**External Scrutiny**

Finance is subject to ongoing external scrutiny from many sources. In 2007-08 various parliamentary committees including the Joint Committee of Public Accounts and Audit, the Senate Standing Committee on Finance and Public Administration, the Senate Standing Committee on Education, Employment and Workplace Relations and the Parliamentary Standing Committee on Public Works each conducted one or more inquiries which either examined or were relevant to Finance's activities.

The Australian National Audit Office (ANAO) also performed a series of performance and other audits on activities that were relevant to the department’s operations. In addition, Finance was involved in several significant legal actions during the year. This chapter focuses on the reviews, inquiries, audits and legal actions where Finance’s involvement was substantial.

**Joint Committee of Public Accounts and Audit**

On 4 June 2008 the Joint Committee of Public Accounts and Audit resolved to review the effects of the ongoing efficiency dividend on smaller public sector agencies. This review was underway at 30 June 2008 and the committee’s program of inquiry did not otherwise include matters which warranted a submission by Finance during 2007-08.

**Senate Standing Committee on Finance and Public Administration**

During 2007-08, Finance appeared at the estimates hearings of the Senate Standing Committee on Finance and Public Administration on 19 and 22 February and 28-29 May 2008. The committee tabled reports in relation to the hearings on 18 March and 24 June 2008 respectively. In its 18 March 2008 report, the committee recommended that Finance “report to the government and the Parliament on the long term effect of efficiency dividends on the outcomes and services provided by different types of government agencies. The report should be completed by the last Parliamentary sitting fortnight of 2008.” This recommendation was under consideration at 30 June 2008.

**Transparency and Accountability of Commonwealth Public Funding and Expenditure**

The committee tabled its report *Transparency and Accountability of Commonwealth Public Funding and Expenditure* on 1 March 2007, and at the time of the presentation of the Finance 2006-07 Annual Report the government had not provided its response to the committee.

On 6 April 2008 an interim response to the report was provided to the committee by the Finance Minister, informing the committee that a final response would be provided in the second half of 2008. The minister noted that a number of the recommendations of the committee report were consistent with initiatives being pursued under Operation Sunlight, the government’s reform agenda in relation to improving Budget transparency and accountability. The minister also advised, however, that Senator Andrew Murray was conducting a review of Budget transparency matters in the first half of 2008, and would be making suggestions on how to further improve Operation Sunlight, taking into account the committee’s own recommendations.

Senator Murray provided his report in late June 2008 and, as a result, a final response to the committee is expected to be provided in the second half of 2008, after the government has considered Senator Murray’s report.

**Senate Standing Committee on Education, Employment and Workplace Relations**

Finance assisted the Senate Standing Committee on Education, Employment and Workplace Relation’s inquiry into the *Higher Education Endowment Fund Bill 2007* and the *Higher Education Endowment Fund (Consequential Amendments) Bill 2007* by appearing before it on 31 August 2007. The committee made the recommendation that the Bills be passed and tabled its report on 10 September 2007.

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1 Finance provided a submission to the inquiry on 4 July 2008 and appeared at a public hearing on 19 September 2008.
Parliamentary Standing Committee on Public Works

The Parliamentary Standing Committee on Public Works (also known as the Public Works Committee (PWC)) reviews all public works valued above $15 million. In 2007-08 Finance had no projects referred to PWC for review. However, two projects that had experienced budget increases were the subject of PWC update briefings in this period.

The Christmas Island Immigration Detention Centre was initially considered by PWC in late 2003. The committee agreed, on 2 December 2003, that the project should proceed at a cost of $197.7 million. This budget was subsequently increased to $317 million during the course of the project. Finance notified the committee of this increase in January 2008, and provided further assistance to the committee by appearing at a public hearing on 26 June 2008.

The Royal Australian Mint Refurbishment was endorsed by the PWC on 11 October 2005, at a cost of $41.2 million. In October 2007, Finance notified the committee of an overall budget increase of $25.6 million and, on 15 May 2008, briefed the committee on the reasons for the increase.

Reports by the Australian National Audit Office

As a central agency, Finance is often referred to in ANAO reports. In relation to references in reports completed during 2007-08, 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 involved Finance significantly or included recommendations specific to Finance.

Audit Report No. 14, 2007-08
Regional Partnerships Program
(tabled 15 November 2007)

The audit examined the Regional Partnerships Program and the processes involved in grant applications, approval, funding and outcomes. The audit found that the manner in which the program had been administered over the three year period to 30 June 2006 had fallen short of an acceptable standard of public administration, particularly in respect of the assessment of grant applications and the management of Funding Agreements. Finance worked closely with the then Department of Transport and Regional Services and the ANAO throughout the course of the audit to address financial framework issues identified during the conduct of the audit.

While Finance was not an auditee, recommendation 2 proposed that Finance assess the merits of proposing amendments to the FMA Regulations. Finance has agreed to assess the proposal. The financial framework issues, including possible amendments to the FMA Regulations, were considered in the Strategic Review on the Administration of Australian Government Grants Programs commissioned by the government to advise on measures to improve grants management and administration. Pending receipt of the report and finalisation of the government’s response, Finance issued a new Finance Circular (No. 2008/06 of 20 June 2008) to provide FMA Act agencies with consolidated advice in entering into commitments to spend public money, including spending proposals relating to discretionary grants.

Audit Report No. 18, 2007-08
Audits of the Financial Statements of Australian Government Entities for the Period Ending 30 June 2007
(tabled 20 December 2007)

The objectives of the audit of the financial statements of Australian Government entities, including Finance, were to provide an independent examination of the financial accounting and reporting of public sector entities. The audit report expresses the auditor’s opinion on whether the financial statements as a whole, and the information contained therein, fairly reflect the results of each entity’s operation and its financial position.
The report concluded that the 2006-07 Consolidated Financial Statements gave a true and fair view of the overall financial position and operating result of the Australian Government as at 30 June 2007. The removal of qualifications contained in previous audit reports reflected the reduction in severity of the qualification of Defence financial statements, and the recognition of GST as revenue of the Australian Government.

**Audit Report No. 22, 2007-08**

**Administration of Grants to the Australian Rail Track Corporation**

*(tabled 14 February 2008)*

The objective of the audit was to assess the effectiveness of the administration of grants made to the Australian Rail Track Corporation (ARTC). The audit involved an examination of the then Department of Transport and Regional Services’ administration of the grant funding approved for, and paid to, the ARTC (in respect of both the grants paid for projects approved under legislation and three special grants). The audit included consideration of the role of the then Department of Finance and Administration (Finance) and the Department of the Prime Minister and Cabinet in advising on the special grant funding and, in respect of Finance, the payment and reporting arrangements for the grants.

The report made two recommendations: to promote improved advice to ministers; and improve the monitoring and acquittal arrangements for any future special grants. Finance supported the recommendations.

**Audit Report No. 23, 2007-08**

**The Management of Cost Recovery by Selected Regulators**

*(tabled 21 February 2008)*

The objective of the audit was to assess whether selected regulatory agencies have cost recovery procedures and practices which comply with the government’s guidelines. Finance was not an auditee but the department has policy responsibility for cost recovery and for providing guidance to assist agencies with its application.

The ANAO recommended that, in order to increase transparency for stakeholders and assist staff to apply the guidelines, agencies should consolidate their cost recovery policy and procedures into a single document and ensure documentation outlining costing systems is up to date, accessible and easily understood.

Finance supported the recommendation, has advised Chief Financial Officers of the report’s recommendation and will subsequently incorporate these requirements in cost recovery guidelines which are scheduled to be reviewed in the second half of 2008.

**Audit Report No. 28, 2007-08**

**Defence’s Compliance with the Public Works Committee Approval Processes**

*(tabled 22 April 2008)*

The audit reviewed selected Defence public works projects to assess whether these had been submitted in accordance with the Public Works Committee’s prevailing requirements for notification and review prior to entering into financial commitments for public works.

The ANAO concluded that Defence complies with the requirements of the Public Works Committee Act 1969, and largely complies with the requirements of the committee’s manual, in referring projects to the committee for notification and review prior to entering into financial commitments for the relevant public works.

The report did not have a direct impact on Finance but it was of broad interest because of Finance’s roles with respect to public works and procurement policy and in the budget process in relation to Defence.

The ANAO recommended that Defence develop and document processes to report back to the committee on recommendations made in the committee’s reports to parliament where feedback has been requested. Finance supported this recommendation.
Audit Report No. 31, 2007-08
Management of Recruitment in the Australian Public Service
(tabled 29 April 2008)

The objective of the audit was to assess whether Australian Public Service agencies had sound approaches to recruitment that assist in providing the workforce capability to deliver government programs effectively.

The report concluded that recruiting skilled staff was difficult for APS agencies in 2007. The report also found that, although the Management Advisory Committee, the Australian Public Service Commission and the ANAO had advised agencies to implement strategic recruitment approaches based on workforce planning analysis, nearly half of the responding agencies reported that they did not have policies, strategies and/or frameworks in place to support them to meet workforce capability requirements over the next one to five years.

The report provided five key recommendations based on the findings of the fieldwork at the audited agencies. At the time of this report being tabled, Finance had addressed all five recommendations and relevant policies, strategies, practices and guidelines had been developed and implemented.

Audit Report No. 37, 2007-08
Management of Credit Cards
(tabled 3 June 2008)

The objective of the audit was to assess whether agencies had effectively administered credit cards, including compliance with legislative and internal requirements. The audit examined the use of Commonwealth credit cards in four selected agencies. Finance was not an auditee.

The four recommendations relate to internal processes and controls that agencies can implement, to help ensure the sound use and management of credit cards.

Finance provided the ANAO with comments on the draft audit report as well as high level, non-agency specific information regarding instances of non-compliance relating to credit cards across all FMA Act agencies. As indicated in Finance’s response, Finance has notified Chief Financial Officers of FMA Act agencies of the release of the report.

Audit Report No. 41, 2007-08
Management of Personnel Security – Follow-up Audit
(tabled 18 June 2008)

The objective of this audit was to assess the effectiveness of personnel security arrangements at selected Australian Government organisations, including whether they satisfied the requirements of the Australian Government Protective Security Manual. The audit examined the extent to which the selected organisations had implemented recommendations from previous reports produced by the ANAO and the JCPAA that assessed the adequacy of personnel clearance arrangements in Australian Government organisations.

The report noted that Finance enhanced its administration of security clearances for Members of Parliament (Staff) Act 1984 staff and implemented the recommendation from the previous ANAO Audit Report No.15, 2003-04.
Audit Report No. 43, 2007-08
Third Tranche Sale of Telstra Shares
(tabled 24 June 2008)

The objectives of the audit were to assess the extent to which the government’s sale objectives were achieved including: maximising overall value for money; assessing the effectiveness of the management of the sale; and identifying principles of sound administrative practice to facilitate potential improvements in any future asset sales.

Overall, the report found that the planning and management of the third tranche sale of Telstra shares was effective and met sale objectives. The report made one recommendation, suggesting that a threshold be set, above which project managers are required to obtain underlying receipts of road show expenditure prior to certifying that expenditure. Finance agreed that, as part of any future asset sale preparation, consideration would continue to be given to the most appropriate road show expenditure control structure, commensurate with the risks being managed. The report did not identify any area of expenditure that should not have been incurred.

Audit Report No. 44, 2007-08
Interim Phase of the Audit of Financial Statements of General Government Sector Agencies for the Year ending 30 June 2008
(tabled 25 June 2008)

This audit outlined findings related to Finance’s and other major entities’ internal control structures, including governance arrangements, information systems and control procedures, as part of the interim audit procedures for the 2007-08 financial statements.

Most agencies had areas of their financial control environment that required attention, although the ANAO noted that there had been an overall improvement in agencies’ financial controls. In respect of Finance, the audit concluded that key internal controls are operating satisfactorily to provide reasonable assurance that financial statements can be produced free of material misstatement.

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 in relation to the depositing of industrial wastes between 1973 and 1980 on land owned by the Commonwealth at Lucas Heights in Sydney. The waste was deposited by Industrial Waste Collection Pty Ltd under a licence agreement with the Commonwealth. The Commonwealth is asserting that this licence was novated to Brambles Australia Limited (now known as BIS Cleanaway) and that, as a result, BIS Cleanaway has the obligation to remediate the site in accordance with the terms of the licence. On 26 September 2007, the NSW Supreme Court struck out the Commonwealth’s claim on the basis that it would not fully resolve the issues between the parties. The Commonwealth has appealed against this decision. At 30 June 2008, final preparations for the appeal hearing were underway.

Commonwealth of Australia v Davis Samuel Pty Ltd & Ors

Since reporting this matter in the department’s 2001-02 and subsequent annual reports, Finance continues to pursue the funds defrauded by Mr David Muir, which were distributed by him to a number of parties. All criminal proceedings have now been completed and the civil hearing in relation to this matter commenced against fifteen defendants in the ACT Supreme Court on 10 June 2008 and continued until 1 July 2008. The matter is proceeding in line with the court timetable.
John Cornwell v Commonwealth of Australia

On 6 March 2005, the Supreme Court of the ACT 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 eligibility to accrue superannuation benefits. The Commonwealth’s two appeals against this decision, to the Full Bench of the ACT Supreme Court and to the Full Bench of the High Court, were not upheld. The Commonwealth settled with Mr Cornwell in October 2007.

There are currently fifteen further cases where the plaintiff has filed proceedings against the Commonwealth in the ACT Supreme Court alleging negligent misstatement, negligence and breach of statutory duty in relation to superannuation entitlements. Each matter is progressing in line with the court timetable. Details of these cases are as follows:

Trevor Syphers v Commonwealth of Australia – filed on 10 August 2005,
Richard Duffy v Commonwealth of Australia – filed on 23 September 2005,
Anthony Harriott v Commonwealth of Australia – filed on 30 June 2006,
Grahame Cooke v Commonwealth of Australia – filed on 12 July 2006,
Robert Reeve v Commonwealth of Australia – filed on 11 October 2006,
Martin Guy v Commonwealth of Australia – filed on 6 December 2006,
Rhoderick Mackenzie v Commonwealth of Australia – filed on 7 March 2007,
David Ferry v Commonwealth of Australia – filed on 23 March 2007,
Wayne Meredith v Commonwealth of Australia – filed on 6 August 2007,
Tony Langhorn v Commonwealth of Australia – filed on 29 August 2007,
Douglas Burgess v Commonwealth of Australia – filed on 16 November 2007,
Kanapathi Siva v Commonwealth of Australia – filed on 20 December 2007,
Mark Bailey v Commonwealth of Australia – filed on 17 January 2008,
Ian McDonald v Commonwealth of Australia – filed on 21 February 2008, and

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 and Deregulation, declining a request for an act of grace payment on the basis of public criticism about the company by a former Minister for Health and Ageing. The matter is progressing in line with the court’s timetable.

Roach v Electoral Commissioner & Anor

In March 2007, proceedings were instituted in the High Court of Australia by Ms Vickie Lee Roach against the Electoral Commissioner and the Commonwealth, challenging the removal of the ability to vote by prisoners serving a sentence of full-time detention. The plaintiff argued that the prisoner voting provisions in the Commonwealth Electoral Act 1918 were contrary to the Constitution and beyond the legislative powers conferred by the Constitution on the parliament.

The Commonwealth argued that the prisoner voting provisions of the Commonwealth Electoral Act were valid. The Western Australian and the New South Wales governments intervened in the proceedings in support of the Commonwealth. Finance worked with the Australian Electoral Commission (AEC) and the Attorney-General’s Department to provide instructions to the Commonwealth’s legal representatives.

The proceedings were heard before the Full Court of the High Court of Australia on 12 and 13 June 2007. On 30 August 2007, the High Court decided that it was unconstitutional to disenfranchise all persons who, on the election-day, were in full-time imprisonment. In doing so, the High Court validated an earlier version of the Electoral Act, which only disenfranchised prisoners serving a sentence of three years or longer for an offence against the law of the Commonwealth or of a State or Territory. The court delivered its reasons for decision on 26 September 2007.
**Athol Sellars v Commonwealth of Australia**

On 31 August 2007, Mrs Sellars, on her own behalf and as personal representative of the estate of the late Mr Sellars, filed proceedings against the Commonwealth in the ACT Supreme Court alleging negligent misstatement, negligence and breach of statutory duty in relation to superannuation entitlements. On 30 July 2008, the court issued a Consent Judgement following Mrs Sellars’ acceptance of the Commonwealth’s offer to withdraw her claim. Both parties agreed to pay their own costs.

**Sharjade v Darwinia (RAAFA)**

The Commonwealth is joined as a second defendant in an action in the NSW Supreme Court. In the action, it is 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 Turramurra, NSW, to Darwinia for construction of a retirement village for ex-service personnel. The matter is proceeding in line with the court timetable.

**Sharples v Australian Electoral Commission**

On 21 November 2007, Mr Terry Sharples and the Fishing Party applied to the Federal Court of Australia seeking an injunction to prevent the 2007 half Senate elections in New South Wales, Queensland and South Australia. The AEC, the Commonwealth, the Australian Fishing and Lifestyle Party and five other persons were the respondents.

The applicants alleged that the Australian Fishing and Lifestyle Party fraudulently obtained registration from the AEC.

On 11 December 2007, Mr Smith, the Chairman of the Fishing Party, unsuccessfully applied to personally represent the Fishing Party in court proceedings. Costs associated with that application were awarded against Mr Smith.

On 8 February 2008, the proceedings were discontinued by consent with no order made as to costs, other than those made on 11 December 2007. The court delivered its reasons on 12 February 2008.

**Gregory Shipp v Commonwealth of Australia**

On 25 October 2007, Mr Shipp filed proceedings against the Commonwealth, AAL Aviation Limited and Qantas Airways Ltd in the New South Wales Supreme Court alleging negligent misstatement, negligence and breach of statutory duty in relation to superannuation entitlements. The matter is progressing in line with the court timetable.

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

In November 2006, the NSW Office of State Revenue (OSR) issued an assessment for Land Rich Duty arising from the sale of the Sydney Airports Corporation Limited to Southern Cross Airports Corporation (SCAC) in 2002. Finance formally objected to the assessment in January 2007 on the basis that the valuation methodology adopted by 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.

In December 2007, OSR disallowed all objections and refused to exercise the ‘just and reasonable’ discretion. In February 2008, the SCAC lodged a judicial review application in the NSW Supreme Court and a formal objection to the OSR’s refusal to exercise the ‘just and reasonable’ discretion (which was rejected by OSR in May 2008). The matter is proceeding in line with the court timetable.
Votraint No. 1008 Pty Limited v Commonwealth of Australia

In 2002, Votraint No. 1008 Pty Limited lodged a statement of claim for damages against the Commonwealth in the NSW Supreme Court, arising from the sale of Lot 2 Forrester Road, St Mary’s, NSW, on 1 October 2002. Votraint alleged that the Commonwealth failed to disclose the existence of a telecommunications cable affecting the property at the time of sale in 1996. While the proceedings were dismissed, Votraint’s appeal was upheld on 15 July 2005 and Votraint was granted a costs order and leave to file an amended statement of claim. No amended statement of claim was lodged and there had been no action for two years. On 10 May 2007, the Commonwealth filed a motion seeking to have the claim struck out for want of prosecution. On 20 February 2008, the Commonwealth accepted Votraint’s settlement offer on the basis that Votraint’s application was dismissed and each party bear their own costs, subject to execution of a Deed of Settlement preventing Votraint resurrecting its claim.

Woodlands Pty Limited and WR Hyles and Co v Commonwealth of Australia

In January 2008 proceedings were instituted in the Federal Court of Australia against the Commonwealth by 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. The family company, Woodlands Pty Limited, was the registered proprietor of the land and members of the family being the partners of WR Hyles and Co partnership, conducted farming business on the land.

The claimants seek a determination of compensation by the Federal Court (an entitlement under the Lands Acquisition Act 1989). An offer of compensation to Woodlands Pty Limited has been made but no offer to the partners of WR Hyles and Co has been made because, in this instance, the assertion by WR Hyles and Co that a leasehold interest exists between WR Hyles and Co and Woodlands Pty Limited is not a recognised interest under the Lands Acquisition Act 1989. The matter is proceeding in line with the court timetable.

Commonwealth Ombudsman’s Office Investigations

In the 2007-08 year, Finance was aware of the Ombudsman’s office investigating eleven issues concerning Finance. The majority of these issues related to Act of Grace concerns raised by members of the public. Finance provided responses to the Ombudsman’s office in relation to all issues raised. In relation to five of these issues, the Ombudsman’s office notified Finance that no action was to be taken. Finance accepted the Ombudsman’s office recommendations in respect of one issue and, as of 30 June 2008, Finance is aware of five issues which are still being investigated by the Ombudsman’s office. Responses have been provided by Finance in relation to these.