



**Legislative Assembly for the
Australian Capital Territory**

Standing Committee on Public Accounts

Inquiry into the Auditor-General's Report No. 1 of 2021: Land Management Agreements

Legislative Assembly for the Australian Capital Territory
Standing Committee on Public Accounts

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About the committee

Establishing resolution

The Assembly established the Standing Committee on Public Accounts on 2 December 2020.

The Committee is responsible for the following areas:

- ACT Auditor-General
- Office of the Legislative Assembly
- Accounts of the receipts and expenditure of the ACT and its authorities
- All reports of the Auditor-General which have been presented to the Assembly
- Treasury including taxation and revenue.

You can read the full establishing resolution [on our website](#).

Committee members

Mrs Elizabeth Kikkert MLA, Chair

Mr Michael Pettersson MLA, Deputy Chair

Mr Andrew Braddock MLA

Secretariat

Mr Samuel Thompson, Committee Secretary

Ms Miriam El-Chami, Assistant Secretary (on secondment from the House of Representatives)

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About this inquiry

Under its resolution of establishment, the Standing Committee on Public Accounts examines all reports of the Auditor-General which have been presented to the Legislative Assembly. Specifically, the resolution requires the Committee to inquire into and report on reports of the Auditor-General which have been presented to the Assembly.

Acronyms

Acronym	Long form
ACT	Australian Capital Territory
Audit Report	The Auditor-General's Report No. 1 of 2021: <i>Land Management Agreements</i>
EPSDD	Environment, Planning, and Sustainable Development Directorate
Legislation Act	<i>Legislation Act 2001</i>
LMA	Land Management Agreement
MLA	Member of the Legislative Assembly
Planning Act	<i>Planning and Development Act 2007</i>

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Recommendations

Recommendation 1

The Committee recommends that the ACT Government ensure that Land Management Agreements contain minimum requirements and are fit for purpose.

Recommendation 2

The Committee recommends that the ACT Government ensures that the Environment, Planning, and Sustainable Development Directorate are reporting and referring all potential non-compliance to Access Canberra in relation to Land Management Agreements for monitoring or further investigation.

Recommendation 3

The Committee recommends that the ACT Government ensures that Access Canberra is more proactive in investigating referred reports of non-compliance.

Recommendation 4

The Committee recommends that by mid-2023, the ACT Government develop and implement governance arrangements for Land Management Agreements. As the responsible entity for the governance arrangements, Access Canberra should:

- monitor rural leaseholders' compliance with their Agreements; and
- in the event of non-compliance—take enforcement action and, where appropriate, more significant interventions.

Recommendation 5

The Committee recommends that, by December 2023, Access Canberra provide a report to the Committee on the number of referrals of potential non-compliance made to Access Canberra and the compliance action taken in response.

Recommendation 6

The Committee recommends that, by December 2022, the Minister of Planning and Land Management provide an update to the Committee on its development and implementation of a strategic framework for monitoring and compliance of Land Management Agreements.

Recommendation 7

The Committee recommends that the ACT Government ensure that each Land Management Agreement contains a clause stating that the Agreement must be reviewed, and replaced if appropriate, every five years.

1. Introduction

Preliminary

- 1.1. Reports of the Auditor-General form a significant part of the Committee's work. The Committee has an important role to follow-up on the reports and recommendations of the Auditor-General.
- 1.2. Where the Committee determines a report of the Auditor-General requires further examination by the Committee, it may conduct a formal inquiry into the matter. This may include calling for written submissions, hearing from witnesses, and preparing a written report for presentation to the Legislative Assembly.

Acknowledgements

- 1.3. The Committee acknowledges those who contributed to its inquiry, including the Auditor-General, the Minister of Planning and Land Management, directorate officials, and the Australian Government Solicitor's Office.

2. Conduct of inquiry

Referral and decision to further inquire

- 2.1. The Auditor-General's Report No. 1 of 2021 *Land Management Agreements* (the Audit Report) was presented to the Legislative Assembly on 9 February 2021.
- 2.2. The Audit Report examined and considered the management and administration arrangements in place for Land Management Agreements including the monitoring, regulation, and enforcement of agreement requirements.
- 2.3. In accordance with the resolution of establishment of the Standing Committee on Public Accounts (the Committee), the Audit Report was referred to the Committee for examination.
- 2.4. On 11 May 2021 the Committee formally announced to the Assembly it would be undertaking further inquiry into the Audit Report.
- 2.5. The Government Response to the Audit Report was presented to the Assembly on 3 June 2021.

Conduct of inquiry

- 2.6. On 27 May 2021 the Committee received a briefing from the Auditor-General and his staff in relation to the Audit Report.
- 2.7. On 17 June 2021 the Committee heard evidence from the Minister for Planning and Land Management, Mr Mick Gentleman MLA, and senior officials of the Environment, Planning and Sustainable Development Directorate responsible for administering Land Management Agreements.
- 2.8. On 1 November 2021 the Committee received legal advice pertaining to issues arising from its inquiry into the Audit Report.
- 2.9. On 15 June 2022 the Committee met to consider the Chair's draft report on its inquiry.
- 2.10. On 15 June 2022 the Committee adopted the Report on its inquiry for presentation to the Legislative Assembly.

3. Audit background and outcomes

- 3.1. This chapter presents an overview of the Audit Report including its findings and recommendations.

Audit background

- 3.2. The Audit Report examined Land Management Agreements, which provide a basis for cooperative land management between rural leaseholders and ACT Government agencies that are ‘responsible for managing non-urban land on behalf of the Territory’. Land Management Agreements are unique to the ACT, with the Audit Report stating that:

No other jurisdiction in Australia has a legal agreement with every rural landholder to deliver sustainable management of rural lands including the conservation of natural and cultural values.¹

- 3.3. The Audit Report provided that the intention of Land Management Agreements are to ‘facilitate cooperation between ACT Government agencies and rural leaseholders’:

... with a view to establishing appropriate sustainable agricultural management practices and good farm biodiversity whilst maintaining the ecological and cultural values of the land and protecting the environment from harm.²

- 3.4. The Audit Report examined the management and administration arrangements that are in place for Land Management Agreements, ‘including the monitoring, regulation and enforcement of agreement requirements’.³

Audit conclusions

- 3.5. The ACT Auditor-General concluded that the Environment, Planning and Sustainable Development Directorate (the EPSDD), responsible for the development of Land Management Agreements, ‘is not effectively managing Agreements to ensure that they are relevant as an active and ongoing land management tool’.⁴ The Audit Report’s overall conclusion stated:

Land Management Agreements are legally binding and enforceable agreements required under the *Planning and Development Act 2007*. The overall purpose of a Land Management Agreement is to ‘establish appropriate sustainable agricultural management practices and good farm biosecurity for the subject land while maintaining ecological and cultural values present on the land, and protecting the environment from harm’.

¹ Auditor-General’s Report No. 1 of 2021: *Land Management Agreements*, p. 1.

² Auditor-General’s Report No. 1 of 2021, p 1.

³ Auditor-General’s Report No. 1 of 2021, p 1.

⁴ Auditor-General’s Report No. 1 of 2021, p 1.

... A significant proportion of Agreements are out of date and they often lack a depth of information and assessment. There is no overarching risk management framework to guide the development of Land Management Agreements and monitoring and enforcement of rural leaseholders' compliance with the Agreements does not occur. The value of Land Management Agreements is questionable.⁵

Audit recommendations

- 3.6. The Audit Report made six recommendations, provided in the table below. The right column of the table indicates the position the ACT Government adopted for the relevant recommendation in its response to the Audit Report.

Audit-Report Recommendation ⁶	Government Position ⁷
R1—Roles and Responsibilities The Environment, Planning and Sustainable Development Directorate, in cooperation with other ACT Government agencies involved in the development of Land Management Agreements should: <ul style="list-style-type: none"> a) identify and document roles and responsibilities for the establishment of the Agreements; and b) establish an ongoing forum for the discussion and resolution of issues associated with the development of the Agreements and the identification of potential system and process improvements. 	Agreed
R2—Policy and Procedural Guidance The Environment, Planning and Sustainable Development Directorate should develop policy and procedural guidance for the development and ongoing management and administration of Land Management Agreements.	Agreed
R3—Land Management Agreement Prioritisation The Environment, Planning and Sustainable Development Directorate should develop a risk-based framework for the development and administration of Land Management Agreements. The framework could assist in identifying appropriate timeframes for the Agreements as well as consideration of a means to synchronise the development of Agreements for collaboration purposes at specific localities.	Agreed

⁵ Auditor-General's Report No. 1 of 2021, p 1.

⁶ Auditor-General's Report No. 1 of 2021, pp 7–8.

⁷ ACT Government, *Government Response to the Auditor-General's Report No 1 of 2021*, June 2021, pp 6–10 (tabled 3 June 2021).

R4—Documentation and Record-Keeping	Noted
The Environment, Planning and Sustainable Development Directorate should develop and implement policy and procedural guidance for the documentation and record-keeping of Land Management Agreements. The guidance should include principles for the consistent documentation of processes associated with the development of Agreements with rural leaseholders.	
R5—Land Management Agreement Detail	Noted
The Environment, Planning and Sustainable Development Directorate should identify and prescribe a minimum level of detail for Land Management Agreements that fosters their use as an active and ongoing land management tool. The minimum level of detail should identify specific actions and outcomes that facilitate the monitoring and enforcement of compliance with Agreements by rural leaseholders.	
R6—Monitoring and Compliance	Agreed
The Environment, Planning and Sustainable Development Directorate and Access Canberra should develop a risk-based framework for the monitoring and enforcement of Land Management Agreements including processes for:	
<ul style="list-style-type: none"> a) monitoring rural leaseholders' compliance with their Agreements; and b) taking enforcement action in the event of potential non-compliance. 	

4. Land Management Agreement forms

- 4.1. At the commencement of the Committee's inquiry, it was found that a form discussed in the Audit Report,⁸ was not current on the ACT Legislation Register. The Audit Report provided that Land Management Agreement forms 'have been developed and promulgated by virtue of section 425 of the *Planning and Development Act 2007*'.⁹ The Report added the following about forms for Land Management Agreements:

A 2016 *Land Management Agreement Form* (AR2016-26) was made and notified under the *Legislation Act 2001* on 29 April 2016. In 2020 the Environment, Planning and Sustainable Development Directorate reviewed and revised the *Land Management Agreement Form*. The 2020 *Land Management Agreement Form* (AR2020-36) was made and notified under the *Legislation Act 2001* on 4 May 2020.

... both the 2016 and 2020 *Land Management Agreement Forms* have comprised of a:

- Statement of Responsibilities and Dispute Resolution section (Part 1 of the Agreement); and
- Site Assessment and Management Actions Plan section (Part 2 of the Agreement).¹⁰

- 4.2. Further, the Audit Report stated that the *Land Management Agreement Form* 'provides the most fulsome and explicit guidance on the type and nature of information to be included' in a Land Management Agreement. It added that:

... the reviewed and revised 2020 version of the Land Management Agreement Form provides more guidance than the 2016 version on the information that needs to be included in each of the sections. The Environment, Planning and Sustainable Development Directorate advised that the review and upgrade of the document 'was identified as being necessary to streamline the process and make the document more workable than the previous iteration'.¹¹

- 4.3. The Committee found, however, that the '2020 version' of the *Land Management Agreement Form* was no longer in force and was not, as described in the Audit Report, an improved remaking of AF2016-26 but an instrument made for the purpose of revoking the 2016 approved form.¹²

⁸ Auditor-General's Report No. 1 of 2021, pp 29–31.

⁹ Auditor-General's Report No. 1 of 2021, p 29.

¹⁰ Auditor-General's Report No. 1 of 2021, p 30.

¹¹ Auditor-General's Report No. 1 of 2021, pp 30–31.

¹² *Planning and Development (Land Management Agreement Form) Revocation 2020*.

4.4. In a question taken on notice, the Minister for Planning and Land Management stated that:

If a form is not ‘approved’, an alternative type of form can be made that does not need to be notified on the Legislation Register. This could include a smartform or a form published on a directorate’s website rather than the Legislation Register.¹³

4.5. The Committee questioned what ‘reviewed and revised 2020 version’ of the form had been provided to the Auditor-General during the audit, and what template was being used by the EPSDD to enter into Land Management Agreements; in lieu of an approved form as notified on the Legislation Register. The Committee also questioned whether a ‘smartform’ or a form published on a directorate’s website is an approved form.

4.6. The Committee sought legal advice from the Australian Government Solicitor (AGS) on the operation of sections 283 and 425 of the *Planning and Development Act 2007* and relevant provisions of the *Legislation Act 2001*, in relation to approval of forms for Land Management Agreements. On 1 November 2021, the AGS provided advice to the Committee on the *Planning and Development Act 2007* that was current at the time,¹⁴ and brought into doubt whether an Agreement could be entered into without an approved form. A summary of this advice is provided in the box below.

Legal Advice received from the AGS regarding Land Management Agreements: need for ‘approved’ form¹⁵

Q1: If s 283 of the *Planning and Development Act 2007* stipulates the use of an approved form, and no such form is current, can the Directorate decide to use a web form and simply consider the form to be approved, although it is not approved under the Legislation Act and registered on the ACT Legislation Register?

There is a distinction between approving a form for the purposes of s 425 of the PDA and notifying a form as a notifiable instrument under the Legislation Act.

In our view, a form can be approved for the purposes of s 425 without being notified under the Legislation Act. In this case, the web form that we understand is now used for LMAs may have been approved for the purposes of s 425 (we would require further instructions to reach a concluded view on this point). However, because the form has not been notified under the Legislation Act, there is some risk that a court would hold that it could not be validly used for entry into an LMA under s 283 of the PDA, potentially preventing the ACT Planning and Land Authority (the Authority) from taking any of the steps in s 283(1) and thus undermining the purpose of the LMA.

On balance, and assuming the web form has in fact been approved for the purposes of s 425, we think it would be open to the ACT Planning and Land

¹³ Mr Mick Gentleman, *answer to QTON 02*, received 30 June 2021, p [2].

¹⁴ On 1 November 2021, the most current version of the *Planning and Development Act 2007* was Republication No 103, Effective: 1 July 2021 - 17 November 2021.

¹⁵ Australian Government Solicitor (AGS), Land Management Agreements: need for ‘approved’ form, advice received 1 November 2021.

Authority to proceed on the basis that the form can be, and has been, validly used for entry into LMAs under s 283. However, given the risk that a court would reach a different conclusion, the ACT Planning and Land Authority may wish to consider notifying the form under the Legislation Act with retrospective effect.

Q2: Can an LMA be entered into without an approved form made under s 425 for the purposes of s 283 of the Act? If yes, would it be fully enforceable? If no, what would the impact be on any LMA made in the period without an approved form?

In our view, an LMA cannot be entered into under s 283 of the PDA without an approved form. The effect of entering into an LMA other than in accordance with an approved form is that the Authority could not take any of the actions specified in s 283(1).

Amendment to the *Planning and Development Act 2007*

- 4.7. During the Committee's inquiry, the ACT Government amended the *Planning and Development Act 2007* to remove the reference to 'a form approved by the planning and land authority' under section 283. The amended section 283 now provides that a Land Management Agreement is valid if it has been signed by both the conservator of flora and fauna, and the person to whom the rural lease is to be granted, assigned, transferred or varied (section 283(2)).
- 4.8. Subsections 283(3) to (6) now provide that the requirements of a Land Management Agreement may be made through guidelines prepared by the conservator, which must be registered on the ACT Legislation Register as a notifiable instrument. The amended section 283 is as follows:
- (1) This section applies to the following actions:
 - (a) granting a rural lease;
 - (b) granting a further rural lease;
 - (c) varying a rural lease;
 - (d) consenting to the assignment or transfer of a rural lease.
 - (2) The planning and land authority may take action to which this section applies only if—
 - (a) the person to whom the lease is to be granted, assigned or transferred, or the person whose lease is to be varied, has entered into an agreement with the Territory about managing the rural land comprised in the lease (a **land management agreement**); and
 - (b) the agreement is signed by the conservator of flora and fauna and the person mentioned in paragraph (a).

(4) The conservator of flora and fauna may make guidelines setting out the requirements for land management agreements.

(5) In preparing a guideline, the conservator of flora and fauna must consult the planning and land authority.

(6) A guideline is a notifiable instrument.¹⁶

- 4.9. On 18 November 2021, the ACT Government also inserted a new section 283A into the Act. The Explanatory Memorandum for the amendment bill stated that the section was made to ensure that Land Management Agreements that were made on or after the revocation of the *Planning and Development (Land Management Agreement Form) Approval 2016* (AF2016-16) are taken to be valid. The Explanatory Memorandum added that:

The approval [of the *Land Management Agreement Form*] was revoked on 5 May 2020 to reflect contemporary usage of government forms. While originally the publication of approved forms on the Legislation Register increased their accessibility, many government agencies now have their own websites to make forms directly available. Additionally, forms that are of an interactive ‘smart’ nature and feed information directly into agency databases cannot be hosted on the Legislation Register.

New section 283A has been inserted out of an abundance of caution to ensure the validity of land management agreements made between the revocation of the approval on 5 May 2020 and the commencement of the bill, which through clause 25 clarifies that an approved form is not a requirement for a land management agreement.¹⁷

- 4.10. Subsection 283A(4) provided that the new section 283A expires on the day it commences and noted that the validating effect of the law does not end merely because of the repeal of the law. As such, a new version of the Act was published the next day, 19 November 2021, without a section 283A.

¹⁶ *Planning and Development Act 2007* (ACT) s 283.

¹⁷ Explanatory Memorandum, Planning and Unit Titles Legislation Amendment Bill 2021, p 11.

5. Committee comment

Development of Land Management Agreements

- 5.1. In its submission, the ACT Government explained that there are 168 Land Management Agreements across the territory, and that:

Each LMA consists of a documented plan and map and includes information on values such as threatened communities and species, riparian areas and wetlands, heritage and risks including weed and fire. LMAs specify the type and number of stock to be held, as well as the requirements for appropriate environmental management and monitoring of conservation assets including identification of pest animal and invasive plant management programs.¹⁸

- 5.2. The Audit Report found that Land Management Agreements were not fit for their purpose of ‘establishing appropriate sustainable agricultural management practices and good farm biodiversity whilst maintaining the ecological and cultural values of the land and protecting the environment from harm’.¹⁹ The Audit Report explained that there was ‘variability in quality and depth of information and assessment’ in the Agreements considered, stating that:

This compromises their ability to be used as an active and ongoing land management tool and hinders the Directorate’s ability to monitor and enforce rural leaseholder compliance with the Agreements. Rural leaseholders consulted as part of the audit questioned the value and utility of the Agreements.²⁰

- 5.3. Mr Ian Walker, Executive Group Manager for Environment, Heritage and Water and the Conservator of Flora and Fauna, explained to the Committee during its public hearing on 17 June 2021 that ‘there will be significant variation from one landholder and one agreement to another agreement’. Mr Walker added that:

We do have a minimum standard, but it is elevated; it relates to ... that risk-based approach. If there are high values on that land, the LMA will go into more detail. If there is greater risk on that land—for example, weeds or particular environmental threats—that will be elevated in the LMA agreements as well.

All of those elements are part of the negotiation and discussion with the rural leaseholder in the development of the LMAs. That is an important part of the work that we do. Of the 168 LMAs that we have in play, on every one of those there is a discussion and an ongoing engagement with the rural landholder about the delivery of their farm practices, their agricultural pursuits, as well as the conservation of the natural and cultural environment here in the territory.²¹

¹⁸ ACT Government, *Submission 1*, p 3.

¹⁹ Auditor-General’s Report No. 1 of 2021, p 1.

²⁰ Auditor-General’s Report No. 1 of 2021, p 39.

²¹ *Committee Hansard*, 17 June 2021, p 3.

- 5.4. Mr Geoffrey Rutledge, Deputy Director-General, Sustainability and the Built Environment at the EPSDD, told the Committee that since the audit the EPSDD has been working on getting its 'documentation better and more visible' but acknowledged that 'we have got some more work to do'. Mr Rutledge expanded on some of the work that the EPSDD had yet to do:

Making more publicly accessible and available some of our risk-based approach. Making sure our forms and our guidelines are easily accessible to rural lessees and to the community more generally. I do not think we have been that explicit about some of the work that we do in helping rural lessees through natural resource management and the bushfire work ...

I do not think we have made it clear to the community, and we certainly have not made it clear to the Auditor-General, that all of these come together and create a package of works to ensure that our rural land is managed well. We have to tell that story a bit better.²²

- 5.5. The Committee is of the view that a more standardised process, with minimum requirements, should be established for the development of Land Management Agreements to ensure that they are fit for purpose.

Recommendation 1

The Committee recommends that the ACT Government ensure that Land Management Agreements contain minimum requirements and are fit for purpose.

Governance arrangements

- 5.6. A key issue identified in the Audit Report was that 'there is no regular and systematic program of compliance activity to monitor rural leaseholders' compliance with their Agreement obligations' by ACT Government agencies. Feedback from rural leaseholders that were consulted during the audit indicated that 'once an Agreement is signed and in place no further monitoring of their compliance with the Management Actions section of the Agreement is undertaken'.²³
- 5.7. Contributing to this issue was that the role of the Rural Services and Natural Resource Protection Team within the EPSDD and its relationship with Access Canberra in monitoring

²² *Committee Hansard*, 17 June 2021, pp 25–26.

²³ Auditor-General's Report No. 1 of 2021, p 53.

compliance were not ‘specifically and explicitly documented’.²⁴ The Audit Report explained that the Rural Services and Natural Resource Protection Team:

... has a key responsibility for engaging with rural leaseholders with respect to Land Management Agreements. This includes assisting rural leaseholders with the development of Land Management Agreements.²⁵

- 5.8. Under the *Planning and Development Act 2007*, Access Canberra is responsible for assessing and investigating complaints about breaches of that Act, and under the *Planning and Development (Inspectors) Appointment 2019 (No 2)* has delegated powers to appoint inspectors to all urban and rural land areas.²⁶ During the Committee’s public hearing the Audit Office explained, however, that:

... no-one from Access Canberra was undertaking any monitoring or compliance role with respect to LMAs, despite having the delegation under the legislation to undertake that role.²⁷

- 5.9. The ACT Auditor-General, Mr Michael Harris, added that Access Canberra appears to ‘work on a referral basis’:

... if they are asked to go and enforce, they will go and enforce. If they are not asked to, they will not. I think the onus for instituting an enforcement undertaking would come from the directorate [being the EPSDD], not from Access Canberra.²⁸

- 5.10. Despite this, the audit found that Rural Services and Natural Resource Protection Team were not referring any matters to Access Canberra for further review or investigation in relation to rural leaseholders’ compliance with their responsibilities under their Land Management Agreement.²⁹

- 5.11. Mr Walker told the Committee about the EPSDD’s compliance regime, explaining that in his view it empowers and supports its rural landholders through ‘education, information and sharing knowledge’ rather than through formal enforcement action. Mr Walker added that:

When it gets to the pointy end of a rural landholder having not complied or not undertaken action to reduce risks there are a number of options that we can instigate. In the instance of not controlling some weeds, the weeds legislation, the pest legislation, has enforcement options within that. We can issue mechanisms by which that rural landholder would need to control said weeds. It is unusual that we would ever need to get to that point because, in the main, rural landholders and the directorate see some common value in controlling things that

²⁴ Auditor-General’s Report No. 1 of 2021, p 59.

²⁵ Auditor-General’s Report No. 1 of 2021, p 59.

²⁶ Auditor-General’s Report No. 1 of 2021, pp 59–60.

²⁷ Ms Kellie Plummer, Director, Performance Audit, *Committee Hansard*, 17 June 2021, p 3.

²⁸ *Committee Hansard*, 17 June 2021, p 4.

²⁹ Auditor-General’s Report No. 1 of 2021, p 62.

impact their agricultural productivity. In the main that work is done cooperatively and more broadly across the landscape.³⁰

- 5.12. When asked about how the EPSDD manages compliance on issues where leaseholders are not so forthcoming in reporting issues on their land, Mr Walker stated that:

We are very fortunate in the ACT in that our rural leaseholders hold the environment and the values of the ACT highly, so they have a high regard for the values that we see as important from an environmental conservation point of view. Our leaseholders engage with that process well and, where we see the need to undertake activity, we look at what options we have.³¹

- 5.13. The ACT Government in its submission acknowledged that there is complexity surrounding the Land Management Agreement process. It stated that, despite this, 'there already exists strong collaborative efforts from leaseholders and the EPSDD staff for the development, management and administration of LMAs'.³²

- 5.14. On the position of education in preference of formal enforcement action, the ACT Auditor-General stated that:

It is a bit difficult to believe that every single proactive resolution of that sort would resolve every dispute to the point where you did not need an intervention of a more significant nature, and there have not been any interventions of a more significant nature.³³

- 5.15. The Committee also received a submission to the inquiry from Ms Georgina Pinkas who concluded that 'there needs to be dedicated resources to ensure statutory requirements for LMAs are met'.³⁴

- 5.16. The Committee is of the view that there is little purpose of Land Management Agreements if they are neither being monitored for compliance nor, where non-compliance is found, taking enforcement action under the Agreement. The Committee considers that, in the first instance, the ACT Government should ensure that the EPSDD is reporting on and referring all potential non-compliance with Land Management Agreements to Access Canberra for further investigation.

- 5.17. The Committee acknowledges that the ACT Government in its submission stated that it will 'establish appropriate governance arrangements to provide oversight on the LMA process'.³⁵ In addition to this, the Committee considers that the ACT Government should ensure that Access Canberra is more proactive in assessing and investigating non-compliance referred by the EPSDD and in taking enforcement action. Further, the

³⁰ *Committee Hansard*, 17 June 2021, p 17.

³¹ *Committee Hansard*, 17 June 2021, p 18.

³² ACT Government, *Submission 1*, p 4.

³³ *Committee Hansard*, 17 June 2021, p 5.

³⁴ Ms Georgina Pinkas, *Submission 2*, p 3.

³⁵ ACT Government, *Submission 1*, p 4.

Committee is of the view that more significant interventions in the event of non-compliance should occur where appropriate.

Recommendation 2

The Committee recommends that the ACT Government ensures that the Environment, Planning, and Sustainable Development Directorate are reporting and referring all potential non-compliance to Access Canberra in relation to Land Management Agreements for monitoring or further investigation.

Recommendation 3

The Committee recommends that the ACT Government ensures that Access Canberra is more proactive in investigating referred reports of non-compliance.

Recommendation 4

The Committee recommends that by mid-2023, the ACT Government develop and implement governance arrangements for Land Management Agreements. As the responsible entity for the governance arrangements, Access Canberra should:

- monitor rural leaseholders' compliance with their Agreements; and
- in the event of non-compliance—take enforcement action and, where appropriate, more significant interventions.

Recommendation 5

The Committee recommends that, by December 2023, Access Canberra provide a report to the Committee on the number of referrals of potential non-compliance made to Access Canberra and the compliance action taken in response.

- 5.18. The Committee notes that the ACT Government has agreed with Recommendation 6 of the Audit Report—relating to the development of a risk-based framework for the monitoring and enforcement of Land Management Agreements—stating in its Government Response that the 'EPSDD and Access Canberra agree to collaborate to develop a strategic framework for monitoring and compliance of LMAs'.³⁶

³⁶ *Government Response to the Auditor-General's Report No 1 of 2021*, June 2021, p 9.

- 5.19. The Committee sees value in the Minister of Planning and Land Management providing an update to the Committee on the ACT Government's development and implementation of the strategic framework.

Recommendation 6

The Committee recommends that, by December 2022, the Minister of Planning and Land Management provide an update to the Committee on its development and implementation of a strategic framework for monitoring and compliance of Land Management Agreements.

Periodic reviews

- 5.20. The Audit Report highlighted that the EPSDD ‘is not effective in ensuring the currency and utility’ of Land Management Agreements, as it has not been managing periodic reviews, and there is a lack of measurable actions being incorporated into the agreements.³⁷

Ms Kellie Plummer, Director, Performance Audit, told the Committee about feedback that the Audit Office received from rural leaseholders, which indicated that Land Management Agreements are ‘overly bureaucratic’ and ‘not something that they use as an active and ongoing tool for their property’. Ms Plummer stated that:

... there was one rural landholder who for 15 years had put it in the bottom of his drawer. ... They felt that the process was onerous compared to how neighbouring government lands are managed by the directorate.³⁸

- 5.21. While the *Planning and Development Act 2007* does not specify timeframes for the review and renewal of agreements, clause 6(3) of the *Land Management Agreement Form* (2016) (now repealed) provided that: ‘The Agreement will be reviewed and replaced by a subsequent agreement within five [5] years from the date of signing, unless a prior review is instigated [...]’.³⁹ The clause continues to list the factors in which a prior review can be instigated by.

- 5.22. Despite this clause, the Audit Report found that:

Of the 63 Agreements considered as part of the audit 31 were more than five years old, demonstrating that they had not been reviewed and replaced in the past five years. Of these Agreements 24 were over ten years old, ten were up to 17 years old and two were up to 19 years old.⁴⁰

- 5.23. Mr Walker explained that there are certain factors that influence the timing to review Land Management Agreements:

It is the lower value areas, from an environmental point of view, or areas that will take time for restoration to occur, that will influence the timing of the updating of LMAs. As you would appreciate, restoring a landscape takes many decades. It is not a five, two or one-year fix. The processes that we have put in place look at how we measure and see changes in the environment over time.⁴¹

- 5.24. When asked about the lack of measurable actions in Land Management Agreements, Mr Walker stated that there are opportunities for the EPSDD ‘to better integrate things like our grants programs and the delivery of LMAs’.⁴² Mr Walker explained that this will ‘[make] it more explicit that, if we have asked for something to occur in a LMA, we can

³⁷ Auditor-General’s Report No. 1 of 2021, p 39.

³⁸ *Committee Hansard*, 17 June 2021, p 11.

³⁹ *Land Management Agreement 2016*, Approved form AF2016-26 made under the *Planning and Development Act 2007* s 425.

⁴⁰ Auditor-General’s Report No. 1 of 2021, p 45.

⁴¹ *Committee Hansard*, 17 June 2021, p 26.

⁴² *Committee Hansard*, 17 June 2021, p 26.

marry that to grant opportunities and tie that back to specific grant funding opportunities'.⁴³

- 5.25. Further, Mr Walker raised that the EPSDD has a Conservation Effectiveness Monitoring Program which measures the effectiveness of its 'management activities across the landscape'.⁴⁴ Mr Walker added that the program is used to 'see improvements' in the ACT's grassy woodlands and grasslands:

... and we can measure those over one year, five years or multiple years into the future. The intention is to provide guidance around whether, for the investment we make, we are seeing an improvement in the environmental condition of the landscape. That relates to all land across the territory but, obviously, is particularly focused on areas that have higher conservation value.⁴⁵

- 5.26. As well as the Conservation Effectiveness Monitoring Program, in its submission the ACT Government stated that the EPSDD also has the Invasive Plants Monitoring and Mapping program which 'has been applied successfully in the Majura Valley and Clear Ridge to integrate weed control at a landscape scale across all land tenures'.⁴⁶

- 5.27. In addition, the ACT Government provided comment on timeframes for renewal of Land Management Agreements, stating that 'it is appropriate that there not be a mandatory or set timeframe for each LMA':

... as each LMA will necessarily be different depending on a number of factors, including the land use, its conservation values, bushfire risk, access to waterways and the land use.

The Directorate maintains a risk-based approach to the management of LMAs and will document this approach to support the delivery of LMAs across the Territory. To minimise confusion, the Directorate will spell this out in the revised policy.⁴⁷

- 5.28. While the Committee understands that a program of activity is currently underway to address the backlog of Land Management Agreements that have not been reviewed and replaced, the Committee is of the view that all Land Management Agreements must have a clause stating that the Agreement is reviewed and replaced every five years.
- 5.29. Further, the Committee acknowledges that restoration takes time to occur in some land that influences the timing of reviews. Nonetheless, it considers that having a periodic review clause in place means that the EPSDD can be more proactive in reaching out to rural

⁴³ *Committee Hansard*, 17 June 2021, p 26.

⁴⁴ *Committee Hansard*, 17 June 2021, p 26.

⁴⁵ *Committee Hansard*, 17 June 2021, p 26.

⁴⁶ ACT Government, *Submission 1*, p 7.

⁴⁷ ACT Government, *Submission 1*, p 5.

leaseholders, and that Land Management Agreements can be utilised for their purpose as an active and ongoing land management tool.

Recommendation 7

The Committee recommends that the ACT Government ensure that each Land Management Agreement contains a clause stating that the Agreement must be reviewed, and replaced if appropriate, every five years.

6. Conclusion

- 6.1. The Committee is of the view that the Auditor-General's performance audit report into *Land Management Agreements* was important in identifying shortcomings in the development, management and enforcement of Land Management Agreements in the ACT. The Committee endorses the Auditor-General's six recommendations.
- 6.2. The Audit Report questioned the value of Land Management Agreements and identified areas for improvement such as that policy and procedural guidance is prepared for the execution, documentation and record-keeping, and monitoring and compliance of Land Management Agreements.
- 6.3. In addition, the Audit Report identified that there is a need for a minimum level of detail to be prescribed for Land Management Agreements to be effective, and that the roles and responsibilities of the relevant agencies involved should be clarified.
- 6.4. The Committee has made seven recommendations in relation to its inquiry into the Auditor-General's Report No. 1 of 2021.

Mrs Elizabeth Kikkert MLA
Chair, Standing Committee on Public Accounts
15 June 2022

Appendix A: Submissions

No.	Submission by	Received	Authorised for publication
1	ACT Government	28/05/2021	07/06/2021
2	Georgina Pinkas	28/05/2021	07/06/2021

Appendix B: Witnesses

Thursday 17 June 2021

ACT Audit Office

- **Mr Michael Harris**, ACT Auditor-General
- **Mr Brett Stanton**, Assistant Auditor-General, Performance Audit
- **Ms Kellie Plummer**, Director, Performance Audit

Minister for Planning and Land Management Portfolio

- **Mr Mick Gentleman MLA**, Minister for Planning and Land Management
- **Mr Geoffrey Rutledge**, Deputy Director-General, Sustainability and the Built Environment, Environment, Planning and Sustainable Development Directorate (EPSDD)
- **Mr Brett Phillips**, Executive Group Manager, Statutory Planning, EPSDD
- **Mr Ian Walker**, Executive Group Manager and Conservator of Flora and Fauna, Environment, Heritage and Water, EPSDD

Appendix C: Questions taken on notice

Questions taken on notice

No.	Date	Asked by	Subject	Response received
1	17/06/21	Braddock	Approved forms – Parliamentary council advice	25/06/21
2	17/06/21	Kikkert	Approved forms – step by step process	30/06/21