

### **Auditing For The Australian Capital Territory**

The Auditor-General is head of the Auditor-General's Office. He and his Office act independently of the Government. The Office assists the Auditor-General to carry out his duties, which are set out in the Audit Act 1989, by undertaking audits of management performance and the financial statements of public sector bodies. The aim is to improve public sector management and accountability by firstly, ensuring the Legislative Assembly and the electorate are provided with accurate and useful information about the management of public sector resources and secondly, by providing independent advice and recommendations for improving the management of public resources.

PA96/05

26 March 1996

The Speaker  
Australian Capital Territory  
Legislative Assembly  
South Building  
CANBERRA ACT 2601

Dear Mr Speaker

In accordance with the authority contained in the Audit Act 1989, I transmit to the Legislative Assembly a Report entitled "1995 Taxi Plates Auction".

This audit was conducted by Mr Darren Box of my Office.

Yours sincerely

John A. Parkinson

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## **1. REPORT SUMMARY**

### **1.1 WHY DID THE AUDIT OFFICE CARRY OUT THIS AUDIT?**

During October 1995, the Chief Minister wrote to the Auditor-General seeking advice on guidelines which

*“should be developed to assist MLAs and Government officials in the making of decisions on matters which may affect, or be influenced by, members of their family. Specifically, what should the guidelines be for commercial dealings with companies, partnerships or individuals who are partners of family members of MLAs?”*

The Auditor-General’s response indicated agreement to the Chief Minister’s request. The response also advised that the situation which gave rise to the Chief Minister’s request would be subjected to an audit. The decision to undertake the audit was taken because of the Assembly interest in the matter and because the amount realised from the taxi plate auction was significantly below the budget estimate. The budget estimate was \$3m and the amount realised was \$2.43m.

This Report contains the results of the audit and the advice requested by the Chief Minister. The advice is contained in *Chapter 5*.

### **1.2 AUDIT OF THE TAXI PLATE AUCTION PROCESS**

#### **1.2.1 What Did the Audit Do?**

The procedures followed in the audit of the taxi plate auction process included:

- movements in taxi plate prices and the numbers of plates released in recent years were reviewed;
- the number of taxis in the ACT was compared with numbers in the States and other Territory;
- processes leading to the decision to issue 15 plates in 1995 were examined; and
- the process used to select the successful auctioneer was reviewed.

## **1.2.2 What Did the Audit Find?**

### **1.2.2.1 *Taxi Plate Prices***

- Taxi plate prices rose steadily in the last decade to an average of \$241,000 in July 1994 before a sharp decrease in 1995 to \$162,000 (33% reduction) (*Chapter 2*);
- The 1995 decrease coincided with the first time that the Taxi Industry Advisory Committee's recommendation was not adopted by the Government. The Committee recommended that five plates be issued, however the Government determined to issue 15 (*Chapter 3*);
- The issue of the larger number of plates fundamentally changed the existing relativity between customer demand for taxis and the number of taxis available (*Chapter 4.4*);
- It could have been readily foreseen that changing the relativity between customer demand and the number of taxis was highly likely to reduce the prices which buyers would be prepared to pay for plates unless the make-up or size of the pool of potential buyers was increased (*Chapter 4.4*); and

- Notwithstanding the changed relativity referred to, the same method of marketing the plates was used in 1995 as in previous years, with no consideration being given to devising a revised strategy to generate a better price outcome for the Territory, consistent with the Government's objectives. Although it cannot be conclusively proved, it is very likely that a more comprehensive and better targeted marketing campaign and process could have generated a better return to the Territory (*Chapter 4.4*).

**1.2.2.2      *Taxi Plate Numbers***

- If the existence of the Comcar fleet is recognised, it would appear that the number of taxis in the ACT is not significantly out of line with national trends (*Chapter 2*).

**1.2.2.3      *Decision to Issue Fifteen Taxi Plates***

- The Government's decision to release 15 plates was made with comprehensive information and recommendations available (*Chapter 3*); and
- The Government's objective for releasing a high number of plates in comparison with previous years was to increase the availability of taxis to the community. The generation of additional income was not the prime purpose for releasing the relatively large number of plates (*Chapter 3*).

**1.2.2.4      *Selection of the Auctioneer***

- The selection of Harold Hird and Associates as the auctioneer was fair and unbiased, although administrative errors were made involving the omission of qualified auctioneers from being

invited to quote and inaccurate documentation being provided to invited auctioneers (*Chapter 4*);

- There is no evidence that the selection process was influenced by Harold Hird or the Minister for Urban Services (*Chapter 4*); and
- The selection procedures followed complied with Government purchasing guidelines in relation to the number of quotes to be called and who should be invited to quote, however consideration was not given to achieving best “value for money” (*Chapter 4*).

### **1.3 FUTURE ACTION**

The Government has announced that 15 plates will be released in 1996-97 and a further 15 plates in 1997-98. In view of the effect of these releases on the relationship between customer demand and the number of available taxis, further reductions in the prices potential buyers are prepared to pay is possible. In view of this, it is considered that a complete re-evaluation of the methodology used for the releases should be made with the purpose of ensuring that the return from the releases reflects the best prices the Territory can reasonably receive.

## 2. TAXI PLATE REVENUE AND NUMBERS

### 2.1 INTRODUCTION

This Chapter reviews the movements in taxi plate prices over the last 10 years and the numbers of plates released. Information on the numbers of taxis in the States and other Territory is also presented to provide a comparison for the number of taxis currently operating in the ACT.

### 2.2 REVENUE RAISED IN TAXI SALES OVER THE LAST DECADE

Over the last decade, taxi plates have been released for sale six times. In 1986, 24 taxi plates were issued; 17 being sold to “senior” drivers for \$250 and the remaining seven sold by open ballot for \$80,000 each. Since 1986, taxi plates have been released five times. The following table provides details of the taxi plates released and the revenue raised over the past decade.

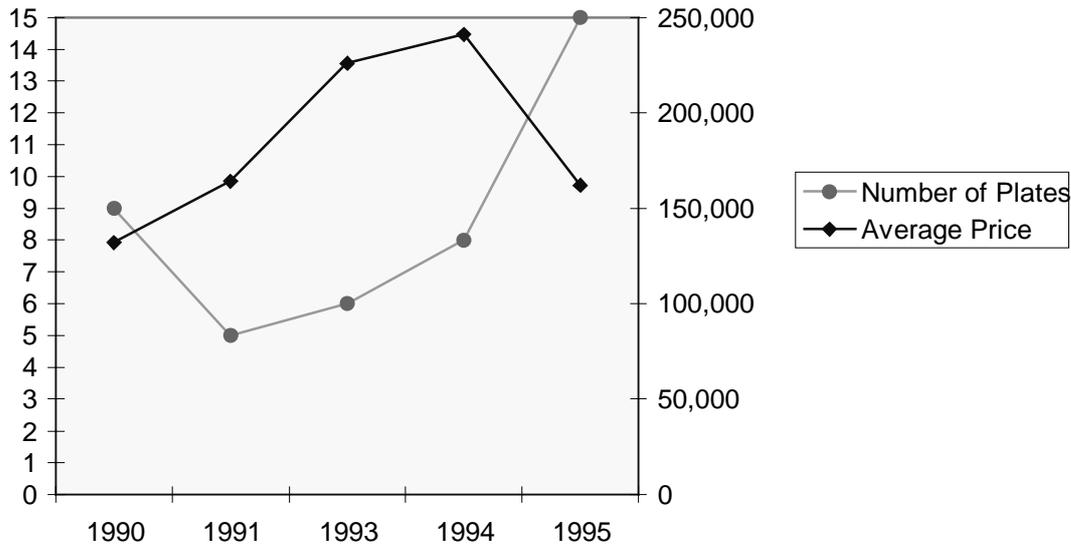
*Taxi Plate Sales Over the Last Decade*

Date	Number Released	Method	Average Price \$	Total Revenue \$
July 1986	17	Senior Drivers	250	4,250
	7	Ballot	80,000	560,000
November 1990	9	Auction	132,000	1,188,000
September 1991	5	Auction	164,000	820,000
November 1993	6	Auction	226,000	1,356,000
July 1994	8	Auction	241,000	1,928,000
October 1995	15	Auction	162,000	2,430,000

Graphically, the numbers of taxi plates sold and the prices obtained are shown following:

## 1995 TAXI PLATES AUCTION

*Graph of Taxi Plates Sold and Average Prices*



Taxi plate prices rose steadily during the last decade to an average price of \$241,000 in July 1994, before a sharp decrease in the October 1995 auction to \$162,000. In comparison with the 1994 auction, the average price of taxi plates decreased by 33% at the 1995 auction.

### 2.3 COMPARISON OF TAXI NUMBERS WITH OTHER STATES AND THE NORTHERN TERRITORY

The following statistics should not be accepted fully as an authoritative guide to the number of taxis required in the ACT. A significant factor which they do not take into account is that there is a large Comcar vehicles fleet based in the ACT. The Department of Urban Services has advised that there are 48 permanent and 85 casual Comcar vehicles in the ACT. These vehicles generally meet demand for taxis for business use by Commonwealth politicians and public servants. The States do not operate general purpose fleets similar to Comcar, which means that State public servant taxi conveyance is provided from private taxi fleets. This difference needs to be considered when interpreting the statistics provided.

## 1995 TAXI PLATES AUCTION

In a five-city comparison, the ACT has the second-lowest number of taxis per head of population with 217 taxis. The ACT has one taxi for every 1,374 people. This is second only to Wollongong which has one taxi for every 1,469 people. The following table shows the people per taxi ratios.

### *Taxis Per Head of Population*

Jurisdiction	Population	Taxi Numbers	Ratio (People Per Taxi)
Wollongong	182,210	124	1,469
ACT	298,303	217	1,374
Melbourne	3,189,200	3,089	1,032
Newcastle	137,370	141	974
Sydney	3,713,500	3,089	942

The ACT has the lowest number of taxis per employed person when compared with the other Territory and the States. The average across Australia is one taxi for every 564 employed people. If the national average was applied in the ACT, there would be a total of 273 taxis, an increase of 56 from the current level. The table on the following page shows the taxi per Employed Person ratios.

A precise measure of the comparative availability of private taxis in the ACT has not been calculated as information on the Comcar fleet's usage patterns was unavailable to the audit. However, when the existence of the Comcar fleet is recognised, it would seem that the number of taxis in the ACT is not significantly out of line with national trends.

**1995 TAXI PLATES AUCTION***Taxis Per Employed People*

<b>State</b>	<b>Average Employed People</b>	<b>Taxis</b>	<b>Employed People Per Taxi</b>	<b>Taxis for ACT Using Ratio</b>
NSW	2,431,925	4,313	564	273
VIC	1,974,325	3,815	518	297
QLD	1,433,933	2,550	562	274
SA	641,292	917	699	220
WA	794,175	1,306	608	253
TAS	195,067	398	490	314
NT	76,608	119	644	239
ACT	153,917	217	709	217
<b>Total</b>	<b>7,701,242</b>	<b>13,635</b>	<b>564</b>	<b>273</b>

**3. RELEASE OF ADDITIONAL TAXI PLATES**

**3.1 INTRODUCTION**

This Chapter outlines the recommendations considered to reach the decision to auction 15 taxi plates. Various recommendations on the number of taxi plates to be released were made. The recommendations are scheduled following.

<b>Recommending Organisation</b>	<b>Recommended Taxi Plate Number</b>
ACT Taxi Industry Advisory Committee	5
Canberra Taxi Proprietors' Association	12
Office of Financial Management	20
Department of Urban Services	13

**3.2 RECOMMENDATIONS**

**3.2.1 ACT Taxi Industry Advisory Committee Recommendation**

The ACT Taxi Industry Advisory Committee (TIAC) is a non-statutory body, which has representatives from the taxi industry and other parties from the community. As part of its role, the TIAC makes an annual recommendation to the Minister on the number of additional taxi plates to be issued. The 1995 recommendation was that five plates be issued.

In all recent years except 1995, TIAC's recommendations have been accepted and implemented by the Government. TIAC's 1995 recommendation was based on the same type of statistical analysis which had been applied for its previous recommendations.

## 1995 TAXI PLATES AUCTION

TIAC's recommendations have been based on a statistical analysis of factors which it had determined to correlate with the need for taxi services. The factors used in the TIAC analyses were:

- number of Employed Persons, and
- number of Radio Bookings.

Prior to making its 1995 recommendation, TIAC reviewed its methodology including investigating whether other indicators should be used to substitute for the currently used indicators or to supplement the indicators. The investigation conclusion was that no change was necessary.

The letter from the TIAC Chairman to the Minister for Urban Services which contained TIAC's recommendation is reproduced in full in the following boxes.

### ACT TAXI INDUSTRY ADVISORY COMMITTEE LETTER

I am writing to inform you that the Taxi Industry Advisory Committee (TIAC) met on 13 March 1995 to finalise a review of the taxi plate formula and discuss the number of additional taxi plates to be issued for 1995.

The taxi plate review was requested in the context of the 1994/95 budget by the former Government, as a result of ongoing criticism from ACT Treasury. Treasury has pressed a view that the existing formulae is too simplistic and of a non-representative nature. In addition, TIAC was asked to analyse other long term trends, such as Domestic Tourism and Population Growth, for possible inclusion with existing factors.

The current mechanisms considered by TIAC when determining taxi numbers relate to Employed Persons and Radio Bookings. The guidelines agreed with previous Governments are:

- one taxi per eight-hundred Employed Persons; and
- one taxi per seven-hundred and thirty Radio Bookings received by Aerial Taxis.

These formulae are used on the basis that the ratios reflect a level of activity at which adequate service to the public can be provided. You should note that at present there is no specific measurement available to determine the actual level of service to the public.

**ACT TAXI INDUSTRY ADVISORY COMMITTEE LETTER (Continued)**

A sub-committee of TIAC was formed to consider the validity of existing factors and investigate other indicators which may be used to improve/substitute for the current ratios. ACT Treasury was invited to participate in the investigation and a Treasury officer did attend some meetings. Through the use of correlation analysis, Employed Persons and Radio Bookings were tested against other factors mentioned above, with the following results:

Employed Persons has significant correlation with:	Average Weekly Earnings; Population Growth; Consumer Price Index; Taxi Numbers; and Radio Bookings.
----------------------------------------------------	-----------------------------------------------------------------------------------------------------------------

Radio Bookings has significant correlation with:	Domestic Tourism; Average Weekly Earnings; and Population Growth.
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During the course of the review, it was noted that figures released by the Australian Bureau of Statistics (ABS) recently indicated a sharp decrease in the number of Employed Persons for the ACT. After further consultation, it was found that the change in figures was the result of both seasonal re-analysis of figures (which occurs annually) and the re-basing of information used to determine Employed Persons from the 1986 census to the 1991 census.

Consequently, TIAC has adjusted the Employed Persons ratio from one taxi per eight-hundred (1:800) Employed Persons to one taxi per seven-hundred and fifty-five (1:755) Employed Persons to reflect the "re-based" figures.

Discussions with the ABS and ACT Treasury have not identified other common statistical indicators which might be usefully used as factors for determining taxi plate numbers. Statistical analysis of Employed Persons and Radio Bookings has substantiated that existing ratios have a statistically significant correlation with a range of economic indicators which are generally accepted as indicators of demand for taxi services.

TIAC therefore recommends you agree that the existing ratios be retained. On that basis, the taxi plate formula identified the need for an extra five taxi plates which will bring the ACT's taxi fleet to 207, and I recommend that you agree with this committee's recommendation to issue an additional five taxi plates for 1995/96.

### **3.2.2 Canberra Taxi Proprietors' Association Ltd Recommendation**

Subsequent to TIAC supplying its recommendation to the Minister for Urban Services, the Canberra Taxi Proprietors' Association Ltd wrote to TIAC recommending that twelve plates should be issued rather than five. The Association's letter was

provided to the Department of Urban Services. The Association's reasons for recommending twelve plates are summarised in the following extract from their letter to TIAC.

*“It has become apparent that peak time servicing is a continuing problem and that this may be related in large part to the historical assessment method used by TIAC for determining plate numbers. When an assessment is made, it refers to the year past and taxis required to service that historic demand. This invariably places the industry in a constant state of catch-up and while it accommodates the public's needs at the point of introduction, the demand outstrips supply well before the next scheduled TIAC assessment.”*

*“Aerial's corporate mission statement is “to provide a taxi service that exceeds the customer's expectation”. With this in mind, the industry proposes a catch-up issue of plates in excess of the number determined by last year's figures. The catch-up release takes into account a forecast of rising demand before the next scheduled TIAC plate review. It is recommended that in addition to the five (5) plates decided upon by TIAC that an additional seven (7) plates be issued in the next release, bringing the total to twelve (12) plates.”*

### **3.2.3 Office of Financial Management Recommendations**

The Office of Financial Management provided a recommendation that 20 taxi plates should be released. The Office of Financial Management judged that the price of taxi plates in the ACT was excessively high relative to prices in many other capital cities. Unlike the recommendation from TIAC, the recommendation from the Office of Financial Management was not based on a formal statistical analysis.

**3.2.4 Department of Urban Services Recommendation**

The Department of Urban Services recommended to the Minister for Urban Services that thirteen additional taxi plates be released. An extract from the Department’s submission to the Minister explaining the reasons why it recommended thirteen plates for issue follows.

*“However, the Department does have some concerns with the TIAC approach, and has suggested some alternatives to TIAC. The Department believes some measure of response times should be developed to assist in assessing the level of service, and will be working with Aerial to establish some measures over the next 12 months.”*

*“In addition, a closer examination of the Employed Persons and Radio Bookings statistics indicates that January and February statistics are significantly lower than the remaining 10 months, and their inclusion in calculations significantly depresses the fleet calculation. The Department has proposed to TIAC that exclusion of these two months represents a more accurate measure of consumer demand. Other TIAC members have declined to accept this view on the basis that the taxi owners’ livelihood is determined by the 12-month result.”*

*“Application of a 10-month average (excluding January and February) to 1994 statistics gives the following results:*

<i>Employed Persons</i>	<i>204 Taxis</i>	<i>(2 New Plates)</i>
<i>Radio Bookings</i>	<i>215 Taxis</i>	<i>(13 New Plates)</i>

*TIAC has previously accepted the argument that two measures, Employed Persons and Radio Bookings, are necessary to ensure consumer demand is reflected. The rationale proposed is that Employed Persons reflects the gross effect of population growth,*

*while Radio Bookings gives an indication of the rise/fall in demand per consumer as affected by economic activity.”*

*“The Department proposes the release of 13 new plates would better service consumer demand at this time.”*

### **3.3 GOVERNMENT DECISION**

The release of 15 additional taxi plates was a decision made by the Government following a submission by the Minister for Urban Services. The decision was made after noting that TIAC had recommended that only five additional plates be issued and the other recommendations. The decision was also taken to issue a further 15 plates in each of the 1996-97 and 1997-98 budget years.

An announcement was made on 21 September 1995 by the Minister for Urban Services that 15 additional taxi plates would be released in 1995 and that a further 15 plates would be issued in each of 1996-97 and 1997-98.

### **3.4 CONCLUSION**

Various numbers of plates were recommended for issue by the parties involved in the process. Each party put forward different reasons to support their recommendation.

The audit has concluded, on the basis of the documentary evidence sighted and discussions with ACT officials that the Government decision to release 15 plates was made with comprehensive and accurate information and recommendations available. The objective for issuing a high number of plates in comparison with previous years was to increase the availability of taxis to the community. The

## 1995 TAXI PLATES AUCTION

documentation and the discussions did not indicate that generation of additional income was a prime purpose for issuing the relatively large number of plates.

## **4. THE AUCTION PROCESS**

### **4.1 INTRODUCTION**

This Chapter outlines the selection process used to award the contract to Harold Hird and Associates to auction 15 taxi plates. The steps in the selection process and the selection criteria are outlined and a schedule of all quotes received is provided. The process used is compared to the guidelines stipulated by the Government.

### **4.2 THE SELECTION PROCESS**

#### **4.2.1 Invitations to Quote**

The Minister for Urban Services announced on 21 September 1995 that 15 taxi plates would be released. Following this announcement, arrangements were commenced for the auction of the taxi plates. 25 October was selected as the date for the auction.

The process used to award the auction to an auctioneer was through obtaining quotations rather than a more formal tender process. In prior years, quotations were obtained from three auctioneers and the lowest bid accepted. Due to complaints received by the Department of Urban Services from certain auctioneers that they had not been given an opportunity to compete for the business in prior years, the three-quote basis was extended.

On 27 September 1995, seven auctioneers listed in the “general auctions” section of the Yellow Pages of the local telephone directory were contacted by telephone and invited to submit a quotation.

It was apparently the intention of the Department of Urban Services to contact all auctioneers listed in the Yellow Pages under the “Auctions General” section,

with established business names. It was intended to invite only auctioneers who had experience in general auctions. Specialist auctioneers such as “Christies of London” and others who specialise in antiques and fine arts were not invited to submit a quote. The Department of Urban Services contacted seven auctioneers to submit a quote.

A review by the Audit Office of the ACT Region Yellow Pages found that two auctioneers with established business names and general auctions experience were not invited to quote. Apparently, the two auctioneers were inadvertently missed when the responsible officials reviewed the Yellow Pages.

ACT Government Purchasing Policy for the procurement of goods or services for less than \$2,000 states that agencies must:

*“Seek at least one quotation from a local supplier where no applicable ACT Government Common Use Contract (CUC) or suitable period contract exists.”*

As the expenditure to be incurred was expected to be less than \$2,000, the procedure utilised by the Department of Urban Services of obtaining seven quotations from local suppliers conformed with this part of the guidelines. However, as commented later, there is a further requirement in the purchasing policy and that is to seek “best value for money”. There is no indication that the decision to specify a flat fee took into account any value for money considerations.

#### **4.2.2 Communication of Requirements to Invited Auctioneers**

The Audit Office was informed by Department of Urban Services officials that the terms and conditions to form the basis for the quotations were verbally explained to each auctioneer by telephone. All quotations were to be submitted on the basis of a flat rate fee which was to be less than \$1,000. The service

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to be provided was the supply of an auctioneer to auction 15 taxi plates. All venue, administration and advertising costs were to be borne by the Government.

Following the telephone conversation with each auctioneer, a fax was sent to each detailing the closing dates for the quotes to be submitted. The actual terms and conditions to form the basis of the quotations (i.e. flat rate fee) were not set out in this fax.

The wrong closing date was mistakenly included in the faxes. The closing date for quotations to be received had been decided as 29 September, however the fax to each auctioneer included a closing date of 29 October. Due to the error, a new closing date of 6 October was verbally negotiated by telephone with the auctioneers.

### 4.2.3 Quotes Received

Quotations were received by the officers responsible for assessing the quotations from seven auctioneers by close of business on 6 October. The lowest quotation obtained was from Harold Hird and Associates for a flat fee of \$250. A schedule of the quotations submitted follows.

Auctioneer	Date Quote Supplied	Quote
		\$
Harold Hird and Associates	29/9/95	250
National Auction Group Pty Ltd	29/9/95	400
Pickles Auctions Pty Ltd	5/10/95	500
Matthew J. Campbell	29/9/95	550
Peter Maidens & Co	29/9/95	600
Capital Property Auctions	6/10/95	750
Central Auctions Pty Ltd	29/9/95	950

After a review of the quotations supplied, the Department of Urban Services decided upon Harold Hird and Associates. On 9 October, a brief to the Minister for Urban Services was prepared, advising

him of the outcome of the quotations and that Harold Hird and Associates had been appointed to conduct the auction. All participants in the auction quotations were advised of the outcome by mail on 9 October.

#### **4.3 INVOLVEMENT OF HAROLD HIRD OR THE MINISTER FOR URBAN SERVICES IN THE SELECTION DECISION**

A thorough examination of all documentation relating to the calling of quotes, the recommendation made and the final selection decision revealed no evidence that Harold Hird or the Minister for Urban Services had any involvement or influence in the selection decision. Discussions with the responsible officials also produced positive statements that Harold Hird and the Minister had no involvement.

#### **4.4 VALUE FOR MONEY CONSIDERATIONS**

In 1995, a revised ACT Purchasing Policy was issued. The policy at *page 3* states:

*“Achievement of value for money to the ACT Government requires the maximisation of the benefits from a purchase, compared to the cost of the purchase, taking into account all the potential costs associated with the purchasing.”*

In this particular case, the “benefits” to be maximised would be the net proceeds from the auction.

In 1995, the procedures to select the auctioneer and the auction process followed were generally the same as in previous years. There was a fundamental difference, however, between 1995 and the previous years. It should have been readily foreseen that this difference was likely to reduce the value which buyers would be prepared to pay for the 1995 issue of plates, unless the make-up or size of the potential pool of

buyers was altered somehow, i.e. a revised marketing strategy was introduced.

In previous years, the ACT Taxi Industry Advisory Council's (TIAC) recommendations were accepted. This did not occur in 1995. For 1995, TIAC recommended the issue of five taxi plates. Adoption of this recommendation would have maintained the relativity between available taxis and existing demand as measured by TIAC. In order to increase the availability of taxis (*see Chapter 3*), the Government decided to issue fifteen plates. This decision's effect was that, after the auction, the existing relationship between the number of taxis available and the existing demand would be fundamentally changed. Consequently, it could be safely anticipated that the price potentially receivable for each new plate would fall in comparison to the previous year. This is what actually happened with the average price reducing from \$240,000 to \$162,000 (i.e. a 33% reduction).

It also needs to be noted that the Government had decided, and announced, that 15 additional plates would be issued in each of the next two years. These releases will further change the relativities between demand and available taxis. This information could also have had an effect on the prices potential buyers were prepared to pay.

Notwithstanding that the decision to issue extra plates would change the relativities between demand and the number of taxi licences, and there would be a resultant impact on prices from the change, it seems no consideration was given to alternative possible strategies for marketing the plates. No investigation was undertaken to ascertain which methods might best ensure that the net proceeds generated from the release were as high as reasonable while not jeopardising the Government's objective of improving taxi availability. A lack of consideration is evidenced by the fact that the processes used in 1995 were the same as in previous years, except that more

auctioneers were invited to quote, and average prices fell by 33%.

The Hymans bid referred to in the next section of this Chapter, which was rejected by the Department of Urban Services as non-conforming with the specifications, did attempt to introduce a more comprehensive marketing strategy, however the proposal was rejected as non-conforming.

#### **4.5 UNINVITED QUOTE SUBMITTED BY HYMANS**

In addition to the seven quotations received from the local auctioneers invited to submit quotes, an uninvited quotation was received from “Hymans”. Hymans is a Sydney-based company which has a representative in Canberra. Hymans were not invited to submit a quotation as they were not listed in the ACT Region Yellow Pages. The quotation from Hymans was submitted after a meeting between Hymans’ Canberra representative and the Minister for Urban Services on 27 September 1994.

The proposal from Hymans was not received by the Departmental officers responsible for assessing quotes until 11 October 1995, although the proposal had been recorded as being received by the Minister for Urban Services’ Office on 29 September. The proposal had therefore been received in the Minister’s Office well prior to the official closing date.

There was a delay of eight working days from the time of receipt by the Minister’s Office until receipt by the responsible Departmental officers. The order of events in relation to the receipt of the proposal are as follows:

- 29 September - Hymans’ proposal received by the Minister’s Office, and sent to the Department of Urban Services by the Departmental Liaison Officer using the routine procedure;

- 5 October - Hymans' proposal logged as received by the Department of Urban Services in its central information system; and
- 11 October - Hymans' proposal received by the officers responsible for the auction contract.

The decision to award the contract was made on 9 October.

Reasons offered for the excessive time delay were the public holiday on 2 October, and the fact that the proposal was a large bound document which had to "*filter*" down to the operational area from the central mail receipt area.

The Hymans quote proposed a 1% buyer's premium to be paid by the buyer with the ACT Government paying no fee to Hymans. All advertising, venue and administration costs were to be paid by Hymans. It was proposed that 25% of the buyers premium would be donated to four charities. The Hymans proposal also contained a "marketing plan which was significantly more extensive than that undertaken by the Department of Urban Services. The auction venue proposed was a "four-star" hotel while the Albert Hall was the venue chosen by the Department.

All auctioneers invited to submit a quote had been informed during a telephone conversation that the bids were to be on the basis of a flat fee. As the other seven auctioneers had submitted quotes on that basis, it was judged to be unfair to accept a quote based on different criteria. Accordingly, the proposal from Hymans was rejected by the Departmental officials as it was not a "flat fee" bid and was therefore considered to be non-conforming.

## 4.6 CONCLUSION

The firm of Harold Hird and Associates was selected to perform the auction of 15 taxi plates on 25 October 1995 for a flat fee of \$250. Harold Hird and Associates submitted the lowest bid of seven auctioneers invited to submit quotes.

Although administrative errors were made involving the omission of qualified auctioneers from being invited to quote and inadequate and inaccurate documentation being provided to the auctioneers, the awarding of the contract to Harold Hird and Associates was fair and unbiased.

There is no evidence that the selection decision was influenced by Mr Hird or the Minister for Urban Services or his staff.

The procedures followed of obtaining seven quotes from local auction firms complied with the purchasing guidelines in relation to the number of quotes to be called and who should be invited to quote.

The conclusion is also drawn that Departmental management did not give consideration to the most appropriate marketing methodology which could be used to generate a reasonable price outcome for the Territory. Although the number of plates being auctioned was significantly greater than in previous years, and the issue of the large number would change the existing relativity between customer demand and the number of taxis available, the same method of marketing was used as in the previous years.

The excessive time delay in the transmission of the Hymans proposal from the Minister for Urban Services' Office to the responsible Departmental officials is a matter of concern. The delay, however, did not affect the decision made as the Hymans

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proposal was judged not to conform with the criteria on which the officials based their decision.

## **5. ADVICE ON GUIDELINES**

### **5.1 INTRODUCTION**

The Chief Minister requested advice on the development of guidelines which:

*“assist MLAs and Government officials in the making of decisions on matters which may affect, or be influenced by, members of their family. Specifically, what should the guidelines be for commercial dealings with companies, partnerships or individuals who are partners or family members of MLAs?”*

The request was generated through Assembly debate on the 1995 auction of taxi licence plates. That auction was the subject of the preceding Chapters in this Report.

### **5.2 ADDITIONAL REQUIREMENTS IN RELATION TO MINISTERS**

Because of the extremely wide discretionary powers that Ministers hold, additional requirements over and above those required from ordinary Members should be expected of them. The comments in this Chapter are confined to the requirements of ordinary Members and public officials. The comments do not address the additional requirements of Ministers. It is noted that a Code of Conduct for ACT Ministers was promulgated in April 1995.

### **5.3 INEVITABILITY OF POTENTIAL FOR OCCASIONAL CONFLICTS OF INTEREST**

It is unrealistic to expect that Members of the Assembly or Government officials, as individuals and citizens, will not have private interests and relationships and that occasionally these interests and

relationships will create conflict, or be perceived to create a conflict, with their public duties and obligations. It is also an impractical proposition to require that all interests and relationships be extinguished due solely to the “potential” for a conflict of interest to arise at some future time. However, if conflicts do arise, the community is entitled to feel assured that the conflicts will be resolved in the public interest and not in the Member’s or official’s interests. The difficulty lies in determining under what circumstances particular interests or relationships can lead to conflict and how such conflicts should be dealt with.

#### **5.4 REVIEW OF CODES OF CONDUCT**

As part of addressing the Chief Minister’s request, various Australian jurisdictions’ Codes of Conduct (some final and some draft) were reviewed. All Codes have similar areas addressing “conflicts of interest”, however Queensland’s draft Codes for Electoral Members and for Public Officials seem to provide the most useful guide.

#### **5.5 CONFLICT OF INTEREST IN RELATION TO DECISIONS**

In Queensland, a draft “Code of Conduct for Elected Representatives” and a draft “Code of Conduct for Public Officials” have been developed. These Codes list a series of general obligations of elected representatives and public officials. In the elected Members Code, the following is presented under the heading “Integrity”:

*“Members shall at all times seek to advance the common good of the community which they serve, in recognition that public office involves a public trust. In particular, Members shall ensure that their official powers or position are not used improperly for personal advantage, and that any conflict between personal interests and public duty which may arise is resolved in favour of the public interest.”*

*“This general obligation requires individual Members to recognise that integrity in Government encompasses a wide range of matters which have in common the idea that public office involves a position of trust which Members must honour.”*

*“The obligation governs Members in relation to their actions, conduct and relationships, if they are such as to give rise to reasonable doubt that a Member has used or is using the powers or influence of public office, official resources, or official information in accordance with the public interest.”*

*“Public confidence in the integrity of the system of Government is put at risk when the conduct of a public official involves or appears to involve a conflict of loyalties - usually stated as ‘a conflict between private interests and public duty’.”*

*“In this context, the public interest is served when Members recognise that the trust placed in them by the community requires that they:*

- a) base their decisions and conduct on a proper consideration of the general good of the community (subject to the requirements of the law), and exclude improper advantage to any person or sectional interest group (including any religious, ideological, professional, commercial, sporting or other interest);*
- b) ensure that the potential for conflict between personal interests, whether pecuniary or otherwise, and the requirements of public duty, is minimised; and*
- c) ensure that any conflict, including apparent conflict, between public duty and private interests which does arise is resolved as quickly as possible, and in favour of the public interest.”*

Examples of activities and relationships which require specific attention by Members as they could give rise to conflicts of interest are provided in the draft Queensland Code. The examples provided are:

- a) being a member of, or a significant shareholder in, a company, association or body which is involved with Government in any capacity;
- b) being significantly involved in the making of a recommendation or decision affecting the rights, entitlements, activities or prospects of a company, association, community group, political organisation or other body with which the Member is associated in a private capacity or in which the Member has a significant interest;
- c) being significantly involved in the making of a recommendation or decision affecting the rights, entitlements, livelihood, prospects or employment of a relative, family member, or close personal friend; and
- d) accepting or retaining any form of benefit, including a gift, offer of appointment, position, discount or consideration which could appear to be likely to influence a Member in the performance of their official duty, whether it was intended to or not.

The draft Queensland Code for Public Officials contains similar guidelines for public officials.

The extract from the Queensland draft Code, together with the examples presented, is a sound statement of general guidance on situations when conflict of interest may potentially arise or where conflict of interest may be perceived to exist. It also provides principles on how Members should act if they recognise that a conflict of interest situation is emerging.

The Chief Minister's request referred generally to "matters which may affect or be influenced by, members of their family" and specifically to "commercial dealings with companies, partnerships or individuals who are partners or family members of MLAs". The extract from the draft Queensland Codes would seem to address these matters.

*Matters Affecting Family Members*

As indicated earlier in the Chapter, it is impractical to completely extinguish the potential for conflict of interest situations to arise. However, if these situations do arise and family members are involved, the Queensland draft Code makes it clear that the public interest must be put before the interests of the family in any activity of public duty. This applies not only to actual situations, but also to perceptions which could be created in the minds of the community by a Member's or official's actions.

*Commercial Dealings*

The specific issue of "commercial dealings with companies, partnerships or individuals who are partners or family members of MLAs" can be addressed similarly to the issue of family interests generally. The primary and only objective is that all dealings must be resolved in the public interest. In addition, not only should this objective be achieved, no perception can be allowed to exist that this was not the case. If the particular circumstances are such that any involvement, even minor, of a Member or official in a matter has the potential to create perceptions that the public interest has not been treated as paramount, then the Member or official should take positive action to ensure that any connection with the matter is severed.

## 5.6 DECLARATIONS

As stated earlier, it is not realistic to expect Members and officials to extinguish all their private interests and relationships because of potential for conflicts of interest to arise. However, if conflict situations do arise, Members or officials should be required to immediately declare the interest or relationship which gives rise to the conflict. The declaration should fully describe the interest, pecuniary or otherwise, and the context in which the conflict has arisen. The declaration should also state how the conflict will be resolved in the public interest.

To whom the declarations referred to in the previous paragraph should be made needs some consideration. It would seem appropriate in Departments for public officials below Chief Executive to make any necessary declarations to the Chief Executive and for Chief Executives to make their declaration to the Minister responsible for the Department. A similar regime would be necessary for officials of statutory authorities. For Assembly Members, how and to whom the declarations should be made is a matter for the Assembly to decide.

## 5.7 USE OF POSITION OF PUBLIC PROMINENCE TO GAIN PERSONAL BENEFIT OR BENEFIT FOR OTHERS

A person using their official position to gain benefit for themselves or others has relationship to the discussion in the previous paragraphs. Specific reference, however, was not made to situations where a person may use their prominent public profile to provide benefit to themselves or to others.

Legislative Assembly Members and senior public officials have prominent positions by virtue of their status and/or influential role in public sector activities. This prominence allows ready access to the

general community through public appearances and through the electronic and other media. As a matter of principle, this access to the community at large should not be availed of to advance the interests of any person related to a Member or official or any group, company, association, etc., in which the Member or official may have a pecuniary or personal interest. Members and senior officials should conscientiously avoid situations where this could occur or be perceived to occur.

## **5.8 SUMMARY**

In response to the Chief Minister's request for advice in relation to the issues discussed in this Chapter, it is recommended that the extracts from the draft Queensland Code of Conduct be utilised as a basis for developing guidelines for Members of the ACT Legislative Assembly and public officials. It is pointed out that a complete Code of Conduct would need to cover a wider range of issues than those addressed in this Chapter.

## **Annexure**

### ***Reports Published in 1992***

- 1 Information Technology Management Policies in the ACT Government Service
- 2 Financial Audits with Years Ending to 30 June 1991
- 3 GAO Annual Management Report for Year Ended 30 June 1992
- 4 ACT Board of Health - Management of Information Technology
- 5 Budget Outcome Presentation and the Aggregate Financial Statement for the Year Ended 30 June 1992
- 6 Financial Audits with Years Ending to 30 June 1992

### ***Reports Published in 1993***

- 1 Management of Capital Works Projects
- 2 Asbestos Removal Program
- 3 Various Performance Audits Conducted to 30 June 1993
  - Debt Recovery Operations by the ACT Revenue Office
  - Publicity Unaccountable Government Activities
  - Motor Vehicle Driver Testing Procedures
- 4 Various Performance Audits
  - Government Home Loans Program
  - Capital Equipment Purchases
  - Human Resources Management System (HRMS)
  - Selection of the ACT Government Banker
- 5 Visiting Medical Officers
- 6 Government Schooling Program
- 7 Annual Management Report for the Year Ended 30 June 1993
- 8 Redundancies
- 9 Overtime and Allowances
- 10 Family Services Sub-Program
- 11 Financial Audits with Years Endings to 30 June 1993

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12 Reports were issued prior to 1992. Details can be obtained from the Government Audit Office.

### ***Reports Published in 1994***

- 1 Overtime and Allowances - Part 2
- 2 Department of Health - Health Grants  
- Management of Information Technology
- 3 Public Housing Maintenance
- 4 ACT Treasury - Gaming Machine Administration  
- Banking Arrangements
- 5 Annual Management Report for Year Ended 30 June 1994
- 6 Various Agencies - Inter-Agency Charging  
- Management of Private Trust Monies
- 7 Various Agencies - Overseas Travel - Executives and Others  
- Implementation of Major IT Projects
- 8 Financial Audits with Years Ending to 30 June 1994
- 9 Performance Indicators Reporting

### ***Reports Published in 1995***

- 1 Government Passenger Cars
- 2 Whistleblower Investigations Completed to 30 June 1995
- 3 Canberra Institute of Technology - Comparative Teaching Costs and Effectiveness
- 4 Government Secondary Colleges
- 5 Annual Management Report for Year Ended 30 June 1995
- 6 Contract for Collection of Domestic Garbage / Non-Salary Entitlements for Senior Government Officers
- 7 ACTEW Benchmarked
- 8 Financial Audits With Years Ending to 30 June 1995

### ***Reports Published in 1996***

- 1 Legislative Assembly Members - Superannuation Payments / Members' Staff - Allowances and Severance Payments

### **Availability of Reports**

Copies of Reports issued by the ACT Auditor-General's Office are available from:

ACT Government Audit Office  
Scala House  
11 Torrens Street  
BRADDON ACT 2601

or

PO Box 275  
CIVIC SQUARE ACT 2608

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