

Department of Finance and Administration

**EXECUTIVE MINUTE**

on

**JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT (JCPAA)  
REPORT 390 (tabled 28 August 2002)**

*Review of Auditor-General's Reports 2001-02 First, Second and Third Quarters*

**General comments**

The Australian National Audit Office (ANAO) *Performance Audit of Commonwealth Estate Property Sales* (Audit Report No.4, 2001-02), tabled 1 August 2001, recommended seven areas in which the Department of Finance and Administration (Finance) should review or change the way in which it administered the Australian Government's property divestment programme. Finance disagreed with the seven ANAO recommendations at the time of the audit, for reasons noted in the audit report.

The JCPAA hearing on 31 May 2002 considered the disagreement between Finance and ANAO regarding the audit recommendations, and relations between Finance and ANAO during the audit. At the hearing, Finance further explained the disagreement it had voiced at the time of the audit, indicating that whilst there were some genuine differences regarding methodology, Finance considered it had already implemented some of the ANAO recommendations.

**Response to the recommendation(s)**

**JCPAA Recommendation No. 1, paragraph 3.57**

*The Committee recommends that the Department of Finance and Administration report to the Committee on whether the substance of the Australian National Audit Office's recommendations have been accepted and are being implemented.*

Finance reports to the Committee as follows:

**ANAO Recommendation No.1** ANAO recommended that Finance review the methodology for deriving the hurdle rate of return in the *Australian Government Property Principles (AGPP)*. A hurdle rate of 14-15% was set in 1996, the year the AGPP were established. This rate was set using the Capital Asset Pricing Model. During the 2002-03 Budget considerations, the Government decided to reduce the hurdle rate to 11%, with effect from 1 July 2002. This reduction was a reflection of the Government's lower long-term cost of funds in more recent years. The methodology used to calculate the rate was refined. The ANAO expressed broad agreement with this outcome at the JCPAA hearing on 31 May 2002. The Government also decided that the hurdle rate should be reviewed annually by Finance. The annual review for 2003-04 concluded that the rate should remain at 11.0% with effect from 1 July 2003. The hurdle rate and methodology has been reviewed again as part of the 2004-05 Budget process.

***ANAO Recommendation No.2*** *ANAO recommended that Finance review the payment of success fees to advisers and the allocation of responsibility to advisers where success fees are used.* Finance has not used success fees as a basis for remuneration of expert advisers on major property sales since August 2001, and has no current plans to do so. Finance continues to use success fees to remunerate real estate agents executing minor sales such as residential properties. This is consistent with standard practice in the property industry. The fee scales used are those recommended by industry peak bodies.

***ANAO Recommendation No.3*** *ANAO recommended that Finance review contractual arrangements with property sales advisers to ensure full documentation and effective management of contractual commitments.* Finance has procedures in place to ensure that all contractual arrangements, including variations to contracts, are formalised via comprehensive contract documentation and approval by appropriate delegates, and effectively managed via a range of widely accepted contract management mechanisms.

***ANAO Recommendation No.4*** *ANAO recommended that, for high value property sales, Finance evaluate the merits of prioritising tender evaluation criteria and documenting the consideration of these priorities in the tender evaluation process.* Finance already implements tender evaluation processes that are aimed at obtaining best value for money and are appropriate to the circumstances of the tender. Finance protects the Australian Government's financial and other interests by accepting the best conforming tender, bid or offer. Conformance covers a range of issues (refer ANAO Recommendation No.5 below) and may include, for example, environment and heritage protection and other planning considerations.

***ANAO Recommendation No.5*** *ANAO recommended that Finance's approval process for property sale and leaseback transactions include the formal consideration of the Financial Management and Accountability Act and Regulations and the Australian Government's Property Disposals Policy, Property Principles, Procurement Guidelines, and the relevant Chief Executive's Instructions.* Finance already considers all property sale and leaseback transactions in the context of how they will satisfy the objectives of all of the relevant policy and regulatory instruments, including those specified above. Finance will further formalise this practice by incorporating explicit relevant approval processes into Finance's procedures manual for property divestment (refer JCPAA Recommendation No.2 below).

***ANAO Recommendation No.6*** *ANAO recommended that Finance consider requiring all bidders in public tenders to lodge a security with their bid.* Finance has previously explored this issue, and legal advice does not support this practice in most situations. However, should an appropriate situation arise, and if supported by legal advice, Finance would consider taking security deposits from registered bidders. Successful bidders are, in any event, always required to lodge substantial deposits upon exchange of contracts, with the balance due on settlement.

*ANAO also recommended that Finance consider assessing the financial capability of short-listed tenderers.* Finance already undertakes, on a case by case basis, appropriate business checks on preferred tenderers to assess their suitability as a purchaser and their ability to complete the sale transaction. Finance also includes in legally binding tender documentation the right to undertake security, probity and/or financial checks on prospective purchasers. Value for money considerations indicate that exhaustive checks are not necessary or cost effective for lower value property sales.

*ANAO Recommendation No.7 ANAO recommended that Finance undertake an appropriate whole-of-lease assessment of value for money on sale and long-term leaseback transactions to ensure the financial interests of the Australian Government are protected. Finance already undertakes appropriate analyses to protect the Australian Government's financial interests. The divestment approval process includes whole-of-lease assessment against the AGPP, including the hurdle rate of return specified therein (refer ANAO Recommendations 1 and 5 above). There have been no sale and leaseback transactions implemented by Finance since June 2003. Finance's future sales will increasingly be surplus properties that are no longer required for Australian Government purposes and are less likely to involve any leaseback arrangements.*

**JCPAA Recommendation No. 2, paragraph 3.59**

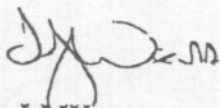
*The Committee recommends that the Department of Finance and Administration, in consultation with the Australian National Audit Office, by June 2003, develop, publish and apply a sale management better practice guide for the disposal of future Commonwealth estate properties, underpinned by the Australian Government Property Principles.*

Finance supports in principle the recommendation to encourage better practice. From a property vendor's perspective, however, Finance has reservations concerning the general publication of its detailed internal procedures. Access to this information by potential buyers in the wider market place could work against the Government's commercial interests.

Finance has compiled a comprehensive procedures manual for property divestment that forms the basis for development of a better practice guide as recommended by the JCPAA. The manual is being applied and progressively refined by Finance in the light of ongoing operational experience and consultation with key stakeholders. Finance proposes to consult with ANAO on how best to develop the manual into a better practice guide.

Finance and the Department of Defence (Defence) are the main agencies involved in divestment of Australian Government property. Finance and Defence have for some time, and on a regular basis, exchanged information on divestment practice. Finance proposes to share its views on better practice with Defence and any other interested Government agencies that may be involved in property divestment. Wider circulation is likely to serve no useful purpose and could compromise the Government's commercial interests as noted above.

Finance notes the guidance already available to Government agencies on the disposal of surplus and under-performing assets which is contained in ANAO's *Better Practice Guide and Handbook on Asset Management*, developed in conjunction with ANAO's 1996 performance audit on asset management.



I J Watt  
Secretary

Department of Finance and Administration

4 May 2004