

Auditor-General Acting Appointment 2018

Disallowable instrument DI2018–225

EXPLANATORY STATEMENT

Section 8(1) of the *Auditor-General Act 1996* (the Act) states that the Speaker must, on behalf of the Territory, appoint a person as auditor-general. Section 8(2) and s 8(3) of the Act sets out a range of conditions that must be satisfied in making an appointment.

Following the conduct of a recruitment and appointment process, an appointment, capable of satisfying the conditions mentioned above, was not able to be made before the expiration of the term of appointment of the current auditor-general. Accordingly, the Speaker is required to appoint an acting auditor-general to acquit the functions of the role while an additional recruitment and appointment process is conducted to make an appointment for 7 years as provided for pursuant to s 8AA.

Notwithstanding the operation of s 8A of the Act, which introduces a requirement for the Speaker to consult with the presiding member of the public accounts committee in making an acting appointment, there is no power granted to the Speaker under the Act to appoint an acting Auditor-General.

In the absence of explicit provision in the Auditor-General Act, the lawful authority to appoint an acting Auditor-General is provided by s 209(2) of the *Legislation Act 2001*. One of the requirements in making appointments pursuant to s 209 is that the power to appoint a person to act is ‘exercisable in the same way, and subject to the same conditions, as the powers to make the appointment’. This means that all the conditions provided for in s 8 of the Auditor-General Act must be complied with in making an acting appointment.

Accordingly, in making the acting appointment, the Speaker:

- consulted with the persons mentioned in ss 8(2)(a)-8(2)(c);
- conducted an open and accountable selection process in accordance with s 8(2)(d);
- was satisfied that the person to be appointed has extensive knowledge of, and experience in, governance, risk management and public administration in accordance with s 8(3)(a); and
- sought and received the agreement of the public accounts committee to the person’s appointment in accordance with s 8(3)(b) (and in so doing also consulted the presiding officer of the public accounts committee in accordance with s 8A).

Pursuant to s 8(5) the appointment is a disallowable instrument.

Section 217(1)(a) of the Legislation Act provides that an acting appointment can be made by naming the person.

Having met the necessary statutory requirements, the Speaker appoints Ajay Sharma as appointee to the position of acting Auditor-General for a period of six months.