

REVIEW OF AUDITOR-GENERAL'S REPORT No. 7 OF 2015:
SALE OF ACTTAB

STANDING COMMITTEE ON PUBLIC ACCOUNTS

FEBRUARY 2016

REPORT 23

COMMITTEE MEMBERSHIP

Mr Brendan Smyth MLA Chair from 6 June 2013

Member to 6 June 2013

Ms Mary Porter AM MLA Deputy Chair

Ms Nicole Lawder MLA Member from 8 August 2013

Ms Joy Burch MLA Member from 21 January 2016

[Ms Burch did not participate in deliberations relating to this report as she was the Minister for Racing and Gaming at the time of the Inquiry.]

Former Members

Ms Meegan Fitzharris MLA Member from 10 February 2015 to 21 January 2016

Ms Yvette Berry MLA Member from 5 August 2014 to 10 February 2015

Dr Chris Bourke MLA Member to 5 August 2014

Mr Zed Seselja MLA Chair to 6 June 2013

Mr Alistair Coe MLA Member from 6 June to 8 August 2013

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RESOLUTION OF APPOINTMENT

The Legislative Assembly for the ACT appointed the Standing Committee on Public Accounts on 27 November 2012.

Specifically the resolution of 27 November 2012 establishing the Standing Committees of the 8th Assembly, as it relates to the Public Accounts Committee states:

(1) The following general purpose standing committees be established and each committee inquire into and report on matters referred to it by the Assembly or matters that are considered by the committee to be of concern to the community:

(a) a Standing Committee on Public Accounts to:

(i) examine:

(A) the accounts of the receipts and expenditure of the Australian Capital Territory and its authorities; and

(B) all reports of the Auditor-General which have been presented to the Assembly;

(ii) report to the Assembly any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed;

(iii) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question; and

(iv) examine matters relating to economic and business development, small business, tourism, market and regulatory reform, public sector management, taxation and revenue;¹

TERMS OF REFERENCE

The Committee's terms of reference were to examine the Audit report and report to the Legislative Assembly.

¹ Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 2, 27 November 2012, pp. 24–27.

TABLE OF CONTENTS

Committee membership	i
Secretariat	i
Contact information	i
Resolution of appointment.....	ii
Terms of reference	ii
RECOMMENDATIONS.....	v
1 INTRODUCTION AND CONDUCT OF INQUIRY	1
Terms of reference	1
Conduct of inquiry.....	1
Structure of the report	2
Acknowledgements.....	2
2 AUDIT BACKGROUND AND FINDINGS.....	3
Audit background and objectives.....	3
Audit conclusions	3
Audit findings.....	5
Audit recommendation(s).....	7
Government response	7
3 COMMITTEE COMMENT	9
Discontinued agency	9
Robust procurement practices.....	10
Records management.....	10
4 CONCLUSION	13
APPENDIX A AUDIT REPORT RECOMMENDATION (S)	15

RECOMMENDATIONS

RECOMMENDATION 1

- 3.8** The Committee recommends that the ACT Government should ensure that all future procurement action conforms appropriately with risk management, evaluation criteria, probity, and documentation and record-keeping requirements as specified in recommendation one of Auditor-General's report No. 7 of 2015: *Sale of ACTTAB*.

RECOMMENDATION 2

- 3.13** The Committee recommends that ACT Government directorates and agencies should ensure recordkeeping procedures and guidance material address the business activities specific to their operations.

RECOMMENDATION 3

- 3.14** The Committee recommends that the ACT Government should remind all ACT Government directorates and agencies of the importance of good records management to the functioning of the ACT Public Service.

RECOMMENDATION 4

- 3.15** The Committee recommends that the ACT Government should remind all ACT Public Servants of their obligation to ensure that accurate records of key decisions, discussions and events are kept and that these records are easily retrievable when required.

1 INTRODUCTION AND CONDUCT OF INQUIRY

- 1.1 ACTTAB was an ACT Government betting agency which was sold to Tabcorp in October 2014.
- 1.2 On 17 June 2014, the Select Committee on Estimates 2014–15 recommended that the Legislative Assembly:
- ...refer the sale process of ACTTAB Ltd to the ACT Auditor-General to consider a review of the sale.²
- 1.3 In September 2014, the Auditor-General decided to conduct a performance audit on the sale of ACTTAB. Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB* (the Audit report) was presented to the Legislative Assembly on 26 June 2015.
- 1.4 In accordance with the resolution of appointment of the Standing Committee on Public Accounts (the Committee), the Audit report was referred to the Committee for examination.
- 1.5 The Audit report presented:
- ...an independent opinion to the Legislative Assembly on the probity of the sale of ACTTAB.³

TERMS OF REFERENCE

- 1.6 The Committee's terms of reference were to examine the Audit report and report to the Legislative Assembly.

CONDUCT OF INQUIRY

- 1.7 On 15 October 2015, the Committee received a briefing from the Auditor-General on the Audit report.
- 1.8 The Government tabled its response to the Audit report on 15 September 2015.
- 1.9 As noted earlier, under its resolution of appointment, the Committee examines all reports of the Auditor-General which have been presented to the Legislative Assembly. Specifically, its

² ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 1.

³ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 17.

resolution of appointment requires the Committee to 'inquire into and report' on all reports of the Auditor-General which have been presented to the Assembly.

- 1.10 The Committee has established procedures for its examination of these reports pursuant to the Assembly resolution.⁴ In accordance with these procedures, the Committee resolved on 8 December 2015 to conclude its consideration of the Audit report with a summary report.
- 1.11 The Committee met on 2 February 2016 to discuss the Chair's draft report which was adopted on 2 February 2016.

STRUCTURE OF THE REPORT

- 1.12 The Committee's report is divided into three sections:
- Chapter 1—Introduction on conduct of inquiry
 - Chapter 2—Audit background and findings
 - Chapter 3—Committee comment

ACKNOWLEDGEMENTS

- 1.13 The Committee thanks those who contributed to its inquiry, including the Auditor-General.

⁴ http://www.parliament.act.gov.au/_data/assets/pdf_file/0006/374847/External.pdf

2 AUDIT BACKGROUND AND FINDINGS

2.1 This chapter presents an overview of the background to, and key findings of, the Audit.

AUDIT BACKGROUND AND OBJECTIVES

2.2 The objective of the Audit was to provide:

...an independent opinion to the Legislative Assembly on the probity of the sale of ACTTAB.⁵

2.3 The Audit:

...included consideration of whether there was appropriate analysis of bids received from potential purchasers against legislative, policy and financial requirements and considerations.⁶

2.4 Furthermore, the Audit:

...focused on the conduct of the sale including the planning, administration and communication processes associated with the sale. The audit also assessed if there was appropriate consideration of bids received.⁷

AUDIT CONCLUSIONS

2.5 The main conclusions of the Audit report are outlined below.

2.6 The overall conclusion of the Audit was:

The sale of ACTTAB successfully realised \$105.5 million for the Territory. This far exceeded expectations. The sale was undertaken in a timely manner. Tabcorp was selected as the successful purchaser with the appropriate experience, capacity and integrity to operate a wagering business. In this regard the Bid stage (Stage 2 of the sale process), involving two potential purchasers, was effectively undertaken.

The local racing industry was not negatively affected by the sale and the welfare of ACTTAB employees was considered as part of the sale process.

⁵ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 17.

⁶ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 17.

⁷ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 17.

Although a successful sale was achieved, the high standard of probity that would be expected for such a complex, large and high risk sale is not evident. There is a lack of transparency due to poor documentation. Some processes were inadequate, including there being no finalised risk plan and the one that was produced being developed too late to influence processes.

At the Expression of Interest stage (Stage 1 of the sale process), involving five interested parties, there were inadequacies due to the poor quality, and the inadequate assessment, of some evaluation criteria. Correcting these and the other inadequacies, although important in terms of probity, may not have changed the result. However, the inadequacies could have been relatively easily avoided.⁸

- 2.7 The Auditor-General made a number of conclusions with regard to preparing for the sale of ACTTAB, the sale process, and the sale results. These are outlined below.

PREPARING FOR THE SALE

- 2.8 The Audit concluded that although the governance arrangements in place and the involvement of subject matter experts strengthened the sale, there were ‘significant inadequacies, for such a complex, large and high risk sale.’ These included a lack of documentation of the conduct of the sale—such as a finalised risk management plan and an evaluation plan for the sale. In addition, the Audit concluded that it would have been prudent if one person had not acted as Probity Advisor as well as a provider of legal advice.⁹

THE SALE PROCESS

- 2.9 According to the Audit, poorly constructed evaluation criteria and an inappropriate assessment of some evaluation criteria made the sale process inadequate.¹⁰

SALE RESULTS

- 2.10 The Audit concluded that the sale was successful as it met the sale objectives set out in the November 2013 resolution of the ACT Legislative Assembly.¹¹

⁸ ACT Auditor-General’s Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 1.

⁹ ACT Auditor-General’s Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 2.

¹⁰ ACT Auditor-General’s Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 2.

¹¹ ACT Auditor-General’s Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 2.

AUDIT FINDINGS

2.11 The Audit provided key findings to support its conclusions. The main elements of these findings—across three audit themes—are outlined below.

PREPARING FOR THE SALE

2.12 Key findings across the audit theme—preparing for the sale—were:

- It would have been prudent to structure and manage the sale according to the requirements of the *Government Procurement Act 2001* until it was clear that the Act did not apply.¹²
- Using an open competitive process using expressions of interest to shortlist and identify the preference of interested parties for an asset or share sale was ‘an acceptable process.’¹³
- Governance arrangements put in place for the sale were appropriate but the draft procurement risk register developed had very limited coverage and was not finalised or approved. As a result ‘there was an absence of an adequate risk management framework.’¹⁴ This was despite the sale being regarded as high risk when compared against risk factors identified in the Australian National Audit Office *Fairness and Transparency in Purchasing Decisions Better Practice Guide* (2007).¹⁵
- There was a lack of documented sign off or advice from the Probity Advisor following the completion of key stages of the sale process.¹⁶
- There is no evidence that there was a need for one person to undertake the Probity Advisor role and provide legal advice. Given the complexity and size of the sale of ACTTAB it would have been prudent to have the probity advisor separate from other roles.¹⁷
- Given the size, complexity and risk involved in the sale of ACTTAB, documentation of sale processes were inadequate and did not meet accountability and transparency requirements for procurement.¹⁸

THE SALE PROCESS

2.13 Key findings across the audit theme—the sale process—were:

¹² ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 3.

¹³ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 3.

¹⁴ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 3.

¹⁵ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 27.

¹⁶ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 3.

¹⁷ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 38.

¹⁸ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 3.

- An open approach to the market was taken and a Request for Expressions of Interest (RfEol) was sent to interested parties. However, no evaluation plan(s) were prepared for the sale and the evaluation criteria included in the (RfEol) did not align with the sale objectives which had been identified in the Assembly resolution.¹⁹
- There is a difference of views in relation to the legal obligations of the Government and if a 'process contract' existed in the sale of ACTTAB. There was no explicit consideration of this risk element being analysed in preparation for the sale.²⁰
- The criteria used for the evaluation of Eol were poorly crafted.²¹
- Following evaluation of five responses to the (RfEol), an evaluation report recommended that all five interested parties proceed to the next phase of the evaluation process. A second evaluation report which was prepared following a meeting of the Sale Project Team also recommended that all five potential interested parties should proceed to the next phase of the process. A third and final evaluation report recommended that two of the interested parties should progress to the next phase.²²
- The Sale Project Team concluded that only two suitable candidates should be invited to participate in the indicative offer stage.²³
- Documentation to support the evaluation of the Eol was inadequate. The evaluation criteria set out in the RfEol were not precisely or rigorously applied. The use of external material in evaluating submissions should not have been used to exclude interested parties from further consideration. The evaluation of the operational capacity criterion inappropriately excluded interested parties from further consideration. Not all probity requirements were met.²⁴

SALE RESULTS

2.14 Key findings across the audit theme—sale results—were:

- On 14 October 2014, the Government accepted Tabcorp's final bid price of \$105.5 million, subject to terms and conditions. The sale price was the highest offered and was 'a good financial result for the Territory.'²⁵
- The sale met all of the sale objectives identified in the Assembly resolution, the racing industry was not negatively impacted by the sale and sufficient consideration was given to employee welfare during the sale process.²⁶

¹⁹ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 4.

²⁰ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, pp. 45–46.

²¹ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 4.

²² ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, pp. 4; 5.

²³ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 5.

²⁴ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, pp. 5–7.

²⁵ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 8.

²⁶ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, pp. 8; 9.

AUDIT RECOMMENDATION(S)

- 2.15 The Audit made one recommendation which is reproduced in full at **Appendix A**. In summary, the recommendation was that the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) examine, and if needed, amend its procurement processes so they comprehensively cover risk management; evaluation criteria; Probity Plan and Probity Advisor role in complex, high value or high risk procurements; and documentation and record-keeping requirements.
- 2.16 The Auditor-General provided the Director-General of CMTEDD and the Government Solicitor with a copy of the draft, final and revised final report for comment. Comments received were considered and required changes were included in the Report.²⁷
- 2.17 The Audit report does not detail any information regarding the Government's position on the Audit recommendation—in particular, whether the recommendation had been accepted, either in whole or in-part and whether any action had been taken to date, either in progress or completed.

GOVERNMENT RESPONSE

- 2.18 The Government tabled its response to the Audit report on 15 September 2015.²⁸ In its response, it **noted** the Auditor-General's recommendation, stating:

Procurement processes are regularly reviewed in consultation with stakeholders and many of the separate components of the recommendation are already incorporated in current procedures. CMTEDD is reviewing the existing procurement policies, procedures and processes. It will consider potential changes to remove any doubt about their applicability or potential exemption in particular circumstances while continuing to allow flexibility to structure transactions to meet the needs of the market, maintain market interest and ensure that sale value is not materially impacted.²⁹

²⁷ ACT Auditor-General's Report No. 7 of 2015: *Sale of ACTTAB*, June 2015, p. 11.

²⁸ Available at: http://www.parliament.act.gov.au/_data/assets/pdf_file/0009/773424/Government-Response-to-AG-Report-No-7-of-2015-Sale-of-ACTTAB-tabled-2015-09-15.pdf

²⁹ ACT Government. (2015) Response to Auditor-General's report No. 7 of 2015: Sale of ACTTAB, p. 7, 15 September.

3 COMMITTEE COMMENT

- 3.1 The Audit report made one recommendation—in that, CMTEDD should ‘examine, and if needed amend its procurement policies, procedures and processes...’so they comprehensively cover risk management; evaluation criteria; probity plan and Probity Advisor role in complex, high value or high risk procurements; and documentation and record-keeping requirements.

DISCONTINUED AGENCY

- 3.2 The Committee notes that the sale of ACTTAB is now complete and that the discontinued agency has no further annual reporting requirements.³⁰
- 3.3 As reported in the CMTEDD 2014–15 annual report ACTTAB Limited, a territory-owned corporation was sold to Tabcorp Holdings Limited on 14 October 2014. For the purposes of resolving all outstanding residual obligations, the company ACN 071257504 was retained under the *Corporations Act 2001*. At the time of publication of the CMTEDD 2014–15 annual report all outstanding residual obligations relating to the sale of ACTTAB had been resolved.³¹
- 3.4 As part of its inquiry into 2014–15 annual reports, the Committee sought confirmation that ACN 071257504 had been deregistered on 19 July 2015 as reported. An official advised:
- Yes it was deregistered...in early July I think. It actually lapsed into this financial year because we had to clean up submissions and needed to discuss the budget areas, but that has all been done. In terms of the residual part of the business at the moment where effectively it has wound down, there is a small amount of money left, about \$40,000 of costs, which the territory will bear in the final wrap-up, which is related to the residual ICT systems and the statutory liability obligations around insurance for the ex-board.³²
- 3.5 Notwithstanding the completion of the sale of ACTTAB, the Committee is of the view that the Audit makes a number of findings that are relevant to all government directorates and agencies—specifically these relate to ensuring robust procurement practices and good records management.

³⁰ PAC Inquiry into referred 2014–15 Annual reports, *Transcript of evidence*, 2 November 2015, pp. 35–36.

³¹ CMTEDD. (2015) *2014-15 Annual Report*, Vol. 3, p. 1.

³² Mr Neil Bulless, PAC Inquiry into referred 2014–15 Annual reports, *Transcript of evidence*, 2 November 2015, p. 35.

ROBUST PROCUREMENT PRACTICES

- 3.6 The Committee emphasises the importance of ensuring that all appropriate policies, procedures and processes are followed to ensure that all procurements are undertaken in a rigorous and transparent manner.
- 3.7 Notwithstanding the Government's response to recommendation one, as noted at paragraph 2.18, the Committee is of the view that the Government should ensure that all future procurement action conforms with the various parameters of the Recommendation—in particular, as it relates to complex, high value or high risk procurements.

Recommendation 1

- 3.8 The Committee recommends that the ACT Government should ensure that all future procurement action conforms appropriately with risk management, evaluation criteria, probity, and documentation and record-keeping requirements as specified in recommendation one of Auditor-General's report No. 7 of 2015: *Sale of ACTTAB*.**

RECORDS MANAGEMENT

- 3.9 The Audit found several instances of poor record keeping and documentation across the audit themes relating to preparing for the sale and the sale process. These are set out under audit findings in chapter two.
- 3.10 The Committee reiterates comments it has made on previous occasions concerning record keeping together with associated recommendations.
- 3.11 The Committee is firmly of the view that effective records management practices in the ACT Public Service, and its subsequent management, is a fundamental core function of all public sector agencies and is also a fundamental part of every ACT public service employee's responsibilities. All public service employees:

...have an obligation to ensure that key decisions and events are recorded in a way that captures the important features of a discussion or decision, presents a faithful and accurate account of what has happened and can easily be retrieved when needed.³³

³³ Commonwealth Management Advisory Committee (2007), *Note for File: A report on recordkeeping in the Australian Public Service*, No. 8, Commonwealth of Australia, Canberra.

3.12 The Committee reminds all ACT Government directorates and agencies about the importance of good records management as a fundamental element of good governance, in particular with respect to transparency and accountability.

Recommendation 2

3.13 The Committee recommends that ACT Government directorates and agencies should ensure recordkeeping procedures and guidance material address the business activities specific to their operations.

Recommendation 3

3.14 The Committee recommends that the ACT Government should remind all ACT Government directorates and agencies of the importance of good records management to the functioning of the ACT Public Service.

Recommendation 4

3.15 The Committee recommends that the ACT Government should remind all ACT Public Servants of their obligation to ensure that accurate records of key decisions, discussions and events are kept and that these records are easily retrievable when required.

4 CONCLUSION

- 4.1 The Committee notes that ACTTAB, as a former territory-owned corporation, was a publicly owned corporation. The Audit has therefore been important in assessing the probity of the sale of ACTTAB on behalf of the community.
- 4.2 Further, it has also been important in determining whether the sale met all the objectives set out in the November 2013 resolution of the Assembly—in particular, that the racing industry was not negatively impacted by the sale and sufficient consideration was given to employee welfare during the sale process.
- 4.3 The Committee would like to thank the Auditor-General, responsible Minister(s), directorate and agency officials, for their time, expertise and cooperation during the course of this inquiry.
- 4.4 The Committee is of the view that the Audit makes a number of findings that are relevant to all government directorates and agencies—specifically, these relate to ensuring robust procurement practices and good records management.
- 4.5 The Committee has made **four** recommendations in relation to its inquiry into Auditor-General's report No. 7 of 2015: *Sale of ACTTAB*.

Brendan Smyth MLA

Chair

2 February 2016

Appendix A AUDIT REPORT RECOMMENDATION(S)

Recommendation 1—procurement policies, procedures and processes

The Chief Minister, Treasury and Economic Development Directorate should examine, and if needed amend, its procurement policies, procedures and processes so they comprehensively cover:

Risk management:

- 1) all complex, high value or high risk procurements should be subject to a procurement risk assessment and be supported by an approved risk plan which is developed before procurement activity commences (this plan may subsequently be modified as needed); and
- 2) the risk assessment should guide mitigation measures and inform governance and administrative processes for the procurement;

Evaluation criteria:

- 3) evaluation criteria should be designed to match the way in which they will be evaluated; and
- 4) the assessment of evaluation criteria by an assessor and/or panel members should be precise, rigorous and documented;
- 5) Procurements that are not subject to the *ACT Government Procurement Act 2001*:
 - i) need to have the policies, procedures and processes to be used defined and documented at the beginning of a procurement activity; and
 - ii) need to be the subject of a risk assessment and have an approved risk plan;

Probity Plan and Probity Advisor role in complex, high value or high risk procurements:

- 6) a Probity Plan should include a requirement for the provision of written independent assurance at key stages of the procurement;
- 7) the Probity Advisor role as a principle should be independent of other roles in the procurement process. However, if this does not occur, the reasons for not so doing should be documented and a risk assessment undertaken to identify how any associated risks are to be managed;

Documentation and record-keeping requirements:

- 8) complex, high value or high risk procurements should be well documented; and
- 9) an audit should be undertaken immediately at the conclusion of the procurement to identify any gaps so that they can be corrected in a timely manner.