

2022

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

**Inquiry into Auditor-General Report No.1 of 2021 - Land Management Agreements -
Government Response**

**Presented by
Mick Gentleman MLA
Minister for Planning and Land Management
October 2022**



ACT
Government

Response

**Standing Committee on Public Accounts,
Report 10, June 2022**

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

Mick Gentleman MLA
Minister for Planning and Land Management

No.	Recommendation	Government Response
<p>This document provides the ACT Government response to the Standing Committee on Public Accounts (PAC) report Inquiry into <i>the Auditor-General's Report No.1 of 2021: Land Management Agreement</i> (Audit Report).</p> <p>The Audit Report was presented to the Legislative Assembly on 4 February 2022 and is available on the ACT Auditor-General's website. The ACT Government presented its response to the Audit Report on 2 June 2021 which is available on the Legislative Assembly's website. On 5 May 2022, the PAC announced that it would inquire into the Audit Report, and on 10 June 2022 released its report which makes seven recommendations.</p> <p>The ACT's Government's position to the several recommendations and its reasoning is described in the table below.</p>		
1	<p>The Committee recommends that the ACT Government ensure that Land Management Agreements contain minimum requirements and are fit for purpose.</p>	<p>Noted.</p> <p>As discussed in the ACT Government's response to recommendation five in the Audit Report, each Land Management Agreement (LMA) is written specifically for the land to which it applies.</p> <p>The government's response noted that the LMA Template developed under the <i>Planning and Development Act 2007</i> (Act) s.425 provides considerable guidance on the development, management and administration of LMAs. The document provides direction on the purpose and authorising environment of the LMA, as well as describing the general objectives sought by the LMAs. The document furthermore outlines a general structure for LMAs including advice on site assessments and the responsibilities of the parties involved, being the ACT Government and the rural leaseholders.</p> <p>Notwithstanding this, it is appropriate that the ACT Government and the rural leaseholders review and update where necessary the LMA Agreement Template to ensure that it is meeting the intended outcomes and objectives sought by the LMAs.</p>
2	<p>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.</p>	<p>Noted.</p> <p>Access Canberra, through its Accountability Commitment and complaint management processes has in place the framework and mechanisms to receive and register planning complaints and allocate them to the appropriate line areas for investigation. These complaints may be made by other government agencies, or third parties.</p> <p>The LMA Governance Group (which includes a representative from Access Canberra) have developed improved monitoring and reporting arrangements which will be implemented by December 2022.</p>
3	<p>The Committee recommends that the ACT Government ensures that Access Canberra is more proactive in investigating referred reports of non-compliance.</p>	<p>Noted.</p> <p>The <i>Planning and Development Act 2007</i> (Chapter 11) sets out how controlled activity complaints may be made, and the actions to be undertaken, noting managing land held under a rural lease other than in accordance with the land management agreement is a controlled activity.</p> <p>Consistent with these statutory requirements, Access Canberra will take reasonable steps to investigate each complaint. As the resources available to Access Canberra to investigate non-compliances is finite, it applies a risk and harm-based</p>

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		<p>approach to the investigation of all referrals of non-compliance and will take regulatory compliance action when required in accordance with its Accountability Commitment.</p>
4	<p>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:</p> <ul style="list-style-type: none"> - monitor rural leaseholders' compliance with their Agreements; and - in the event of non-compliance—take enforcement action and, where appropriate, more significant interventions. 	<p>Noted.</p> <p>Action against this recommendation is already occurring as part of the government's work to address recommendation 2 (Policy and Procedural Guidance) and recommendation 6 (Monitoring and Compliance) in the original Auditor-General's Report. It is further noted that due to the finite government resources previously mentioned, the pro-active monitoring of LMAs as suggested is not viable.</p> <p>The specific technical expertise required to monitor the conservation management practices and agricultural practices under an LMA are not established in Access Canberra. These functions sit within the Environmental, Planning and Sustainable Development Directorate (EPSDD) who lead the policy and governance of LMAs along with engagement with rural landholders and other stakeholders for preparation and renewal. Notwithstanding, Access Canberra will lead the investigation, and as required, to undertake regulatory actions when complaints are made either through EPSDD or by third parties.</p> <p>In undertaking these actions, Access Canberra will seek the advice of relevant experts, either from EPSDD or as required, through third parties, such as technical consultants. In formulating any regulatory response, Access Canberra will undertake compliance in line with its Accountability Commitment. This Commitment provides for proportionate response within a framework of engagement, education and enforcement to address noncompliance, and does allow for significant intervention as appropriate to circumstances.</p> <p>It is further noted that compliance actions may include a requirement for ongoing monitoring of compliance of an LMA, which may be undertaken by Access Canberra, or EPSDD as appropriate.</p>
5	<p>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.</p>	<p>Agreed.</p> <p>The government acknowledges the information being sought by the Committee. Access Canberra, as the regulator, will provide a report on the number of referrals of potential non-compliance made to Access Canberra and the compliance action taken in response.</p> <p>Access Canberra, through its membership and participation in the Land Management Agreement Governance Group has contributed to the development of a compliance protocol which establishes referral pathway to Access Canberra for identified compliance issues regarding rural land management. Following its implementation – likely in December 2022 – Access Canberra will be in a position to not only address, in conjunction with its EPSDD colleagues, non-compliance but also report on breaches and any associated compliance action.</p>

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6	<p>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.</p>	<p>Agree in-principle.</p> <p>While the government will provide an update to the Committee on the development and implementation of a strategic framework for monitoring and compliance of Land Management Agreements, the ongoing and uncertain nature of COVID-19 impacts may impact on achieving the proposed timeframe.</p> <p>As stated above, the LMA Governance Group is implementing a monitoring and compliance protocol that will ensure that any “non-compliance issues identified through the LMA process will have an avenue of monitoring, reporting and investigation”. This will be in place by December 2022.</p>
7	<p>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.</p>	<p>Not agreed.</p> <p>LMA’s are administered under the Act which does not mandate a review date.</p> <p>Establishing a mandatory review timeframe for LMAs will increase the regulatory burden for the government and the landowner. LMAs are already updated where a rural lease is varied or transferred, or at any other time where there is an identified need or benefit.</p> <p>However, EPSDD has already strengthen its administrative arrangements for LMAs with the implementation of a review schedule of every 5 years for individual LMA’s. This cycle requires that approximately 40 LMAs be reviewed each year by EPSDD. This review approach allows EPSDD to adopt a flexible and risk-based approach to focussing its attention on those LMAs that have the critical environmental issues to be managed with the available resources.</p>