitional allowance for this. The CGC concluded that it was difficult to conclude whether extra maintenance costs could be attributed to the Commonwealth after 15 years of self-government.

The CGC took the view that as time elapses from the date of self-government, it would be reasonable to suggest that the number of national claims would reduce. However, in reality this is not the case due to the ongoing nature of national capital influences and the fluidity of Commonwealth policy decisions that affects these costs.

The CGC has on occasion expressly stated that the ACT should undertake all endeavours to enter into direct negotiations where possible for compensating the ACT for a number of National Capital allowances.

The CGC's approach seemed to be affected by the change in Commonwealth-State funding arrangements from Financial Assistance Grants to GST. The fact that the GST legislatively belongs to the States and Territories, the CGC seemed to think it is no longer appropriate for Federal related expenses to be funded from this pool.

For this reason, the CGC, which is two thirds of the way through its 2010 Review of the underlying methodology, has to date adopted a status quo approach to the type and quantum

of National Capital claims. We are aware however, that other jurisdictions have specifically questioned the CGC on the continued application of any National Capital allowances.

In the absence of a Federal Government prepared to take responsibility, the ACT has little room to manoeuvre. For example, directly charging Federal Government agencies for additional costs generated by the ACT's large diplomatic presence (education of diplomats children, rates etc.) would be an approach encouraged by the CGC.

Such a process could involve a lengthy and costly exercise for the ACT agencies to identify underlying costs of Commonwealth impacts, which would prove difficult without the cooperation of the Commonwealth who has consistently shown no desire to address these issues.

However, options to deal with other national capital costs—including those relating to the NCA and NCP—do not lend themselves to direct negotiation, as the current structures do not provide either the Minister for Territories or its agent, the NCA, to negotiate and have the funding capacity to account for the differential costs arising from their actions.

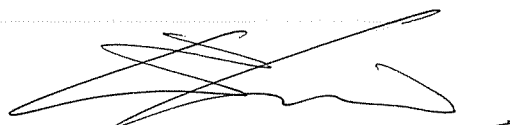
What is required is a substantial shift in policy from the Commonwealth based on the principle that in the first instance, it bears the brunt of any financial impost it imposes on the ACT arising from its decisions. This principle should not be restricted directly to the roles and responsibilities of the NCA, but more generally to all ACT Government services where Commonwealth policy imposes differential costs on service delivery aspects.

Having established an appropriate accountability framework, a suitable mechanism that facilitates the negotiation and subsequent funding flows between the respective jurisdictions is critical. This might best be achieved under the umbrella of a Memorandum of Understanding or some other form of Intergovernmental Agreement between the ACT Government and the Minister for Territories.

Any developments along these lines would be a welcome outcome for the ACT Government in order to facilitate a direct approach to the Minister for Territories in the first instance.

I hope these comments are helpful and I wish your Committee well as you finalise your recommendations.

Yours sincerely



Andrew Cappie-Wood
Chief Executive

AL June 2008

ATTACHMENT

NATIONAL CAPITAL ALLOWANCES

The following is an outline of current payments made to the ACT in recognition of Canberra's status as the National Capital and Seat of Government.

These payments arise from the obligation on the Commonwealth as stated in Section 59 of the *ACT (Self-Government) Act* that requires the Commonwealth to conduct its financial relations with the ACT on the same basis as the States and the Northern Territory, while having regard to the special circumstances arising from the existence of the National Capital and the Seat of Government being in the Territory.

GST revenue collected by the Commonwealth is distributed to the States according to the principals of Horizontal Fiscal Equalisation (HFE). The Commonwealth Grants Commission (CGC) undertakes an annual assessment to determine the relative advantages and disadvantages faced by State Governments in revenue raising capacity and expenditure on State level services.

As such, HFE, for the purpose of distributing the GST revenue pool, does not provide a mechanism for the Commonwealth to compensate States for Local Government type services.

In lieu of this, the findings of the *Commonwealth Grants Commission's Second Report on financing the ACT*, released in June 1986, included an assessment of municipal services in the lead up to the introduction of self-government. The report recommended two types of payments to compensate the ACT for these unique circumstances at the local government level, which continue to this day.

National Capital Grants for Local Government

As a consequence, the Commonwealth Government directly compensates the ACT Government for national capital expenses through Specific Purpose Payments (SPPs) via the Minister for Territories.

The intention of these payments, which are indexed annually for inflation, is to assist the ACT Government in meeting the additional Local Government costs arising from Canberra's role as the National Capital, namely:

ACT National Capital Influences:

This grant recognises that Canberra's role as the National Capital and Seat of Government imposes additional costs and/or restrictions on the ACT Budget such as the inability to rate Commonwealth property and the extra costs the ACT Government incurs due to the design and layout of the National Capital:

- For 2007-08, this funding amounted to \$24.0 million.

Assistance for Water and Sewerage:

This grant compensates the ACT for extra costs in providing water and sewerage services attributable to higher maintenance and operational costs arising from the excess length of water and sewerage mains due to the dispersed nature of urban development in the ACT in its open space setting.

- For 2007-08, this funding amounted to \$9.6 million.

Fee for Service Arrangements

The ACT provides services on behalf of the Commonwealth Government through fee for service agreements and is fully compensated for the cost (\$1.3 million in 2007-08). Such services include:

- the administration of the French-Australia school;
- processing diplomatic vehicle registration concessions;
- processing overseas births, deaths and marriages;
- the provision of the International Baccalaureate; and
- administering correspondence courses for the children of Federal Government officers posted overseas.

National Capital Grants at the State Level

In the 2004 Review, the CGC accepted that the ACT incurred additional costs because of the special circumstances it faced. The special circumstances included:

- allowances for national capital influences. These were assessed to allow for the additional costs incurred by the ACT because of Canberra's status as the national capital and seat of government. These disabilities were funded from the combined pool of GST revenue and Health Care Grants; and
- special fiscal needs. These were assessed to allow for the additional costs incurred by the ACT stemming from cost legacies inherited at self-government. The CGC did not consider it appropriate for these additional costs to be funded from the combined pool; it recommended that they be funded separately by the Commonwealth Government. They related to:
 - corporate affairs compensation – the ACT is excluded from the arrangements agreed between the Australian and State Governments for payments for revenue foregone following the establishment of the National Scheme of Companies Regulations;
 - police services – the ACT does not have control over the terms and conditions of Australian Federal Police officers employed in ACT policing; and roads – the ACT does not have control over the higher maintenance costs associated with wider arterial roads it inherited from the Commonwealth Government at the time of self-government.

In its 2004-05 Budget, the Commonwealth Government said that it would cease providing special revenue assistance to the ACT from 2005-06.

The CGC considered whether some or all of the special fiscal needs should be brought within the scope of equalisation and funded from the pool. After consulting with States it decided to include the police and roads assessments but to exclude, and so effectively discontinue, the corporate affairs compensation assessment.

It excluded the latter because the terms of reference quarantined the corporate affairs payment received by the States.

National capital allowances

The process of assessing national capital allowances is based on the ACT mounting a claim for an allowance and the CGC deciding the case on its merits.

In the 1999 Review, the CGC assessed allowances totalling \$24.3 million. In the 2004 Review, the ACT sought allowances totalling \$86.4 million. The CGC assessed allowances totalling \$27.6 million. The amount assessed for each category is shown in Table A and B provides the reason for each allowance assessed in the 2004 Review.

Table A National Capital Allowances, 2004 Review

Category	Allowance sought	Allowance assessed
	\$m	\$m
Education	4.000	-
Housing	13.000	-
Public Safety	3.300	1.900
Culture and Recreation	5.800	4.870
National Parks and Wildlife Services	0.500	0.100
Primary Industry	0.572	-
Tourism	5.700	-
Urban Transit	2.100	1.500
General public services	33.387	5.000
Police services	7.400	7.400
Roads	6.400	2.600
Corporate affairs compensation	4.200	4.200
Total	86.359	27.570

Source: Commonwealth Grants Commission, 2004 Review Working Papers, Volume 7, Table 2, page 623 and Table 6, page 639.

Table B National Capital Allowances – reason for assessment

Category	Reason for assessment	Allowance \$m
Public Safety	The impact of the above average areas of urban/bush interface;	0.5
	The impact of the heightened threat of terrorism on the ACT's public and diplomatic buildings; and	0.4
	The additional cost arising from the ACT's limited ability to recruit volunteer fire fighters. It accepted that this was a consequence of its status as the national capital, particularly the atypical land use patterns arising from the National Capital Plan	1.0
Culture and Recreation	The additional costs incurred by the ACT in managing and maintaining above average urban open space; and	4.87
	The additional costs incurred by the ACT in managing and maintaining land classified as Designated Land Areas under the National Capital Plan.	
National Parks and Wildlife Services	The additional costs of managing the Canberra Nature Park under the National Capital Plan	0.1
Urban Transit	The impact of reduced bus patronage because of the Australian Government policies that prohibited parking fees being charged on Australian Government land; and	0.5
	The impact of the ACT's urban form resulting from the National Capital Plan on pricing subsidies.	1.5
General public services	The impact of the National Capital Plan on the ACT's capital works program;	1.0
	The impact of the National Capital Plan on the ACT's planning and development activities; and	1.5
	The additional costs incurred by the ACT in operating a leasehold land management system.	2.5
Police	The additional cost of the above average salaries of AFP. It accepted the ACT had no power to influence the terms and conditions of AFP employees and had no practical alternative but to use AFP as the provider of its policing services.	7.4
Roads	The additional maintenance cost of wider arterial roads inherited by the ACT at self-government.	2.6
Corporate Affairs Compensation		4.2

Source: Commonwealth Grants Commission, 2004 Review Working Papers, Volume 7, Table 2 page 623, Table 6 page 639 and Table 4 page 661.