

External Scrutiny



Parliamentary Committees

Reports by the Australian National Audit Office (ANAO)

Substantial Legal Actions involving Finance

Commonwealth Ombudsman's Office Investigations

e|leven

External Scrutiny

Finance is subject to external scrutiny from many sources. In 2008-09, various parliamentary committees conducted inquiries that were relevant to Finance. These included the Joint Committee of Public Accounts and Audit (JCPAA), the Senate Standing Committee on Finance and Public Administration (SSCFPA) and the Parliamentary Standing Committee on Public Works. The Australian National Audit Office (ANAO) performed a series of audits on activities that were relevant to the department and Finance was involved in several significant legal actions. The department also cooperated with investigations undertaken by the Commonwealth Ombudsman. This chapter focuses on the reviews, inquiries, audits and legal actions where Finance's involvement was substantial.

Parliamentary Committees

Joint Committee of Public Accounts and Audit

The JCPAA is responsible for holding Australian Government agencies to account for the lawfulness, efficiency and effectiveness with which they use public monies. Given Finance's accountability role, the committee often asks the department to contribute to its inquiries.

On 4 June 2008, the JCPAA opened an inquiry into the impact of the efficiency dividend on smaller public sector agencies¹. The committee initiated the inquiry following public discussion about the impact of the government's one-off two per cent efficiency dividend on these agencies, and the related impact of the ongoing efficiency dividend. Finance lodged a submission to this inquiry with the JCPAA on 4 July 2008 and appeared before the hearings of the committee on 19 September 2008. The committee tabled its report on 4 December 2008, recommending a revised approach to the application of the efficiency dividend to smaller agencies. The government's response to the report's eight recommendations was under consideration at 30 June 2009.

On 12 February 2009, the JCPAA invited Finance to give evidence to its inquiry into the role of the Auditor-General in scrutinising government advertising campaigns. The department appeared at public hearings on 11 March and 13 May 2009 and provided a submission on 1 June 2009. The inquiry was still underway at 30 June 2009.

The committee commenced a review of the Auditor-General's reports, numbers 18 to 31, 2008-09 on 13 May 2009. This review included *Audit Report 25: Green Office Procurement and Sustainable Office Management*. Finance appeared at a public hearing of the committee on 24 June 2009 to discuss the report. The review was still underway at 30 June 2009.

On 22 June 2009, the JCPAA tabled *Report 412 – Review of Auditor-General's Reports tabled between August 2007 and August 2008*. The report included five recommendations directed to Finance on matters related to: agency compliance with the Senate Order for the production of lists of departmental and agency contracts; the handling of legal advice obtained by agencies; and support Finance provides to agencies related to information technology security. The report's recommendations were under consideration at 30 June 2009.

Senate Standing Committee on Finance and Public Administration

The SSCFPA is responsible for Senate oversight of several portfolios including Finance. During 2008-09, Finance appeared at the estimates hearings of the SSCFPA on 21 October 2008, 24 February 2009 and from 27 to 28 May 2009. The committee tabled reports that covered the two 2009 hearings on 17 March 2009 and 23 June 2009 respectively. The report tabled on 17 March contained three recommendations for Finance relating to the implementation of Operation Sunlight reforms. These recommendations were under consideration at 30 June 2009.

¹ Report 413 – *The Efficiency Dividend: Size Does Matter*.

Officers of the department appeared before the SSCFPA's inquiry, *Nation Building and Jobs Plan – Inquiry into the provisions of the Appropriation (Nation Building and Jobs) Bill (No.1) 2008-2009 and 5 related bills*², at its hearings on 5 and 9 February 2009. The committee tabled its report on 10 February 2009 with the majority recommending the Senate pass the Bills.

Finance's 2007-08 Annual Report noted that the SSCFPA recommended the department report on the long-term effect of efficiency dividends on the outcomes and services provided by different types of government agencies³. This request was deferred pending the JCPAA's inquiry into the effects of the ongoing efficiency dividend on smaller public sector agencies (outlined on the previous page). The department intends to respond to this matter once the government has finalised its response to that report.

Finance's 2006-07 Annual Report noted that the SSCFPA tabled its report, *Second report on the operation of the Senate Order for the production of lists of departmental and agency contracts (2003-06)* on 27 February 2007. The report made nine recommendations directed to Finance. The government provided a response to the report on 26 August 2008 supporting the report's recommendations, except for the proposal to extend the coverage of the Senate Order to include CAC Act agencies, as these agencies operate under a different legislative and governance framework to those that are subject to the Senate Order.

Finance's 2007-08 Annual Report noted that the SSCFPA tabled its report, *Transparency and Accountability of Commonwealth Public Funding and Expenditure* on 1 March 2007. The Minister for Finance and Deregulation noted that a final response would be provided following the completion of the review of budget transparency matters, including Operation Sunlight, by former Senator Andrew Murray. Senator Murray provided his report to the government on 9 June 2008 and the government released its response to Senator Murray's review on 9 December 2008. A final response to the SSCFPA report was under consideration at 30 June 2009. Further details relating to Operation Sunlight can be found in Chapter 5 – *Outcome 1: Sustainable Government Finances*.

Senate Standing Committee on Economics

On 25 November 2008, Finance gave evidence to the Senate Standing Committee on Economics' inquiry into the *Nation-building Funds Bill 2008*; the *Nation-building Funds (Consequential Amendments) Bill 2008* and the *COAG Reform Fund Bill 2008*. The committee tabled its report on 2 December 2008 recommending the Senate pass the Bills.

Parliamentary Standing Committee on Public Works

The Parliamentary Standing Committee on Public Works, also known as the Public Works Committee, reviews all public works valued above \$15 million.

On 22 September 2008, the committee published *Report 7/2008 – Update Report: the Christmas Island Detention Project*. The committee expressed concern about cost over-runs associated with the project and noted that the ANAO was undertaking an audit of the project⁴ (this audit is outlined on page 98).

On 4 December 2008, the Australian Security Intelligence Organisation and Finance provided a confidential briefing to the committee in regards to the Commonwealth New Building Project. This briefing was offered to the committee after the Governor-General granted the project an exemption from scrutiny by the committee on 4 October 2007 (under paragraph 18(8)(c) of the *Public Works Committee Act 1969*), because the work is for defence purposes and referring it to the committee would be contrary to the public interest.

On 14 May 2009, Finance provided a proposal to the committee to undertake works to enable the Department of Defence to take up the tenancy of the refurbished ANZAC Park West office building in Parkes, Canberra. The committee was still considering the proposal at 30 June 2009⁵.

² *Appropriation (Nation Building and Jobs) Bill (No.1) 2008-2009; Appropriation (Nation Building and Jobs) Bill (No 2) 2008-2009; Commonwealth Inscribed Stock Amendment Bill 2009; Household Stimulus Package Bill 2009; Tax Bonus for Working Australians (Consequential Amendments) Bill 2009; and Tax Bonus for Working Australians Bill 2009.*

³ SSCFPA *Additional Estimates 2007-08 report, tabled 18 March 2008.*

⁴ *Report Number 43, 2008/2009: Construction of the Christmas Island Immigration Detention Centre* (tabled 23 June 2009).

⁵ Finance appeared in relation to the ANZAC Park West proposal at the Public Works Committee's public hearing on 4 August 2009.

Reports by the Australian National Audit Office (ANAO)

As a central agency, Finance is often referred to in ANAO reports. In relation to reports completed during 2008-09 where recommendations were directed to and agreed by Finance, the department has either implemented or is taking steps to implement these recommendations. The following audit reports either included significant involvement by Finance or included recommendations specific to Finance.

Report Number 3, 2008/2009: Establishment and Management of the Communications Fund – tabled 23 September 2008

The objective of this audit was to assess the effectiveness of the management of the Communications Fund by the former Department of Communications, Information Technology and the Arts. Finance was a member of the working group that examined management options for the fund and had a role in progressing its longer-term investment strategy, but was not significantly involved in the development of the legislation that enabled the fund.

The ANAO made recommendations relating to the way legislative approval and investment advice should be sought in similar circumstances in the future. Finance agreed with the recommendations but, as the department's ongoing involvement with the Communications Fund is limited, further action by Finance was not required.

Report Number 5, 2008/2009: The Senate Order for Departmental and Agency Contracts (Calendar Year 2007 Compliance) – tabled 25 September 2008

The objective of this audit was to assess the extent to which all agencies complied with the requirement of the Senate Order on Departmental and Agency Contracts to place on the internet a list of contracts valued at \$100,000 or more that the agency has entered into in the previous 12 months. The audit also examined the appropriateness of the use by six selected agencies of confidentiality provisions in contracts. Finance produces guidance that assists agencies to meet their obligations under the Senate Order.

The report recommended that agencies implement review measures to assess the appropriateness of decisions to include confidentiality provisions in contracts and provide suitable feedback to the staff involved in their procurement activities. Finance supported the recommendation.

Report Number 14, 2008/2009: Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2008 – tabled 17 December 2008

The objective of this audit was to provide an independent examination of the financial accounting and reporting of public sector entities, including Finance. The audit report expresses the auditor's opinion on whether the financial statements as a whole, and the information contained within them, fairly reflect the results of each entity's operation and its financial position.

The report concluded that the 2007-08 Consolidated Financial Statements gave a true and fair view of the Australian Government's financial position as at 30 June 2008. For the second consecutive year, the Consolidated Financial Statements received an unqualified audit report.

Report Number 18, 2008/2009: The Administration of Grants under the Australian Political Parties for Democracy Program – tabled 3 February 2009

The objective of this audit was to assess the effectiveness of the accountability arrangements and of Finance's administration of the Australian Political Parties for Democracy Program.

The audit concluded there were opportunities for Finance to strengthen the administrative arrangements for the program. Finance agreed to the four audit recommendations, with some qualifications. On 1 July 2009, administration of the program transferred from Finance to the Australian Agency for International Development (AusAID). AusAID will be responsible for implementing the ANAO's recommendations.

Report Number 19, 2008/2009: CMAX Communications Contract for the 2020 Summit – tabled 4 February 2009

The objectives of this audit included an examination of whether the Department of the Prime Minister and Cabinet's appointment of CMAX Communications Pty Ltd for the 2020 Summit was consistent with the Australian Government procurement framework and sound principles of public administration.

The report recommended implementing coordinated procurement arrangements for media and communications advisory services. In response, Finance advised that the level of expenditure on media and communications advice consultancies across government was not sufficient to warrant centralising the procurement of these services.

Report Number 20, 2008/2009: Approval of Funding for Public Works – tabled 5 February 2009

The objective of this audit was to assess the planning and delivery of capital works projects undertaken by Australian Government agencies. The report made recommendations that were relevant to the department relating to the information provided to the Public Works Committee about project cost estimates, project finalisation reports and post-implementation reviews. Finance agreed to the recommendations.

Report Number 24, 2008/2009: The Administration of Contracting Arrangements in relation to Government Advertising to November 2007 – tabled 5 March 2009

The objective of this audit was to assess the effectiveness of the procurement and contracting activities associated with government advertising campaigns and the operation of the Central Advertising System.

The report recommended that in developing arrangements to renew the Central Advertising System, Finance include a performance management framework and transition planning, simplify financial arrangements, and provide for appropriate consultation with clients. Finance supported the recommendations and has incorporated them into the department's ongoing administration of government advertising.

Report Number 25, 2008/2009: Green Office Procurement and Sustainable Office Management – tabled 11 March 2009

The objective of this audit was to assess and report on government agencies' progress in achieving better practice in green office procurement and sustainable office management. The report recommended that all agencies strengthen their internal environmental management systems and plans, and improve their sustainability practices. Finance agreed in-principle with all the recommendations and has commenced developing an environmental policy statement and supporting strategies.

Report Number 29, 2008/2009: Delivery of Projects on the AusLink National Network – tabled 23 April 2009

The objective of this audit was to assess the effectiveness of project delivery on the AusLink National Network by the Department of Infrastructure, Transport, Regional Development and Local Government. The audit included discussion of the way AusLink projects that were announced as election commitments had been costed.

The report directed no recommendations to Finance but encouraged the department to consider expanding its guidance on the information required for costing projects in the *Charter of Budget Honesty, Costing of Election Commitments: Guidelines*. Finance undertook to consider this issue during the regular review of matters relevant to costings under the charter, which will be finalised in 2009-10.

Report Number 37, 2008/2009: Online Availability of Entities' Documents Tabled in the Australian Parliament – tabled 25 May 2009

The objectives of this audit included an assessment of Finance's policy and guidance to agencies on online publishing, including the department's *Australian Government Web Publishing Guide*.

The report found that the guide was relevant, accessible and easy to use. The report suggested the guide could be improved by specifying the requirements relating to tabling papers with greater clarity, providing advice on the period that government entities must maintain documents online and providing advice on whether an entity can electronically archive its parliamentary documents. Finance revised the guide in accordance with the recommendations and released the enhanced version on 17 June 2009.

Report Number 42, 2008-2009: Interim Phase of the Audit of Financial Statements of General Government Sector Agencies for the Year ending 30 June 2009 – tabled 22 June 2009

As part of the interim audit procedures for the 2008-09 financial statements of agencies, the objective of this audit was to examine the internal control structures of major government entities including Finance. These control structures include governance arrangements, information systems and control procedures.

In relation to Finance, the audit found that key internal controls are generally operating satisfactorily. The report made two moderate risk findings associated with the implementation of the department's new Financial Management Information System. Finance addressed these issues during the 2008-09 financial year and is confident that they will not affect the financial statements for 2009-10.

Report Number 43, 2008/2009: Construction of the Christmas Island Immigration Detention Centre – tabled 23 June 2009

The objectives of this audit were to assess the adequacy of the planning and delivery processes for construction of the Christmas Island Immigration Detention Centre, the extent of the value for money achieved in the delivery of the project, and the project's compliance with the *Public Works Committee Act 1969*.

The report noted that the project was more complex than many others undertaken by the Australian Government and recommended changes to the business processes Finance uses to deliver capital projects. Finance agreed to the recommendations and is incorporating the proposed changes into internal guidance material. In particular, the department is addressing the areas of risk assessment, order of accuracy of cost estimates, governance arrangements, and costs over the life of projects where multiple agencies are involved. Finance is also conducting post-project reviews to identify further areas for improvement.

Report Number 44, 2008/2009: Security Risk Management – tabled 23 June 2009

The objective of this audit was to assess whether selected organisations had effective security risk management programs, including whether protective security risk controls were working as designed.

The report recommended that the Attorney-General's Department work with Finance to clarify the CAC Act organisations to which the *Protective Security Manual* applies. The department agreed to the recommendation. While the report did not direct any other recommendations to Finance, the department has incorporated relevant suggestions from the audit into its security risk management framework.

Report Number 48, 2008/2009: Planning and Approval of Defence Major Capital Equipment Projects – tabled 30 June 2009

The objective of this audit was to assess whether the strengthened two-pass approval process for major capital equipment projects is being implemented effectively.

The report's recommendations included requesting that the Department of Defence should reach an agreement with Finance on a suitable approach to whole-of-life costings, and seek Finance's involvement in the evaluation of capability development costings at an early stage. Finance agreed to the recommendations.

Substantial Legal Actions involving Finance

Commonwealth of Australia v BIS Cleanaway Ltd

The Commonwealth commenced proceedings on 28 June 2006 in the NSW Supreme Court against BIS Cleanaway Limited (now known as Transpacific Cleanaway Pty Ltd). This action relates to the depositing of industrial wastes by a private entity between 1973 and 1980 on Commonwealth land at Lucas Heights in Sydney under a licence granted by the Commonwealth.

Since reporting this matter in Finance's 2006-07 and subsequent Annual Reports, the department has continued to pursue this action. On 23 July 2008, the NSW Court of Appeal struck out Finance's application for leave to appeal a previous decision on this matter. Negotiations with BIS Cleanaway Ltd and the NSW Department of Environment, Climate Change and Water (DECCW) continue. Finance's legal advisers, Clayton Utz, are continuing to liaise with DECCW to ensure the matter is resolved to the satisfaction of all interested parties.

Commonwealth of Australia v Davis Samuel Pty Ltd & Ors

Since reporting this matter in Finance's 2001-02 and subsequent Annual Reports, Finance continues to pursue the funds defrauded by Mr David Muir, which he distributed to a number of parties. All criminal proceedings have now been completed and the civil hearing in relation to this matter commenced against 15 defendants in the ACT Supreme Court on 10 June 2008. Final submissions were lodged on 27 February 2009 and the defendants have asked the Court to re-list the matter. The Commonwealth opposed the request and the Court is yet to decide on this issue. A written decision on the matter is expected in late 2009.

John Cornwell v Commonwealth of Australia

On 6 March 2005, the ACT Supreme Court found against the Commonwealth of Australia in a claim for negligence and breach of contract relating to superannuation benefits by Mr John Cornwell, a former employee of the then Department of the Interior. Mr Cornwell claimed that he was disadvantaged by advice he received from his manager in relation to his ineligibility to join a Commonwealth superannuation scheme. Following two unsuccessful appeals, the Commonwealth settled with Mr Cornwell in October 2007.

As at 30 June 2009, there were 22 further cases where the plaintiff had filed proceedings against the Commonwealth in the ACT Supreme Court alleging negligent mis-statement, negligence and breach of statutory duty in relation to superannuation entitlements. Each matter is progressing in line with the court timetable.

G & M Nicholas Pty Ltd v Minister for Finance and Deregulation

On 29 February 2008, G & M Nicholas Pty Ltd filed proceedings in the Federal Court of Australia seeking a review under the *Administrative Decisions (Judicial Review) Act 1977* of a decision by the Minister for Finance. The Minister had declined a request for an Act of Grace payment (under Section 33 of the FMA Act) relating to a compensation claim for alleged business losses and reputational damage due to a statement by a former Minister for Health and Ageing, which named the applicants in Parliament. A hearing was held on 17 and 19 September 2008 and the Court handed down its judgement on 20 February 2009. It found that, by not providing the applicants with an opportunity to comment on a summary of a Question Time Brief in a document used by the Minister in making his decision, the Minister had not provided the applicants with procedural fairness. The Court referred the matter back to the Minister to reconsider.

Sharjade v Darwinia and the Commonwealth of Australia

The Commonwealth was a second defendant in an action by Sharjade, which the NSW Supreme Court heard from 7 to 24 July 2008. Sharjade alleged that the Commonwealth induced Darwinia to breach an agreement made in 2000 between Sharjade and Darwinia in relation to the sale of Commonwealth land at Turrumurra (NSW) to Darwinia for the construction of a retirement village for ex-service personnel. The Court dismissed the claim against the Commonwealth on 8 October 2008. Sharjade subsequently appealed the decision.⁶

⁶ The full bench of the NSW Supreme Court heard the appeal on 19 and 20 August 2009.

Southern Cross Airports Corporation Pty Ltd v Chief Commissioner of State Revenue

On 17 November 2006, the NSW Office of State Revenue (OSR) issued an assessment for land rich duty arising from the sale of the Sydney Airport to Southern Cross Airports Corporation Holdings Limited in 2002. Finance formally objected to the assessment on 11 January 2007 on the basis that the valuation methodology adopted by the OSR was not in accordance with the relevant legislation and standard valuation practices, and that the Commissioner should have exercised his 'just and reasonable' discretion not to assess stamp duty.

Since reporting this matter in Finance's 2007-08 Annual Report, the department has continued to pursue the matter and pre-trial procedures are still in progress. The matter is likely to be listed for hearing in early 2010.

Woodlands Pty Limited and W R Hyles & Co v Commonwealth of Australia

On 17 January 2008, the former owners and operators of the property that is now the site of the Defence Headquarters Joint Operation Command (located between Queanbeyan and Bungendore, NSW) instituted proceedings in the Federal Court of Australia against the Commonwealth. The family company Woodlands Pty Limited was the registered proprietor of the land and members of the family, being the partners of the W R Hyles & Co partnership, conducted farming business on the land.

The claimants sought a determination of compensation by the Federal Court as an entitlement under the *Lands Acquisition Act 1989*. The Commonwealth made an offer of compensation to Woodlands Pty Limited on 20 July 2007 but it was not accepted. The matter was resolved through mediation on 9 December 2008.

Commonwealth Ombudsman's Office Investigations

In the 2008-09 year, Finance was aware of the Ombudsman's Office investigating thirteen issues concerning the department. The majority of these issues related to concerns about Act of Grace payments raised by members of the public. Finance provided responses to the Ombudsman's Office in relation to all the issues raised. The Ombudsman's Office notified Finance that no action was to be taken on nine of these matters and, as of 30 June 2009, the department is aware of four issues that the Ombudsman's Office is still investigating. Finance has provided, or is in the process of providing, responses to these.