

2020

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**REVISED - GOVERNMENT RESPONSE TO
STANDING COMMITTEE ON PUBLIC ACCOUNTS REPORT 8**

**Inquiry into Auditor-General's Report No. 7 of 2016
Certain Land Development Agency Acquisitions**

**Presented by
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Government Response to Standing Committee on Public Accounts inquiry into Auditor-General's Report 07/2016: Certain Land Development Agency Acquisitions

Background

On 30 September 2016, the Auditor-General provided to the Speaker of the Legislative Assembly the *Performance Audit Report 07/2016: Certain Land Development Agency Acquisitions*. The report made seven recommendations.

On 28 February 2017, the Minister for Housing and Suburban Development tabled the Government Response to the audit report. The response agreed with each of the seven recommendations of the audit report.

On 28 March 2017, the Public Accounts Committee resolved to inquire into the matters in the Auditor-General's Report 7 of 2016. The inquiry report was completed in November 2019 and made 13 recommendations.

The Government observes that a number of the propositions in the report reflect a limited understanding of government processes or the evidence that was given. In particular, it was wrong for the Committee to call for evidence from a witness – AQUIS – draw conclusions from that evidence and provide no opportunity to the government to respond prior to the finalisation of the report. Such a breach of the Committee's obligations of procedural fairness is concerning.

Government Position on Recommendations

Recommendation 1

The Committee recommends that the ACT Government commission formal valuations for all purchases of land by the ACT Government, paid for at market rate.

Government Position – Agreed. This already occurs. In April 2017, the ACT Government introduced the Portfolio Valuations Policy (PVP) which requires formal valuations prior to land transactions. The PVP was reported in the Suburban Land Agency's 2018-19 Annual Report. The PVP is reviewed regularly.

Recommendation 2

The Committee recommends the ACT Government obtain at least two valuations current at time of purchase when it seeks to acquire land.

Government Position – **Agreed in principle.** The PVP already requires two valuations be obtained, one of which may be obtained by the seller. If no valuation is obtained by the seller, then the ACT Government must obtain two.

Recommendation 3

The Committee recommends the ACT Government, when seeking to secure services to government in the property sector other than valuations, such as training and liaison with prospective sellers, obtain these under formal contract.

Government Position – **Agreed in principle.** The ACT Government already follows the requirements of the *Government Procurement Act 2001* and the *Government Procurement Regulation 2007* when procuring services. Depending on the nature and value of the services being supplied, it is generally preferable that services are supplied under a written agreement. Entering into formal contracts, where the expectations of each party are clearly described, also supports an appropriate level of governance in relation to those arrangements.

Recommendation 4

The Committee recommends that the ACT Government conduct all negotiations for acquisitions, or any other contractual matter, in a manner consistent with Clause 3.1 of the *Law Officer (Model Litigant) Guidelines 2010 (No 1)*, and the principles of the Guidelines more generally.

Government Position – **Agreed in principle.** The ACT Government is committed to conducting its business fairly and consistently within the spirit that underpins the Model Litigant Guidelines, noting that the guidelines apply to the conduct of claims and litigation not commercial negotiations, and many aspects of Clause 3.1 are not relevant to front-end legal work such as commercial negotiations or acquisitions.

Recommendation 5

The Committee recommends that the ACT Government apply a consistent approach to dealing with other parties in land acquisitions, applying similar approaches in similar settings while allowing for variations according to documented specific and defensible requirements.

Government Position – **Agreed in principle.** Where circumstances are sufficiently similar a consistent approach should be applied. There are practical difficulties in implementing such an approach uniformly across a public service of over 25,000 with complete assurance.

Recommendation 6

The Committee recommends that the ACT Government consider amending the *City Renewal Authority and Suburban Land Agency (City Renewal Authority Land Acquisition) Direction 2017* to provide legislative tests for land acquisitions by the ACT Government.

Government Position – **Agreed in principle**, noting it is unclear whether the Committee understands the directions applies only to the SLA and CRA as appropriate. The ACT Government will consider whether any further requirements need to be included in the mandatory business case and guidelines for land acquisitions as part of any reviews undertaken in the future.

Recommendation 7

The Committee recommends that wherever possible the ACT Government acquire land for large projects under the provisions of the *Lands Acquisition Act 1994*, or equivalent legislation, and that this be the default setting for such acquisitions in the future.

Government Position – **Agreed**. Wherever possible, given the nature of the transaction and the terms of the legislation, the ACT Government will follow the provisions of the Lands Acquisition Act in the case of acquisition of land by agreement and by compulsory acquisition.

Recommendation 8

The Committee recommends that where the ‘public purpose’ character of an ACT Government project is not clear that the ACT Government either make a declaration to the Assembly under section 19 of the *Lands Acquisition Act 1994* or present in the Assembly legislation which, if passed, would make specific provision for land acquisitions for that project.

Government Position – **Noted**. This is a complex area of law that requires careful consideration. If land is to be acquired by agreement under section 32 or by compulsory process under section 33 of the Lands Acquisition Act, the pre-acquisition declaration under section 19 may be used to identify the acquiring authority, the land, the interest in the land and the public purpose. However, whether or not a purpose is a public purpose will depend on the particular circumstances and whether it meets the relevant legal test. Simply declaring a purpose to be a public purpose does not make it so. Any legislative instrument purporting to acquire land must meet the constitutional requirements under the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth).

Recommendation 9

The Committee recommends that the ACT Government review the *Lands Acquisition Act 1994* to determine the suitability of the Act in its present form as a basis for land acquisitions by the ACT Government.

Government Position – **Agreed in principle.** The Government is of the view that the Act, in its current form, is fit for purpose. However, if significant issues are raised with the legislation, a review would be considered.

Recommendation 10

The Committee recommends that any proposals to amend the *Lands Acquisition Act 1994* which proceed from a review of the Act be referred to the Standing Committee on Public Accounts for inquiry and report.

Government Position – **Agreed.** As the Committee would be aware, the Legislative Assembly may refer any bill to amend the Land Acquisition Act to the Public Accounts Committee for inquiry. Any proposals to amend the Act will be referred by the Government.

Recommendation 11

The Committee recommends that the ACT Government define and apply appropriate sanctions for staff who do not comply with legislatively-defined processes for responding to requests for information under *Freedom of Information Act 2016* requests.

Government Position – **Agreed in principle.** The Government agrees with the need for compliance with the *Freedom of Information Act 2016*. The Freedom of Information Act already includes a range of offences for failing to comply with that Act, for example, making a decision contrary to the Act, giving a direction to act contrary to the Act and failing to identify information. Further, the *Public Sector Management Act 1994* provides for a public service code of conduct and misconduct procedures for failing to comply with it.

Recommendation 12

The Committee recommends that the ACT Government clarify principles and constraints for the hire and retention of contractors so that government agencies will not re-hire recent employees as contractors.

Government Position – **Agreed in principle.** Secure employment is the highest priority for the Government. However, operational circumstances may mean it will be prudent for Government agencies to take advantage of skills and expertise of former staff. The ACT Government is governed by the *Government Procurement Act 2001* and the Government Procurement Regulation 2007.

The ACT Government also implemented the ACT Public Sector – Commercial Engagements with former ACT Public Service Executive policy, which introduced additional considerations to manage the potential for conflicts of interest when engaging former executive employees.

Recommendation 13

The Committee recommends that the ACT Integrity Commission investigate the four acquisitions and any other matters raised in this report.

Government Position – **Noted**. The Committee may refer matters to the ACT Integrity Commission.