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Murray Swan



*REVIEW OF THE FINANCE MINUTE
ON REPORT 270 -
'IMPLEMENTATION OF THE
OFFSETS PROGRAM'*

*REPORT
305
JOINT
COMMITTEE
OF PUBLIC
ACCOUNTS*

*THE PARLIAMENT
OF THE
COMMONWEALTH
OF AUSTRALIA
NOVEMBER 1989*



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
JOINT COMMITTEE OF PUBLIC ACCOUNTS

REPORT 305

REVIEW OF THE FINANCE MINUTE ON REPORT 270 -
'IMPLEMENTATION OF THE OFFSETS PROGRAM'

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DUTIES OF THE COMMITTEE

Section 8(1) of the Public Accounts Committee Act 1951 reads as follows:

Subject to sub-section (2), the duties of the Committee are:

- (a) to examine the accounts of the receipts and expenditure of the Commonwealth including the financial statements transmitted to the Auditor-General under sub-section (4) of section 50 of the Audit Act 1901;
- (aa) to examine the financial affairs of authorities of the Commonwealth to which this Act applies and of inter-governmental bodies to which this Act applies;
- (ab) to examine all reports of the Auditor-General (including reports of the results of efficiency audits) copies of which have been laid before the Houses of the Parliament;
- (b) to report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
- (c) to report to both Houses of the Parliament any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
- (d) to inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question,

and include such other duties as are assigned to the Committee by Joint Standing Orders approved by both Houses of the Parliament.

PREFACE

This Report presents the findings of the Committee's Inquiry into the Finance Minute on Report 270 - 'Implementation of the Offsets Program'.

In early 1987 the Committee concluded its Inquiry into the Implementation of the Offsets Program. The findings of that Inquiry, contained in Report 270, focused on four main areas of concern: essential measures to widen the impact of the program on Australian industry, valuation of technology transfers, inadequate record keeping and administrative matters such as dual administration of the program, consultative mechanisms and administrative discretion.

The Finance Minute co-ordinating the departmental responses to the Committee's Report was a source of considerable disappointment to the Committee. In respect of some matters it provided no explanation for retraction of previously espoused directions, and in some instances it did not provide persuasive evidence which, in the Committee's view, sufficiently justified the rejection by the departments involved of certain recommendations. In view of this, the Inquiry was re-opened in order to gain additional information and explanations.

The Committee is perturbed to find that in some areas, corrective action has either not been implemented or has not been completed despite the fact that criticisms in those areas have been raised several times over the last few years: by the Auditor-General in 1984; by the Committee of Review on Offsets also in 1984; and the Committee itself in Report 270.

The offsets policy involves costs to departments in its implementation and costs to overseas suppliers who are forced to comply with the policy. The Committee is therefore at a loss to understand why after all this time, a cost-benefit analysis of the offsets program has never been undertaken and, in respect of civil aspects of the program, there are still no proper notification procedures, no definitive procedures manual, no proper procedures to ensure objective valuations of offsets proposals and no penalties for non-compliance.

Public inquiries involve considerable resources of both departments and the Committee. The Committee is of the firm view that this Inquiry should not have been necessary, however, it is hopeful that the public re-examination of this matter will hasten corrective action in the program particularly in those areas of long-standing concern.

The Committee's recommendations emanating from this Inquiry are primarily intended to ensure consistency and equity in the application of the offsets policy amongst both overseas and local participants, to minimise the degree of administrative discretion utilised in assessing and evaluating offsets proposals, and of particular import, to remove the shroud of secrecy for which the program has been widely criticised, by seeking to improve program visibility and accountability.

The Committee would like to thank the Department of Finance for the secondment of Julia van der Heide for the purpose of assisting with this Inquiry. The Committee wishes to extend its appreciation to Julia van der Heide for her highly professional contribution to the work.

For and on behalf of the Committee.

R E Tickner, MP
Chairman
29 November 1989

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ABBREVIATIONS

AITC	Australian Industry and Technology Council
AIIA	Australian Information Industry Association
AIDAB	Australian International Development Assistance Bureau
AFSIS	Australian Product and Services Information System
ASTEC	Australian Science and Technology Council
Austrade	Australian Trade Commission
BIE	Bureau of Industry Economics
COMARS	Commonwealth Offsets Management and Records System
DAS	Department of Administrative Services
DEFENCE	Department of Defence
DITAC	Department of Industry, Technology and Commerce
GOPAC	Government Offsets and Procurement Advisory Committee
IIO Database	Industry Involvement and Offsets Database
JCPA	Joint Committee of Public Accounts
NEIS	National Engineering Information Service Pty Ltd
NIES	National Industry Extension Service
NOMIS Database	National Offsets Management Information System
NRIC	National Register of Industrial Capabilities
OAC	Offsets Advisory Committee
PQOS	Pre-Qualified Offsets Supplier Status
R&D	Research & Development
SES	Senior Executive Service

SUMMARY OF RECOMMENDATIONS

The Committee has made a number of recommendations which are listed below, cross-referenced to their locations in the text. The Committee's analysis in the text should be referred to when considering these recommendations.

The Committee recommends that:

Information for Overseas Company Participants on Local Industry

- . The Department of Industry, Technology and Commerce investigate means of economically:
 - establishing and maintaining a database of local industry capability; or alternatively
 - upgrading Austrade's APSIS database to provide suitable verifiable information. (paragraph 2.27)

Information for Local Firms on Offsets Opportunities

- . Outstanding offsets obligations of individual companies and the age of such obligations, be published in the annual report of the Offsets Program. Information concerning offsets arrangements and acquittal plans be released on a periodical basis. (paragraph 2.50)
- . Future offsets contracts and Partnerships for Development agreements exclude clauses restricting the disclosure of nett offset obligations. (paragraph 2.50)

Information from Government to Industry

- . Efforts be made to ensure that publication and distribution of consolidated forward procurement plans for all departments and agencies subject to the Offsets Program proceed without delay. (paragraph 2.63)

Information on Offsets Policies of Overseas Countries

- . The Department of Industry, Technology and Commerce prepare and maintain a comprehensive and up to date record of overseas offsets policies and practices to be distributed to all personnel involved in the administration of the Offsets Program. (paragraph 2.75)

Notification Procedures

- . Notification procedures in respect of purchases anticipated to be subject to offsets be incorporated into Procurement Guidelines at an early date. (paragraph 3.24)
- . A Ministerial directive be issued to all purchasing authorities subject to the Offsets Program, stipulating provision of quarterly returns, to the Department of Industry, Technology and Commerce detailing all purchases, leases and hire arrangements in respect of overseas sourced goods or services, and the imported component thereof. (paragraph 3.24)

Accumulated Orders:

- . Offsets authorities investigate means whereby all overseas suppliers are formally placed on notice of their potential offsets obligation prior to incurring such an obligation. (paragraph 3.37)

- . The cost effectiveness of applying offsets to accumulated orders be assessed by the Departments of Industry, Technology and Commerce and Defence, and the results of that assessment by reported in the Finance Minute. (paragraph 3.37)

Compliance by Overseas Companies - Outstanding Obligations

- . The Department of Industry, Technology and Commerce proceed with reconciliations of offsets status with overseas suppliers, as a matter of priority. (paragraph 3.54)
- . Urgent action be taken by the Department of Industry, Technology and Commerce to facilitate the regular production of statistics of 'aged' offsets obligations outstanding. (paragraph 3.54)
- . The annual report on the Offsets Program incorporate details of total outstanding offsets obligations by year to which those outstanding obligations relate. (paragraph 3.54)

Achievement of Targets under Partnerships for Development

- . Action be taken to ensure that independent audits of partnership activities of all participating companies be undertaken prior to 30 June 1990 and that subsequent audits be undertaken promptly upon completion of review periods. (paragraph 3.64)
- . Summaries of all such audit reports be published in the annual report on the Offsets Program. (paragraph 3.64)

Penalties

- . The Attorney-General's Department and the Department of Industry, Technology and Commerce investigate means whereby offsets arrangements give rise to legally enforceable obligations secured by way of liquidated damages. (paragraph 3.87)

Enforceability of Partnerships for Development Agreements

- . Details of agreed offsets status at the time of signing be incorporated into Partnerships for Development agreements. (paragraph 3.91)
- . Clauses referring to maintenance of a sound economic and business environment in Australia be excluded from all future Partnerships for Development agreements (paragraph 3.91)
- . The Attorney-General's Department and the Department of Industry, Technology and Commerce investigate means whereby Partnerships for Development agreements are legally enforceable and contain penalty or damages clauses. (paragraph 3.91)

Consistency between the two Administering Departments

- . The Departments of Industry, Technology and Commerce and Defence take steps to increase the degree of consistency in respect of the discharge of offsets obligations by overseas suppliers whether they arise from civil or defence purchases. (paragraph 4.14)
- . The Departments of Defence and Industry, Technology and Commerce co-operate in the production and issue of joint guidelines for the Program. (paragraph 4.14)
- . The Departments of Defence and Industry, Technology and Commerce collaborate on the joint production of a listing of overseas offsets obligors to be issued at the earliest opportunity. (paragraph 4.17)
- . The Departments of Defence and Industry, Technology and Commerce produce a single comprehensive report on the Offsets Program. (paragraph 4.25)

The Necessity for two Commonwealth Offsets Authorities

- . The Departments of Defence and Industry, Technology and Commerce examine the need or otherwise for the current dual administration of offsets, and in particular, investigate means whereby the administrative role can reside solely within the Department of Industry, Technology and Commerce whilst maintaining suitable links with defence industry policy. (paragraph 4.34)

Consistency for Participants - Register of Precedents

- . The results of decisions by the offsets authorities be documented in a comprehensive register of precedents and significant precedents published in the annual report on the Offsets Program. (paragraph 4.45)

Exempt Organisation Status

- . The Departments of Industry, Technology and Commerce and Defence report in the Finance Minute on the outcome of the GOPAC review of exempt organisations. (paragraph 4.55)
- . Guidelines for Participants include expanded documentation in relation to exempt offsets status addressing such matters as the approval process for the inclusion and deletion of organisations, and provide practical working definitions of such terms as 'major trading activities', 'competitive markets' and 'government bestowed protective advantage'. (paragraph 4.55)

Consistency within Administering Departments - Procedures Manual

- . The procedures manual for staff of the civil offsets authority, which was first recommended by the Inglis Committee and again by the Public Accounts Committee in its Report 270, be completed forthwith. (paragraph 4.59)

Security

- . The Departments of Defence and Industry, Technology and Commerce pursue methods whereby purchasing and offsets authorities are made aware of, wherever possible, any criminal convictions of overseas companies with which they have, or intend to have, dealings. (paragraph 4.68)

- . In addition to those matters identified in Report 270, the manuals for both offsets authorities should:
 - detail procedures to be followed upon notification of an offsets officer's impending resignation to take up employment in the private sector; and
 - prescribe procedures to be followed upon awareness of a successful prosecution against an overseas company participating in the Offsets Program. (paragraph 4.68)

Evaluation and Valuation of Offsets Proposals

- . The offsets authorities reconsider the Committee's recommendation to value transfer of technology based solely on valuation of exports, except where defence objectives of self-reliance dictate otherwise. (paragraph 5.24)

- . A permanent panel of independent experts in appropriate fields be established to assist the Department of Industry, Technology and Commerce in evaluating and valuing offsets proposals. (paragraph 5.24)

- . All civil offsets proposals entailing difficult measurement or subjective judgement be referred to that permanent panel for approval, and the requirement to do so be specified in the guidelines and procedures manual. (paragraph 5.24)

Annual Reports

- . Annual report disclosure on matters pertaining to defence offsets be expanded to encompass relevant statistical data necessary to facilitate a meaningful assessment of the Program's status, achievements, problems and prospects. (paragraph 6.10)

Evaluation of the Offsets Policy

- . If a notional value of technology is given at the time of technology transfer, that valuation should be discounted if the transfer is to a subsidiary or otherwise associated company of the overseas company. (paragraph 6.21)
- . The NOMIS database enhancements be completed at an early date to enable adoption of the recommendations of the Bureau of Industry Economics. (paragraph 6.38)
- . The Department of Defence report in the Finance Minute on the progress of improvements to its offsets database and that those improvements take into account the recommendations of the Bureau of Industry Economics in relation to the Department of Industry, Technology and Commerce database. (paragraph 6.38)
- . The Department of Defence report in the Finance Minute on the results of its survey as it specifically relates to the Offsets Program. (paragraph 6.38)
- . At the earliest opportunity, an independent full scale assessment be undertaken of the national significance of the offsets policy, in particular to identify and quantify all policy implementation costs, and assess the success or otherwise in meeting both its civil and defence objectives. (paragraph 6.38)

Chapter 1

INTRODUCTION

The Offsets Program

1.1 The Offsets Program is a device which aims to utilise the leverage of government purchasing power for the benefit of Australian industry. 'Offsets' are activities of commercial and technological significance which are directed to Australian industry by an overseas supplier as a result of, or in anticipation of, receiving an order for goods and/or services from the Commonwealth. In general terms, overseas suppliers selling to Commonwealth bodies attract an obligation to provide approved offsets to a level of 30% of the imported content of Commonwealth purchases where the duty free price of the purchase, or accumulated purchases in a single year, exceeds \$2.5m and where the imported content exceeds 30% of that price.

1.2 Approved offsets activities include transfer of technology, research and development, training, export etc. and all offsets proposals must meet specified criteria relating to commercial viability, price, technology and new work.

1.3 The objective of the Program is to contribute to the establishment of internationally competitive activities within Australia as well as, in the case of defence offsets, the attainment of self-reliance through the establishment, enhancement or maintenance of Australian industry defence capabilities.

1.4 Offsets relating to civil purchases (including defence general purpose computers) are administered by the Department of Industry, Technology and Commerce (DITAC) and the Department of Defence (Defence) manages the defence aspects of the program.

Reviews Prior to Report 270

1.5 Prior to the tabling of Report 270, two other reviews of the offsets program had been undertaken since its inception in 1970. The Report of the Auditor-General on the Efficiency Audit of the Administration of the Offsets Policy and the Report of the (Inglis) Committee of Review on Offsets were both published in 1984. As a result of the Government's broad acceptance of the recommendations of the Inglis Report, the Minister for Industry, Technology and Commerce and the Minister for Defence jointly announced in January 1986 the Government's decision on 'significant redirection and strengthening of the Australian offsets policy'.

1.6 The revised policy came into effect on 1 March 1986 and significant features were:

- . increased emphasis on the development of competitive capabilities in Australian industry;
- . incentives for technology transfer as offsets with multipliers to apply to research and development and training;
- . companies with an unsatisfactory offsets performance to face more stringent conditions in tendering for Government business;
- . uniform administration of the civil and defence aspects of the program and pooling of offsets arising from computer purchases; and
- . the public issue of guidelines for the administration of the program.¹

1.7 The revised policy would also, according to the joint statement, incorporate the following administrative changes:

- . the Department of Defence will negotiate and administer offsets against all its purchases other than general purpose computers provided through the Department of Local Government and Administrative Services. The Department of Industry, Technology and Commerce will administer offsets against these computers and purchases of all other Departments,

1. Department of Industry, Technology and Commerce and Department of Defence, Australian Government Offsets Program, Guidelines for Participants, AGPS, Canberra, 1986, p. 32.

Commonwealth Authorities and companies subject to the policy;

- . the Departments of Industry, Technology and Commerce, and Defence are to develop comprehensive guidelines for the administration of the program to allow effective implementation of the new policy;
- . for major Defence programs, to be defined initially as those with greater than \$10 million of offsets, the Minister for Defence will consult with the Minister for Industry, Technology and Commerce to ensure that the offsets proposed are consistent with the Government's industry policy; and
- . to ensure that competitiveness is achieved, the Department of Defence is to revise its methods of doing business with Australian industry to remove, at the earliest possible time, any arrangements that directly or indirectly subsidise offsets against non-Defence purchases and call on the Defence Outlay.²

1.8 In order to facilitate the operation of the revised offsets policy, the Government released guidelines - 'Australian Government Offsets Program - Guidelines for Participants, March 1986' covering the administration of both the civil and Defence elements of the Program, to assist overseas and local companies to participate in the Program.

Report 270

1.9 The Committee tabled Report 270 - 'Implementation of the Offsets Program' in April 1987. The main recommendations of the Report concerned:

- . dissemination of information to enable greater Australian participation in the Program;

2. Department of Industry, Technology and Commerce and Department of Defence, Australian Government Offsets Program, Guidelines for Participants, AGPS, Canberra, 1986, p. 33.

- . redefining the method of valuation of technology transfer, an area considered by the Committee as having major potential for abuse;
- . clarification of relationships between the Commonwealth's Offsets Program and other policies such as the Purchasing Preference Policy and various State offsets programs;
- . the reduction of administrative discretion; and
- . improvement of offsets records to facilitate the monitoring of program compliance.

1.10 In addition, the Defence and civil offsets authorities were urged to increase their efforts to present the offsets program as a single program in compliance with government policy and to avoid the potential for confusion, inconsistency and inequity in its application. The Committee viewed as extremely serious, criticisms regarding lack of accountability, secrecy and probity and sought to encourage a general increase in the visibility of the Program's administration through publication of more information on overseas firms and the nature and scale of their outstanding obligation as well as acquittal plans. The Committee also sought an enhancement in program accountability in the form of an annual report on the Program to the Minister.

1.11 A complete summary of recommendations in Report 270 is at Appendix A.

Recent Developments

1.12 Since Report 270 was tabled the Government has introduced two major initiatives which impact upon the Offsets Program - Partnerships for Development and the Australian Civil Offsets Agreement.

1.13 The Partnerships for Development Program was launched in September 1987 as part of the Australian Government's Information Industries Strategy. The stated intention of the Program is to encourage transnational companies within the information industries sector to expand their activities in Australia so that they become an integral part of their corporate global operations. The Program aims to boost the competitive strength of Australian firms by developing relationships with transnationals to form product development and marketing links into world wide markets.³

 3. Department of Industry, Technology and Commerce, Partnerships for Development, Working with Australia's Information Industries, AGPS, Canberra, 1988.

1.14 Under the Program a Memorandum of Understanding is signed between the Commonwealth, which pledges amongst other things, a supportive infrastructure environment and publicity promotion, and the overseas supplier's parent corporation, which commits itself to achieve specified research and development (R&D) and export targets over seven years.

1.15 Those companies that sign such agreements are exempted from the regular Offsets Program obligations. If partners accomplish the targets at the end of the agreements and continue to operate in a manner consistent with the broad principles of the Partnerships for Development Program, then they will gain permanent exemption from the Offsets Program.

1.16 If the agreement is terminated due to inadequate performance by the company, the company loses its partnership status and returns to standard offsets arrangements. The offsets obligations outstanding is then assessed as the balance outstanding at the time of signing the agreement, adjusted by firstly, sales to State and Commonwealth Governments and secondly, export and R & D achievements under the Program.⁴

1.17 As of June 1989, Partnership Agreements had been signed with 15 companies.⁵ Further aspects of Partnerships for Development are discussed at paragraphs 3.55 - 3.64 and 3.88 - 3.91.

1.18 The Australian Civil Offsets Agreement, signed by the Commonwealth and participating State industry Ministers, established a single national offsets program with effect from 1 March 1988. The Commonwealth Government and the Governments of New South Wales, Victoria, Queensland, South Australia and Tasmania signed the agreement in December 1987, with the Northern Territory signing in August 1988 and Western Australia in January 1989.⁶ DITAC advised in August 1989 that it had initiated discussions with the ACT Administration with a view to the ACT Government also becoming a signatory to the Agreement.⁷

4. Ministerial Statement on the Partnerships for Development Program, by Senator The Hon John Button, Minister for Industry, Technology and Commerce, 27 September 1988.

5. Evidence, p. 826.

6. Department of Industry, Technology and Commerce, Australian Civil Offsets Program, Annual Report, 1987-88, AGPS, Canberra, 1989, p. 6.

7. Evidence, p. S242.

1.19 The Agreement, which initially applies to all civil purchases by the Commonwealth and procurement of information technology goods and services by the States, is directed at removing confusion and resolving industry fragmentation caused by overseas companies having to abide by separate and different Commonwealth and State offsets programs and policies. It was anticipated that the uniform offsets arrangements would contribute to the efficiency and competitiveness of Australian industry and, by allowing offset obligations to be discharged in any State, provide companies maximum flexibility to operate where there is greatest competitive advantage thereby reducing costs.⁸

1.20 The Agreement declares the intention of signatories to eventually extend arrangements to cover all State purchases of overseas sourced goods and services but specifically excludes offsets arising from procurement by the Department of Defence, other than those the Minister for Defence has agreed be managed by the civil offsets authority. In relation to plans for the extension of the arrangements to all State purchases, DITAC advised:

The further implementation of the Australian Civil Offsets Agreement was considered by the Australian Industry and Technology Council (AITC) at their meeting on 24 February 1989. The AITC agreed in principle to a case by case implementation to all areas of State Government procurement with commercial vehicles and plant to be the first area to be considered. Western Australia, however, indicated it would have some difficulty implementing the agreement in this area because of existing countertrade agreements. Subsequently, at the [Government Offsets and Procurement Advisory Committee] GOPAC meeting on 20 April 1989 this matter was further discussed. Currently we are seeking to develop a position which will accommodate the difficulties involved and now expect that the next stage will be implemented from 1 January 1990.⁹

A copy of the Australian Civil Offsets Agreement is at Attachment 5 of the Finance Minute at Appendix B.

8. Minister for Industry, Technology and Commerce, Senator John Button, Press Release, March 1988

9. Evidence, p. 629.

1.21 Guidelines for Participants under the Australian Civil Offsets Program were issued in March 1988 replacing the civil component of the Australian Government Offsets Program Guidelines for Participants published in March 1986. The new guidelines seek to ensure greater focus on product development and export activity than in the past.¹⁰ A number of changes were incorporated into the new civil Guidelines. They were:

- . the exclusion of:
 - part production or assembly and gifts and donations as types of eligible offsets activities; and
 - penalty clauses and references to retention of payments pending discharge of an obligation;
- . the inclusion of:
 - investment guidelines; and
 - sunset clauses for exports intended to stimulate technology and product development in beneficiary firms.¹¹

1.22 In December 1988 interim guidelines for the inclusion of the general insurance industry in the Australian Civil Offsets Program were issued. By linking the insurance industry to the Offsets Program, the Government seeks to:

- . facilitate the development of an internationally competitive and export oriented insurance industry; and
- . enhance the capacity of the insurance industry to provide innovative risk management and insurance protection to assist the development of export oriented manufacturing and service industries generally.¹²

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10. Department of Industry, Technology and Commerce, Australian Civil Offsets Program, Guidelines for Participants, March 1988, AGPS, Canberra, Foreword.
 11. Department of Industry, Technology and Commerce, Australian Civil Offsets Program, Annual Report 1987-88, AGPS, Canberra, 1989, p. 9.
 12. Minister for Industry, Technology and Commerce, Senator John Button, Press Release 197/88, December 1988.

Another Recent Review

1.23 One of the recommendations of the Inglis Committee was the introduction of mandatory dual tendering whereby tenderers would be required to prepare separate quotes with and without offsets. After a one year trial period it should then be reviewed to see if the objective of identifying price premiums on Government purchases was being achieved.¹³ This proposal was rejected by the Government which instead decided to establish, within the Bureau of Industry Economics (BIE), an independent system to monitor the costs and benefits of the civil aspects of the Offsets Program.

1.24 The BIE advised the Committee in 1986 that its study was to be undertaken in three stages:

- review of offsets administration and information systems in order to improve Offsets Branch's data collection;
- assessment of the Program on the basis of indicators extracted from Offsets Branch's database and particularly the levels of achievement of post-offsets work induced by the Program; and
- determination of the value of a full-scale cost-benefit analysis of the program.¹⁴

1.25 The BIE published its report 'Monitoring of the Offsets Program' on stage one of its monitoring responsibility in June 1987. The BIE recommended that further methods to improve the reporting of purchases be examined and implemented. They also made recommendations concerning collection of data on final prices and payment (or delivery) dates, Australian beneficiaries' operations and major subcontractors, as well as post-offsets activity.¹⁵

1.26 Aspects of the BIE study are addressed in more detail throughout this Report.

13. Report of the Committee of Review on Offsets, December 1984, AGPS, Canberra, 1985, p. 157.

14. JCPA File 1986/13, Part A(1).

15. Bureau of Industry Economics, Monitoring of the Offsets Program, First Report, Program Evaluation Report No. 3, AGPS, Canberra, 1987, p 36.

The Finance Minute and Re-opening of the Offsets Inquiry

1.27 To ensure that appropriate action is taken in response to each report of the Committee, the Committee has since 1952 had a formal procedure known as a Department of Finance Minute. After a report by the Committee is tabled in the Senate and the House of Representatives, the Chairman of the Committee forwards a copy of the report to the responsible Minister. A copy is also forwarded to the Minister for Finance, together with a request that the report be considered and the Chairman subsequently be informed of actions to address the Committee's recommendations. The reply, in the form of a Department of Finance Minute, is then examined by the Committee and reported upon to the Parliament.

1.28 The Finance Minute on Report 270 was not received by the Committee until October 1988, 18 months after the Report was tabled in Parliament.

1.29 The Committee was not only concerned at the length of time taken to provide a formal response on the recommendations and the conclusions contained in Report 270, but was also very disturbed at the fragmentary nature of that formal response.

1.30 Evidence presented to the Committee in the form of correspondence between the Department of Finance and DITAC suggests that the Department of Finance had little influence in eliciting prompt responses from departments and played no part in attempting to establish a cohesive Government stance on Committee conclusions and recommendations.

1.31 The Committee raised its concerns about the inadequacies of the existing Finance Minute process with the Minister for Finance and senior Departmental officers. Subsequent action by the Department of Finance has led to more senior officers being assigned to handle the Finance Minute process and to the Department assuming a more pro-active role. The Committee notes that subsequent Finance Minutes have not encountered the delays which prompted the Committee's initial concern.

1.32 In respect of the content of the Finance Minute, the Committee found the responses given by departments to be superficial and inadequate in addressing Report 270 recommendations. However this is not surprising in view of the level of departmental involvement. Responses to parliamentary committees from DITAC are cleared at Senior Executive Service

(SES) level.¹⁶ It was clear that prior to his appearance before the Committee for this Inquiry, the Secretary of DITAC, Dr David Charles, had little knowledge of Report 270 or the content of the Department's response, and displayed a certain degree of annoyance at being asked to appear before the Committee. The Minutes of Evidence record:

Dr Charles - ...you have asked myself, personally, to come along and take part in this Committee's proceedings - not a usual procedure I would have thought; I do not know. I have been the Secretary of the Department for four years and I have never been asked by any parliamentary committee to appear before it.

Senator BISHOP - Did you not think we were important enough?

Dr Charles - That is not the point. The point I am making is that I think it is an unusual procedure to ask a secretary of a department to come here before it.

Mr RUDDOCK - I would agree.

Dr Charles - Therefore I have personally reviewed all the papers and all of the relevant documents in this area. I have done little else for the last week, and I have now read the original report in intense detail ...¹⁷

1.33 It was also clear that the Secretary had not been made aware by his Department, of the concern raised by the Department of Finance in respect of the delay in responding to the Committee's Report.¹⁸

1.34 The Committee believes a departmental secretary must be fully apprised of parliamentary inquiries, reports and responses in respect of matters for which he or she is directly responsible.

1.35 The Committee considered that the Finance Minute did not provide persuasive evidence which sufficiently justified the rejection by the departments involved of certain recommendations. The Committee was also disturbed to find that despite three reviews to date - the Auditor-General's Efficiency Audit on the Administration of the Offsets Policy in 1984, the Inglis Review also in 1984 and the Committee's own review - some aspects of the

16. Evidence, p. 232.

17. Evidence, p. 190.

18. Evidence, p. 197.

program appeared to be still open to the same sorts of criticisms previously directed at it. The administration of the Offsets Program continues to be the subject of questions and unfavourable comment by other parliamentary committees and Parliament itself, and on occasions the Program suffers criticism from sections of industry and the media.

1.36 The Committee therefore decided to re-open the Inquiry to the extent of seeking further information and explanations from departments involved in the Offsets Program. Fresh submissions were not publicly sought, however, the Committee did receive further submissions as a result of the circulation of the Finance Minute to various individuals and organisations involved in the original Inquiry.

Chapter 2

COMMUNICATION

2.1 Adequate and appropriate information flows are imperative if the Offsets Program's objective of establishing internationally competitive activities within Australia is to be achieved. The Committee believes that this objective implies the desire to not only ensure that any local firms that have already reached internationally competitive status maintain that status, but to assist additional local firms in achieving such status. In order to expand the number of local firms participating in offsets work effective information links are critical.

2.2 The Committee observed in Report 270 that the Offsets Program incorporating both the civil and Defence aspects impacted on only a small section of Australian industry and only a small number of Australian firms were involved in performing offsets work. It was felt that it should be the responsibility of Defence and DITAC to source and disseminate information to lift awareness of the Program throughout local industry and to provide assistance to overseas firms in locating suitable Australian companies to undertake offsets work.

Information for Overseas Company Participants on Local Industry

2.3 In Report 270 the Committee concluded that a comprehensive database on local industry capabilities, technologies and interests was essential for the proper administration of the Program and recommended the development by DITAC of such a database by 31 December 1987. A local industry database would enable DITAC to both aid overseas suppliers in identifying potential recipients of offsets work and assist in providing information to local industry on offsets opportunities. The Committee was aware that local industry information was being collected by other bodies including The Australian Trade Commission (Austrade) and State instrumentalities but was concerned that it might be some time before DITAC had access to such a database.

2.4 In making this recommendation the Committee was mindful of evidence given to them in late 1986 and early 1987 to the effect that DITAC had a number of databases within the Department that would be integrated to form a civil industry database. The project was being undertaken as part of the development and implementation of a National Register of Industrial Capabilities. The first phase of the project including the development of a heavy engineering sector database was largely complete at that time.¹

2.5 The Committee was therefore bewildered by the response given by DITAC in the Finance Minute at paragraphs 11 - 17 opposing the adoption of this recommendation. The Department expressed the view that the development of such a database would be a time-consuming and costly exercise and exceed the needs generated by the Offsets Program. DITAC claimed that location of Australian beneficiaries is in general the responsibility of the overseas supplier whilst it sees its role in the Program as that of gathering intelligence in relation to the capabilities required of local industry by overseas suppliers. Furthermore, State offsets authorities have responsibility under the Australian Civil Offsets Agreement for the involvement of additional local companies and will initially utilise their existing industry databases. However DITAC does now have access, through the National Industry Extension Service (NIES), to Austrade's APSIS database and also expressed an intention to produce, in conjunction with the relevant State Government authorities, a list of Australian industry directories for distribution to overseas suppliers.

2.6 The Committee sought to establish firstly, why the Department's plan of a comprehensive database had been abandoned, secondly, the fate of the heavy engineering database developed by DITAC in 1986 and thirdly, the extent of the progress by DITAC in respect of the proposed list of directories.

2.7 The Committee learned from DITAC witnesses that since Report 270 general administrative changes in the Public Service, in particular substantial constraints on resources, had served to initiate a re-appraisal of their original plans. In addition DITAC became aware of other organisations that were developing national industry advisory information systems.² It is the Department's view that the public sector should not seek to drive out of the market-place private sector and other agencies which are in a better position to produce databases than the Department.³ In this respect the Department of Finance also expressed an opinion that it did not support unnecessary duplication of activities already undertaken within the public sector or those able to be provided commercially.⁴

1. JCPA File 1986/13 Part B(11).

2. Evidence, p. 242.

3. Evidence, p. 243.

4. Finance Minute on Report 270, para. 7. See Appendix B.

2.8 The Committee was advised that DITAC has developed closer connections with Austrade and thus the APSIS database, and due to the emergence of closer relationships between NIES and State Governments, better connection could be made into the State department databases. Overseas companies with obligations seeking potential recipients of offsets work are now directed to known databases held by other organisations and their requirements brought to the notice of State Government offsets authorities.⁵

2.9 The Committee was informed that DITAC sold the heavy engineering database to National Engineering Information Service Pty Ltd (NEIS), a wholly owned subsidiary of the Illawarra Technology Centre based on the University of Wollongong for \$1,000 in June 1987. DITAC advised that the total cost of development of the National Register of Industrial Capabilities (NRIC), a database of heavy engineering firm capabilities, up to the point of its sale was \$342,183. The various actual and imputed charges were as follows:

- . preliminary feasibility study (undertaken by Coopers & Lybrand W D Scott) - \$30,000;
- . data collection via an Australian Bureau of Statistics mailout survey - \$4,000;
- . database creation (undertaken by Coopers & Lybrand W D Scott) - \$66,275;
- . initial system operational software development (undertaken by Computer Power Pty Ltd) - \$116,908;
- . overheads borne by DITAC (e.g. salaries, travel etc. associated with consultant selection and management; ADP use)- \$125,000 (est)⁶.

2.10 The NRIC development was a joint venture between the Commonwealth and the States/Territories, under the auspices of the interim heavy engineering program announced in May 1985. Half the costs of the feasibility study and the database creation had been met by the States. The decision to sell the database for this nominal fee was a collective decision taken by Commonwealth, State and Territory industry Ministers to facilitate its integration into the significantly superior (in terms of useability, access and integrity of original data) engineering firms capability database developed by NEIS in conjunction with BHP.

5. Evidence, pp. 243, 247.

6. Evidence, p. 614.

2.11 In striking a nominal price of \$1,000 regard was had to the fact that significant additional expenditure was required to further develop, operate and maintain the NRIC system. In May 1987 it was estimated that a further \$500,000 - \$750,000 was required in the period to 30 June 1989 for these purposes. Major costs would have been associated with software refinement and verification of claimed capabilities. Through the sale these costs, except for the software refinement, were effectively transferred to NEIS.

2.12 Other conditions on the sale included free access to the integrated database by Commonwealth and State/Territory agencies for a three year period after which they would be required to pay for access. In this context regular users of the database include State Industrial Supply Offices, Austrade and the Australian International Development Assistance Bureau (AIDAB).⁷

2.13 The proposal to publish a list of Australian industry directories had not progressed but the Committee was informed that the Government Offsets and Procurement Advisory Committee (GOPAC) considered the matter in April 1989.

2.14 At that time GOPAC re-iterated DITAC's view that under the terms of the Australian Civil Offsets Agreement involvement of local firms was a State responsibility and that it was not aware of any indication that appropriate local firms were being overlooked by overseas suppliers. Although GOPAC considered that directories were not a major factor in the involvement of local industry in the Program, a list of directories would be prepared with the co-operation of State offsets authorities.⁸

2.15 The Australian Information Industry Association (AIIA) believes that there is a continuing requirement for the establishment of a comprehensive database of Australian industry capability, capacity and technologies. In their view, the lack of such an information service had meant that many of the international companies involved in the Partnerships for Development Program have had to waste valuable resources seeking out local firms capable of benefiting from the Program. In Defence's experience also, overseas companies have difficulty in matching their requirements with local suppliers capabilities.⁹ However, in some cases the overseas supplier has little need to resort to 'outside' help in locating suitable local firms. For instance, IBM has a large Australian subsidiary that has been operating within this country for a considerable number of years. Through long experience they have built up their knowledge of the capability that exists here in their specific areas of interest.¹⁰

7. Evidence, pp. 614-5, 626.

8. Evidence, p. 626.

9. Evidence, p. 891.

10. Evidence, p. 608.

2.16 AIIA stated that they had sought to encourage the establishment of such a database by private organisations, but it is obvious to them that it will require at least catalytic government funding or underwriting.¹¹ AIIA claimed that the greatest need was for a unified database which measures Australia's capability rather than production of fragmented and unverified listings of what people claim they can do. AIIA considered that the APSIS database is not verifiable, and because it was probably designed with exports in mind, is inadequate in meeting the needs of industry development. An effectual on-line database could be established for about half a million dollars it was claimed, and probably cost about \$400-\$500 a year to verify the entries.¹²

2.17 DITAC believes that this estimate would likely be at the bottom end of any actual costs. In addition, verification costs could require the part/full time services of one person at an annual cost including overheads of \$20,000 to \$80,000.¹³

2.18 The Committee sought to establish exactly what information was held in the APSIS database, and the extent of Austrade's involvement in matching participants in the Offsets Program.

2.19 Austrade confirmed AIIA's supposition that APSIS was created initially for internal Austrade purposes and is effectively a database for exporters. It has about 10,000 companies on it which covers the vast majority of Australian exporting companies and it is kept up to date largely through the interaction of Austrade State offices with exporters. Much of the information is classified commercial-in-confidence and is provided only on the understanding that it is maintained on that basis, however, Austrade advised that most companies permit DITAC accessibility. In fact it was stated commercial-in-confidence normally extends to not making it available to non-government agencies.¹⁴

2.20 Under the Australian Civil Offsets Agreement Austrade's role is to:

- initiate and facilitate offsets related trade development activities;
- provide overseas follow up support in regard to offsets negotiations and activities; and

11. Evidence, p. 325.

12. Evidence, pp. 335-8.

13. Evidence, p. S121.

14. Evidence, p. 427-8.

provide overseas marketing support to local participants in the Program.¹⁵

2.21 Austrade's prime interest in offsets is the value the Program has as an export tool which can be used by Australian companies seeking to expand export markets.¹⁶ For instance, the Committee heard evidence that Austrade is working on defence Export strategy with the Department of Defence through consultations and joint activities such as trade displays and joint missions overseas on defence exports, equipment and services.

2.22 The Committee considers that whilst 'every bit helps', the government assistance extended to participants in the offsets program by Austrade is somewhat limited. Austrade sees their main facilitation role in the offsets area as matchmaking between an offsets obligor and local companies.¹⁷ However, any introductions are a by-product from the main activities undertaken in relation to any particular industry strategy (Austrade claimed a large number of contacts were made this way) or as a result of requests for assistance from overseas companies.¹⁸

2.23 The Committee was advised that in Austrade's view that it could be a counter productive effort to over encourage too many smaller, inexperienced firms into the offsets arena. They therefore make judgements on the particular needs of any company that seeks assistance from them (which may not correspond to the company's perceptions) and tailor the level of service provided to that company accordingly - not withstanding the introduction of cost sharing. A representative from Austrade stated:

... otherwise we would be involved in giving exactly the same service to all people who walk through our door and we believe that would be a very ineffective way to use the funding that we are provided with.¹⁹

2.24 The Committee found that even though the clause at paragraph 2.20 above was inserted in the Civil Offsets Agreement largely as a result of Austrade's suggestion, Austrade was not able because of its integrated approach to its overall responsibilities to quantify its activities in relation to offsets.²⁰ The Committee notes that no objective assessment has been made of Austrade's performance in either judging which firms are likely to become successful exporters, or the success or failure of firms to which Austrade has provided assistance.

15. Evidence, p. 177.

16. Evidence, p. 417.

17. Evidence, p. 422.

18. Evidence, pp. 424, 425.

19. Evidence, p. 429.

20. Evidence, pp. 440-2.

2.25 The Committee believes that information which discloses local capability would be of the most benefit to overseas suppliers attempting to locate suitable recipients of offsets work and in gauging the potential of local firms to undertake new and technologically sophisticated work. The Committee does not believe that a consolidated list of available directories or the individual directories themselves, suffice.

2.26 A database of local capability would not only streamline administration leading to more effective and efficient use of costly manpower but could also be a valuable tool in designing industry strategies and on a user pays basis, serve the needs of other government organisations as well as investment consultants and brokers. However, the Committee does appreciate DITAC's point that there are currently in excess of 650,000 firms in Australia and the development of one comprehensive industry database would be a costly and time-consuming exercise which they do not have the resources to undertake.²¹ The Committee, however, does not support DITAC's contention that any further development in this area should be left up to the private sector.²² DITAC and Defence have been charged with prime responsibility for the implementation of the Offsets Program - not the private sector.

2.27 The Committee recommends that:

The Department of Industry, Technology and Commerce investigate means of economically:

- . establishing and maintaining a database of local industry capability; or alternatively
- . upgrading Austrade's APSIS database to provide suitable verifiable information.

2.28 In areas of industry where an appropriate database already exists, and is comparatively inexpensive to access, duplication should be avoided.

21. Finance Minute on Report 270, para. 12. See Appendix B.

22. Finance Minute on Report 270, para. 17. See Appendix B.

Information for Local Firms on Offsets Opportunities

2.29 The provision of easily accessible and competent information to local firms of potential offsets opportunities is essential in order for local firms to prepare and target their proposals more directly to supplier needs, thus enhancing their prospects of participating in the Program.

2.30 In Report 270 the Committee concluded that there was scope for offsets authorities to publish more information on overseas suppliers and recommended the compilation of a comprehensive directory of overseas companies with offsets obligations for distribution to local firms seeking offsets work. The Committee envisaged that the directory should include:

- . details of each firm's business in terms of products, technologies and interests;
- . the nature and scale of its offsets obligations; and
- . non-sensitive information on the nature and scale of its acquittal plans.

2.31 In 1986 Defence signified their intention to produce a directory of overseas participants in the Offsets Program. Defence now produces, for the information of Australian companies wishing to pursue opportunities for work which may arise from the Defence element of the Offsets Program, a listing which in addition to essential name, address and contact number details, incorporates, in response to the Committee's suggestion, indicatory information on contract values and industry categories. The List of Participants also includes overseas companies who have completed their offsets obligations and identifies companies who have entered into Offsets Credit Deeds whereby overseas companies are permitted to accumulate offsets credits in anticipation of future obligations.

2.32 On the other hand, DITAC, who at the time of the previous Inquiry published and distributed a list of names, addresses and contact points only of overseas suppliers, rejected the Committee's recommendation for greater information and continues to produce exactly the same type of listing as it did in 1986. The Committee found DITAC's response as presented in the Finance Minute provided little additional persuasive material to that accepted as evidence at the previous Inquiry. In April 1989, the Committee noted that the list, which is produced as part of the Department's general promotional literature for distribution at seminars (with appropriate segments provided to those individually enquiring about particular areas of interest), had not been updated since August 1988. DITAC subsequently provided an updated list in June 1989.²³

2.33 In the public forum most of the Committee's enquiries in relation to this recommendation tended to concentrate on the question of disclosure of the level of offsets obligations of individual companies. DITAC stated in the Finance Minute that 'previous experience is that the release of such information would provoke a strong reaction from many overseas suppliers who would dispute the accuracy of the figures quoted'.²⁴ The Committee found this statement to be rather at odds with their claim that substantial work had been undertaken to reconcile the status of offsets commitments.²⁵ Furthermore, the term 'strong reaction' was subsequently found to be based on the experience of one occasion where one firm indicated that they would be 'more reluctant to work in a co-operative mode ...'.²⁶

2.34 One company submitted the view that there is no basis for fearing strong reaction from overseas suppliers and called for the immediate reinstatement of the type of publication previously circulated to industry by the Department of Defence Support in the early 1980s.²⁷ That publication, titled 'Summary of Prime Contractors with Outstanding Offsets Obligation Greater than A\$1.0 million', provided brief details of acquittal plans and the amount of the current approximate offsets 'debt'.²⁸

2.35 DITAC also noted other difficulties in releasing this information such as:

the information rapidly becomes dated;

23. Evidence, p. 630.

24. Finance Minute on Report 270, para. 20. See Appendix B.

25. Evidence, p. 21.

26. Evidence, p. 269.

27. Evidence, p. 711.

28. JCPA File 1986/13, Part B(2)

- . gross obligation figures do not provide any indication of time scale of the obligations or the existence of any long term agreement to acquit them; and
- . large obligation figures may give the impression of delinquency.²⁹

2.36 The Committee considered none of these points to be valid obstacles to the provision of details, it being a simple matter to preface the publication of details with any necessary provisos. Although noting the concern expressed by one industry witness that despite provisos some media outlets would still, in an offsets debit situation, misrepresent the facts,³⁰ the Committee considers the bald listing of offsets obligation debtors included in the Australian Civil Offsets Program Annual Report³¹ to be more disposed to misinterpretation and speculation by the media than any out of date list containing figures and provisos.

2.37 Further information was sought on how the disclosure of offsets obligations of an individual company could be prejudicial to the companies concerned. DITAC put forward the following circumstances that had been mentioned to them:

- . prices paid for large items can be deduced from knowledge of offsets obligations e.g. an Australian airline purchases aircraft from an overseas manufacturer which by definition is 100 per cent foreign content. From knowledge of the overseas suppliers' offset obligations it is possible to deduce the price paid for the aircraft. As these items are typically negotiated, this information has value to competing airlines and alternative suppliers;
- . similarly, information concerning the discharge of offsets can reveal, under certain circumstances, the unit price of items supplied by Australian manufacturers to firms with offset obligations; and
- . firms claim that sometimes the disclosure of offsets information of itself may appear harmless. However, combined with other industry intelligence, it can be quite revealing. Other sources of information could include press releases, annual reports, industry rumours and the movement of

 29. Finance Minute on Report 270, para. 20. See Appendix B.

30. Evidence, p. 606.

31. Department of Industry, Technology and Commerce, Australian Civil Offsets Program, Annual Report 1987-88, AGPS, Canberra 1989, p. 85.

employees between organisations. The more concentrated the industry, the greater the scope for this type of intelligence. For example, a specific case would be local content. Competitors can, by observing changes in the obligation level and with knowledge of contracts from government publications, determine degrees of local content.

2.38 DITAC pointed out that these situations are the more damaging, the more frequent the obligation status of firms is revealed. Additional information can be deduced by looking at the change in offset status of firms over time:

- . information on offsets obligations can be used by Governments, unions and sub-contractors in the home country of the supplier to place pressure on the company to reduce the extent of the work placed overseas; and
- . third countries can use the information from negotiating offsets on their behalf. The public disclosure of this information will work to the detriment of Australian industry by increasing the resistance to do offset work in Australia and to drive a harder bargain with Australian industry.

2.39 Although not of a commercial-in-confidence nature, DITAC considered the following issues should also be considered in relation to this issue:

- . public perceptions of delinquency and possible adverse publicity for a company with a large offset obligation, perhaps arising from a recent major purchase, when in fact the company may already have entered into satisfactory agreements with local industry to fulfil its obligation;
- . the presence of non-disclosure clauses in many agreements restricting the release of any information covered by the agreement, including obligations, without the formal consent of parties; and
- . routine disclosure of offsets obligation information would reduce the impact and effectiveness of the threat of disclosure currently used as a sanction to ensure compliance by delinquent overseas suppliers.

2.40 According to DITAC firms with lumpy sales or single sources of discharge are more concerned about the question of disclosure than firms who sell to many clients during the course of a year. However the Government's position has been to adopt a universal treatment of firms operating under the Offsets Program, whilst encouraging companies to reveal additional information through their own press releases.

2.41 DITAC advised that this issue had recently been put to State offsets authorities with an explanation of the problems arising from the policy of non-disclosure such as the undesirable aura of secrecy, conjecture as to the valuation of offsets activities and concern about the accountability of program managers. The State authorities had acknowledged these difficulties but nonetheless strongly supported the present policy of non-disclosure.³² The Committee noted that through their link to DITAC's NOMIS database, State offsets authorities have access to details of the value of offset obligations of individual companies.³³

2.42 The Committee wishes to make it clear that it is not advocating disclosure of obligations per individual contract, but rather, the total outstanding offsets 'debt' of individual overseas companies. It is therefore unclear how a nett figure of offsets obligations less achievements to date can permit such deductions to be made as suggested above.

2.43 The underlying objection of both DITAC and Defence to the release of details of offsets obligation was the fact that the Government had accepted the recommendation of the (Inglis) Committee of Review on Offsets that the commitments of individual companies not be published except in the case of major delinquencies. The Joint Committee of Public Accounts sought the co-operation of DITAC in establishing precisely what circumstances had led to the Committee making this recommendation. Although the volume of information and the availability of resources did not permit a detailed search, the Department researched the relevant archival material, without success.

2.44 A written request was made to Sir Brian Inglis seeking his consideration of the matter.³⁴ His reply indicated that the recommendation as to the inappropriateness of public disclosure at that time was made as a result of:

strong impressions gained during discussion with senior management of major overseas companies that offsets information was regarded as confidential and that disclosure would be resisted;

32. Evidence, pp. 616-8.

33. Evidence, p. 290.

34. Evidence, p. 616.

- . serious discrepancies between the (then) Defence Support records and company records of offset obligations coupled with the Committee's lack of confidence in the Department's records; and
- . recognition that breach of the confidentiality of special negotiated offset arrangements would be strongly resisted.³⁵

2.45 Whilst Austrade acknowledges the importance of Australian industry awareness of the program and the opportunities it may present, it considers that publication of a directory of overseas firms having offsets obligations does not in itself generate more business for Australian companies and furthermore that the additional benefit from publishing a directory is marginal.³⁶ The Committee too does not accept the naivety of such a view but believes that provision of an informative directory on overseas obligors is an essential tool in overcoming imperfect information flows which is surely one of the basic economic rationales for the existence of the Program. The benefits may be marginal, but as the cost is minimal it seems foolish not to utilise this method of putting more information in the market-place. Whilst the Committee does not believe that provision of written information will in any way eliminate the need for the provision of personal and therefore costly assistance by government offsets authorities, the more information and better quality of the information that can be provided as a matter of course to local industry, the less other assistance should be required.

2.46 The line of discussions and questioning during the Inquiry dwelt not only on the usefulness of the information to local firms, but their right and the right of any individual or parliamentarian to this information. In the opinion of the Committee, the argument that there is a choice to be made between the benefit to Australian industry and 'harm' caused by upsetting some overseas companies is irrelevant. The Committee believes that the question of commercial-in-confidence cannot be viewed so narrowly. The matter must be considered within the context of the Program as a whole and in particular the issue of public accountability of the Program. The Committee believes that wide public knowledge and scrutiny of programs actively encourages efficiency and probity. Whether justified or not, non-disclosure, the Committee believes, is leading to increased public criticism of the Program.

 35. Evidence, pp. 643-4.

36. Evidence, pp. 418, 434.

2.47 Subsequent advice was received from DITAC that in the light of discussion at the public hearing and further consideration of the Department of Defence Directory, it sees merit in upgrading their directory of overseas firms to provide more information in relation to contract values and the firms' industry. It is their intention to introduce the new publication as soon as practicable.

2.48 DITAC also advised:

Reflecting the desire shared with the Department of Defence to make sure industry is well aware of opportunities under our respective programs, we have initiated discussions with them on the possibility of a joint advertising campaign.³⁷

2.49 Although the Committee welcomes these proposals it believes that considerably more can be done in the way of public disclosure.

2.50 The Committee recommends that:

- . Outstanding offsets obligations of individual companies and the age of such obligations, be published in the annual report of the Offsets Program. Information concerning offsets arrangements and acquittal plans be released on a periodical basis.
- . Future offsets contracts and Partnerships for Development agreements exclude clauses restricting the disclosure of nett offset obligations.

2.51 Nonetheless, the Committee acknowledges the extent of support to the Program given by DITAC staff by way of personal interviews, seminars etc. and commends DITAC for the introduction of other new initiatives since Report 270 aimed at expanding the knowledge of local firms to offsets opportunities and establishing better communications between Australian and overseas companies. The Australian Technology Magazine, with a current circulation of approximately 15,000, commenced publication in May/June 1987. The 'In Partnership' newsletter of which 1,100 are distributed to State Governments, Austrade and industry associations for dissemination, commenced publication in December 1988.³⁸

37. Evidence, p. 624.

38. Evidence, pp. 12, 13, 28.

Information from Government to Industry

2.52 In Report 270 the Committee recommended that all organisations subject to the Offsets Program publish forward procurement plans as early as practicable consistent with their operating and commercial circumstances. This recommendation supports the notion that early knowledge of potential opportunities assist both local firms in preparing and qualifying for offsets work as well as overseas firms in locating suitable offsets activities should they be the successful tenderer.

2.53 The Committee of Review on Government High Technology Purchasing Arrangements, chaired by Sir Brian Inglis, also believed publication of forward plans to be a valuable tool for industry, and they recommended preparation and consolidated annual publication for all Commonwealth agencies of 3 year forward procurement plans identifying requirements for technology intensive products and services.³⁹

2.54 DAS and DITAC indicated in the Finance Minute that the development of forward procurement plans was a priority of the Inglis Report Implementation Task Group which consisted of officers of their respective departments. But as the Finance Minute shed little further light on the matter other than to advise that the Task Group commenced operations in June 1988 and 'progress will be regularly monitored by the Departments involved', the Committee sought to establish the extent of advancement on this matter.

2.55 DITAC advised that there had been difficulties in staffing the Task Group permanently with officers who have sufficient expertise in the area. With the formation of the Purchasing Reform Group within the Department of Administrative Services work on the Inglis recommendations is now being co-ordinated with work on the introduction of purchasing reforms announced in November 1988.⁴⁰

2.56 As part of this activity ministerial guidelines are being prepared for departments on purchasing policies and practice, including procurement planning for all requirements. A guideline on procurement planning is scheduled to be issued emphasising the need for departments to give industry early advice on their intention.

39. Committee of Review on Government High Technology Purchasing Arrangements, Report, February 1987, AGPS, Canberra, pp. 109, 111.

40. Evidence, p. 13.

2.57 Following the issue of the guideline, DAS and DITAC will jointly convene discussions with departments and agencies about consolidating plans on the lines proposed by Inglis and determine a course of action for consideration by Ministers. It was optimistically assessed that information (which would not be confined to technology intensive requirements) would be available for dissemination to industry by 1990.

2.58 At present departments are only required to prepare strategic plans every three years in respect of information technology and to submit a three year forward procurement plan to DAS each year.⁴¹ In April 1989 DAS advised it was in the process of compiling a consolidated summary of plans for the three years 1988-89 to 1990-91. Even though by the time of release one-third would be out of date, DAS considered publication was still a worthwhile exercise.⁴² DAS cited the July 1987 Administrative Arrangements Orders causing amalgamation, reorganisation and rationalisation of ADP areas as the reason why no plans had been published since December 1986.⁴³

2.59 The Committee heard evidence that the 1986 plans were a welcome and useful tool for local information industries.⁴⁴ The AIIA believes that the timely provision of information regarding forward procurement programs and strategies of governments and other public instrumentalities is perhaps one of the most valuable means of promoting local industry development. The AIIA stated:

Timely information enables local firms to prepare themselves for specific projects and, in particular, develop critical strategic alliances with other suppliers. The recent process wherein a number of local firms have become successful prime contractors in response to tenders involving long lead times illustrates the benefits that can be derived.⁴⁵

2.60 DAS has subsequently submitted in October 1989 for the Committee's information the first volume of forward procurement plans for the acquisition of information technology facilities. The plans are for the years 1989-90 to 1991-92 and the first volume incorporates plans of Commonwealth departments who submitted them to DAS by July 1989. These documents are available to the public from the DAS Purchasing and Sales Group at \$500 per set. Additional volumes will be released as other plans are received.⁴⁶

41. Evidence, p. 359.

42. Evidence, p. 377.

43. Evidence, p. 360.

44. Evidence, p. 345.

45. Evidence, p. 325.

46. Evidence, p. S515.

2.61 Defence publishes annually a Forecast of Minor (under \$10m) Defence Capital Equipment Procurement for a 5 year period, which is available upon request to local and overseas firms. Defence signified their intention to produce similar information for industry on their unapproved major capital program (with the necessary caveats) but also anticipated inherent difficulties with this or with contributing to the annual consolidated forward procurement plans proposed by DITAC and DAS due to uncertain timing and the need for Government consideration and approval of individual items.⁴⁷

2.62 The Committee is quite perplexed at the current situation. As long ago as 1984, the Australian Science and Technology Council (ASTECC) advised the Prime Minister of the potential value of publishing forward procurement plans.⁴⁸ Despite persistent entreaties ensuing from subsequent inquiries, it would appear little has been achieved to date and no priority has been afforded to addressing the task - a point which has not gone unnoticed in the private industry sector.⁴⁹

2.63 The Committee recommends that:

Efforts be made to ensure that publication and distribution of consolidated forward procurement plans for all departments and agencies subject to the Offsets Program proceed without delay.

Consultation between Government and Industry

2.64 Regular and formal liaison between Government and industry is necessary to ensure that the Offsets Program administrators are aware of, and have a clear understanding of, the manufacturing and commercial environment upon which the Program impacts.

47. Evidence, pp. 452, 868.

48. Australian Science and Technology Council, Government Purchasing and Offsets Policies in Industrial Innovation, AGPS, Canberra, 1984, p. 39.

49. Evidence, p. 325.

2.65 The Committee was advised in November 1986 that the Offsets Advisory Committee (OAC) which had been established in 1970 to advise the Minister on local industry views of matters associated with the Offsets Program had gone into recess pending the outcome of the (Inglis) Committee Review of Offsets.⁵⁰ In fact no meetings have been held since March 1985.⁵¹ In Report 270, the Committee recommended early re-formation of an industry advisory body similar to the OAC.

2.66 The functions of the Offsets Advisory Committee have now been combined with those of the State Preferences and Industry Restructuring Advisory Committee to form a new tripartite committee called the Government Offsets and Procurement Advisory Committee (GOPAC). Membership consists of Commonwealth and State Government representatives and industry representatives. A full list of GOPAC members is at Attachment 2 of the Finance Minute at Appendix B.

2.67 Defence, as well as being a member of GOPAC, has its own separate Defence Industry Committee of private businessmen, servicemen and public servants to advise the Minister on matters relating to industry and its development for defence purposes. The Defence Offsets Program is reported on regularly to that committee.⁵²

2.68 GOPAC's role in relation to the Offsets Program is to:

- . provide advice on the development and implementation of government offsets policies;
- . develop a uniform Commonwealth-State approach to offsets policy;
- . promote the Offsets Program and review progress; and
- . identify particular industry or product groups which could be assisted by the Program.⁵³

50. Evidence, (JCPA Report 270: 1987) p. 391.

51. JCPA, Implementation of the Offsets Program, Report 270, AGPS, Canberra, 1987, para 2.49.

52. Evidence, p. 572.

53. Evidence, p. 81.

2.69 Since its first meeting on 4 June 1987, GOPAC has met 2 or 3 times a year. A sub-committee comprising Commonwealth and State Government GOPAC representatives has been established to address issues referred to it by GOPAC. There is also a provision permitting any industry and trade union representatives on GOPAC to participate on particular matters of interest to them. The sub-committee has increased its frequency of meeting, convening 5 times over the 12 months to August 1989. In general it meets the day before a GOPAC meeting and once between GOPAC meetings.

2.70 The AIIA submission expressed fears that domination of government officials would render GOPAC ineffectual from an industry standpoint.⁵⁴ Scepticism was also expressed as to the value of such committees per se in obtaining an industry point of view, and criticism raised of GOPAC's focus on administration rather than policy.⁵⁵

2.71 Despite this and although the Committee's preference for a separate advisory group solely concerned with offsets has not eventuated, the Committee has no reason to doubt that GOPAC is functioning effectively and is satisfied that GOPAC provides an adequate industry consultative mechanism.

Information on Offsets Policies of Overseas Countries

2.72 DITAC originally furnished very little up to date information regarding offsets policies in comparable countries. At the Committee's request, further information on specific aspects of overseas offsets policies was sought from various overseas posts. Initially the Committee was presented with voluminous documents and, as was made clear at a subsequent public hearing, the documents had not even been properly read by departmental witnesses.

2.73 Despite overseas trips by various departmental officers and an interchange program with the Canadian Department of Industry, the prime witnesses displayed an abysmal lack of knowledge of overseas practices, even those pertaining to Canada.⁵⁶

54. Evidence, p. 326.

55. Evidence, pp. 347-483.

56. Evidence, pp. 271, 838.

2.74 Prudent administration dictates that those charged with policy advice ought to be familiar with equivalent industry policies and practices in comparable and competing countries. To this end, the Committee considers a comprehensive informative record should be prepared and made available to all personnel involved in the administration of offsets policy. Austrade Offices could assist in providing information and in ensuring that such information is kept up to date.

2.75 The Committee recommends that:

The Department of Industry, Technology and Commerce prepare and maintain a comprehensive and up to date record of overseas offsets policies and practices to be distributed to all personnel involved in the administration of the Offsets Program.

Chapter 3

COMPLIANCE

Compliance by Departments and Agencies to Program Requirements -

Notification Procedures

3.1 Complete and timely notification to the relevant offsets authority of details of purchases subject to the offsets policy is a prerequisite to the success of the Program.

3.2 In the case of civil purchases DITAC must rely on the co-operation and diligence of purchasing authorities to ensure that they are apprised of any purchases (or potential purchases) which are (or may be) subject to offsets. Defence is responsible for most of its own purchasing. Therefore, the problem does not arise in relation to Defence offsets as there is no third party involved.

3.3 The requirement for departments and agencies subject to the Audit Act to gazette invitations to tender and contracts arranged, provides DITAC with a means of identifying many purchases subject to offsets, and to check that those purchasing authorities are in fact supplying advice to DITAC of Requests for Tender where contracts are expected to exceed the offsets threshold, as well as seeking offsets clearance before entering into contracts.

3.4 In Report 270, the Committee found that provision of advice from purchasing authorities was not satisfactory and that reporting mechanisms such as Gazette notification could not be relied upon. Furthermore, DITAC, in an attempt to counteract problems such as the lack of a central source of information on Government purchases and the low priority accorded by purchasing authorities to maintaining up to date records able to be provided to DITAC, was relying to a large extent on information provided by overseas suppliers who, as a condition of gaining Pre-Qualified Offsets Supplier Status (PQOS), must regularly advise DITAC of their sales to the Commonwealth.¹ In view of this, the Committee

1. Evidence (JCPA Report 270: 1987), p. 103.

recommended that the Department of Administrative Services (DAS) and DITAC ascertain the extent of compliance by purchasing authorities with the existing procedures and that they strengthen those procedures.

3.5 Whilst DITAC accepted the Committee's recommendation concerning more rigorous reporting procedures, it reported in the Finance Minute that it considered compliance to be generally satisfactory.² Promotion of the Australian Civil Offsets Program had contributed to improvement in this area and, it was claimed, the broad application of PQOS and Partnerships for Development Agreements, particularly in the information technology area, would make a significant contribution to overcoming the problems associated with data capture.³ Signatories to Partnership Agreements are exempt from the requirements of the Offsets Program but are required to furnish the Offsets Authority annually with a written statement of their sales to Purchasing Authorities.⁴

3.6 An important factor in DITAC's satisfactory impression of the current situation seemed to be the Bureau of Industry Economics report "Monitoring of the Offsets Program" dated June 1987, which did not, as DITAC points out in the Finance Minute, identify any major areas of non-compliance. The Committee noted, however, that the Bureau did not undertake a detailed examination of the notification procedures because changes to the notification procedures were recent and appeared to be effective. The Bureau in conducting its review relied largely on discussions with DAS (then DOLGAS) and DITAC staff, and some examination of its files and database output. The Bureau observed that the diligence of purchasing authorities to report Requests for Tender and contracts varied considerably, and recommended that DITAC and DAS examine and implement further methods to improve the reporting of purchases.⁵

3.7 The Inglis Committee found in 1984 that there was no reliable system requiring all Government purchasing agencies to report details of their intended purchases to facilitate implementation of the Offsets Program and recommended the establishment of a reliable reporting system to ensure that all purchases likely to be subject to offsets are reported to the offsets authority in sufficient time to implement offsets procedures.⁶

2. Finance Minute on Report 270 para 45. See Appendix B.

3. Finance Minute on Report 270 para 57. See Appendix B.

4. Department of Industry, Technology and Commerce Australian Civil Offsets Program, Annual Report 1987-88, AGPS, Canberra, 1989, p. 99.

5. Bureau of Industry Economics, Monitoring of the Offsets Program, pp. 2, 17, 34, 36.

6. Report of the Committee of Review on Offsets, December 1989, AGPS, Canberra pp. 161, 163.

3.8 The Committee recommended that a Ministerial direction be given to all Government purchasing authorities that they provide a return each financial year to the Offsets Secretariat detailing their overseas purchases. That recommendation was accepted by the Government and in addition, copies of all Requests for Tender for civil purchases expected to exceed offsets thresholds were to be provided to DITAC.⁷ No directive has ever been issued.

3.9 When queried as to the reason for this, DITAC advised that the redrafted Chapter 9 of the Commonwealth Purchasing Manual provides explicit instructions that purchasing authorities notify the offsets authority of anticipated purchases from overseas suppliers or where overseas suppliers are short-listed. DITAC considered that such measures would be more effective than requiring purchasing authorities to provide a return each financial year.⁸

3.10 The Committee notes that not all organisations subject to the offsets policy are obligated to comply with the requirements of the Commonwealth Purchasing Manual and that the manual itself is essentially an advisory rather than prescriptive document.⁹

3.11 New Procurement Guidelines issued by the Minister for Administrative Services under Finance Regulation 42 became effective from 1 November 1989. As these guidelines are issued under Audit Act Regulations, they have legal status to the extent that purchasing officers must have regard to them or have a good reason to depart therefrom. Procurement Guidelines issued to date do not refer to the matter of offsets notification but the Committee understands that the matter is currently the subject of discussions between DAS and DITAC.

3.12 DITAC witnesses told the Committee that they were aware that Gazettal requirements were not uniformly complied with and that there is a "very patchy response rate from departments" in respect of adherence to notification procedures prescribed in the Commonwealth Purchasing Manual. However, although DITAC stated that a prima facie examination of purchases across departments suggested that some departments are not reporting all their purchases, they were unable to identify any specific departments.¹⁰

7. Department of Industry, Technology and Commerce and Department of Defence, Australian Government Offsets Program, Guidelines for Participants, March 1986, AGPS, Canberra, p. 38.

8. Evidence, p. 15.

9. Evidence, pp. 382-3.

10. Evidence, pp. 675, 678-9.

3.13 The Committee can only deduce from this that DITAC can neither be certain that it is applying the offsets policy on a consistent basis to overseas suppliers, nor certain that it is receiving the optimum benefits resulting from the application of that policy.

3.14 DITAC believes that seeking information directly from suppliers will provide more reliable information on sales to government than relying on notification of purchases by all government purchasing departments and agencies.¹¹ However DITAC has indicated that it is now looking at the area of purchase notification to see what can be done. Consideration has been given to such measures as automatic links to Gazette information and asset registers.¹² However, the Committee is concerned that neither of these avenues will necessarily provide DITAC with complete and timely information.

3.15 The Committee noted the comment of the Bureau of Industry Economics in its report on the Commonwealth Purchasing Preference Margin:

... based on the information available to the BIE, it is clear that less than half of total purchases are reported in the Gazette.¹³

3.16 DAS advised that although a general review of the Gazette was undertaken as part of the work which led to the announcement of the recent purchasing reforms, it did not focus specifically on compliance with the requirement to advertise tenders and notify contracts.

3.17 DAS considered it prudent and sensible for DITAC to be seeking information from offsets obligors. In fact they will be utilising the same mechanism in collecting data in relation to period contracts in order to combat the problem, for both State and Commonwealth purchasing organisations, of assessing the extent of ordering on common use purchasing arrangements. DAS stated:

... this is not only feasible but also consistent with practices in the private sector to the extent that major common use contractors are not concerned either about being asked to provide this information or about having the systems that will enable them to provide it routinely.¹⁴

11. Evidence, p. 15.

12. Evidence, pp. 679-682, 807.

13. Bureau of Industry Economics, The Commonwealth Purchasing Preference Margin as an Industry Development Mechanism, Program Evaluation Report 6, AGPS, Canberra, 1988, p. 6.

14. Evidence, p. 380.

3.18 DAS are now collecting information on orders placed against period contracts both from suppliers and ordering departments and authorities, allowing double checking to verify the quality of the information provided to them. However, it is to be noted that contract or order value is the extent of DAS information requirements - compared to DITAC which also seeks knowledge of the imported value in any purchases.¹⁵ DAS has discussed the issues with DITAC but conceded that it had not made any recommendations to strengthen procedures relating to data collection.¹⁶

3.19 Whilst endorsing the practice of verification from external sources, the Committee considers that it is preposterous for the government to rely on overseas companies to maintain systems that will efficiently collate complete and accurate information about their sales to the government. It seems almost absurd that responsibility for such information is being placed, on pain of penalty, with overseas suppliers, because the Commonwealth is unable to maintain comprehensive and accurate records.

3.20 The Committee is perturbed to find that the unsatisfactory state of affairs regarding gazettals and purchase notification persists despite the fact that it has been brought to the attention of Ministers and Government not once, but several times over the last few years in:

- . Report of the Auditor-General on Efficiency Audits, Administration of the Offsets Policy, 1984 (pp. 14-16);
- . Report of the Committee of Review on Offsets, 1984 (p. 161);
- . Implementation of the Offsets Program, JCPA Report 270, 1987;
- . Monitoring of the Offsets Program, Bureau of Industry Economics, 1987 (p. 33);
- . Committee of Review on Government of High Technology Purchasing Arrangements, 1987 (p. 24); and
- . The Commonwealth Purchasing Preference Margin as an Industry Development Mechanism, Bureau of Industry Economics, 1988 (p. 6).

3.21 Until this situation is rectified, costly review and investigation resources will continue to be expended in covering the same old ground. In the opinion of the Committee, DITAC has

15. Evidence, pp. 379-381.

16. Evidence, p. 396.

been remiss in carrying out its responsibilities under the Offsets Program in not ensuring that proper and reliable notification procedures are in place.

3.22 As a result of a recommendation of the Inglis Committee, the Auditor-General has agreed, resources and priorities permitting, to keep in mind the Inglis Committee's recommendation to pay particular attention to the legal requirement of Commonwealth agencies to publish details of their purchases in the Commonwealth Purchasing and Disposals Gazette.¹⁷ However, compliance with Finance Regulations and Directions is clearly a responsibility of Departmental Secretaries. Failure to comply with Finance Regulations and Directions is no less than a breach of the law. However, it is the consequences of that breach that disturb the Committee. It is crucial that complete information on all Government overseas-sourced purchases be provided to DITAC if full advantage is to be taken of the offsets policy and if that policy is to be implemented on a uniform and unbiased basis.

3.23 The Committee is convinced that the only method of ensuring that all information concerning overseas-sourced goods required by DITAC to properly implement the Offsets Program, is for all the relevant purchasing authorities to provide DITAC with such information on a regular basis. Moreover, the only way in which purchasing authorities subject to the Offsets Program can be coerced into providing such information, is by way of a ministerial directive.

3.24 The Committee recommends that:

- . Notification procedures in respect of purchases anticipated to be subject to offsets, be incorporated into Procurement Guidelines at an early date.
- . A Ministerial directive be issued to all purchasing authorities subject to the Offsets Program, stipulating provision of quarterly returns to the Department of Industry, Technology and Commerce detailing all purchases, leases and hire arrangements in respect of overseas sourced goods or services, and the imported component thereof.

17. Committee of Review on Government High Technology Purchasing Arrangements, Report, February 1987, AGPS, Canberra, p.26. See also Evidence, pp. 361-2.

3.25 The offsets obligation for firms with PQOS status is established on a quarterly basis.¹⁸ The Committee therefore believes that returns should also be required from purchasing authorities on a quarterly basis.

3.26 Purchasing information is fundamental for various types of policy decision making. In addition, publication thereof, by allowing public scrutiny, is an important factor in encouraging probity in government purchasing practices.

3.27 The Committee reaffirms its recommendation in its Report 304 that Departmental annual reports incorporate details on instances where gazettal requirements were not met, the reasons for such failures and the remedial action proposed or taken.

Accumulated Orders

3.28 Program requirements specify that an offsets obligation also arises where the cumulative orders placed on an overseas supplier by organisations subject to the policy in a single financial year exceeds \$2.5m and the imported content exceeds 30 per cent of this price. The Committee has recognised that this requirement places a considerable administrative burden on the offsets authorities, especially DITAC, in their endeavours to administer the policy on a consistent basis. This problem has been exacerbated now that purchases by State and Commonwealth organisations are aggregated under the Australian Civil Offsets Program.

3.29 The \$2.5m threshold was established in 1986 as a consequence of the Inglis Committee of Review. That Committee recommended a rise in the threshold from \$1m to \$5m. The Government decided instead to raise the level to \$2.5m but directed that this be reviewed after two years.¹⁹ DITAC has now advised that a review was initiated and discussions undertaken with State Offsets Authorities, Defence, DAS, GOPAC and the Standing Interdepartmental Committee on Offsets, and indicated that the Minister would be advised of GOPAC's conclusion that no change is necessary or desirable at this time.²⁰

3.30 The Finance Minute reveals that the cost-effectiveness of applying offsets to accumulated orders has not been assessed as recommended by the Committee.

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18. Department of Industry, Technology and Commerce and Department of Defence, Australian Civil Offsets Program, Guidelines for Participants, March 1988, AGPS, Canberra para 2.4.
 19. Department of Industry, Technology and Commerce and Department of Defence, Australian Government Offsets Program, Guidelines for Participants, March 1986, AGPS, Canberra p. 37.
 20. Evidence, pp. 19, 634.

3.31 The main advantage of the accumulated orders provision is the minimisation of order splitting as a way of avoiding offsets requirements. DITAC also believes that the provision provides an improved negotiating position with regard to major suppliers and a larger pool of offsets against which to seek worthwhile offsets activities. However, DITAC's expectation that additional obligations captured would exceed \$30m - \$50m per year appears to be rather doubtful.²¹ DITAC indicated in the 1987-88 Annual Report on the Australian Civil Offsets Program published in May 1989, that in 1987-88 only \$14.54m of additional offsets obligations arising from accumulated small orders have been identified. However, the Department does point out that although NOMIS (National Offsets Management Information Systems) includes provision to enable details of accumulated small orders to be monitored, at this stage of the development of the database not all accumulated small orders are adequately identified, thus the actual total may be considerably more and as yet the figure does not include State procurement.²²

3.32 The delay in identifying these obligations highlights the Committee's concern as to the legality of imposing offsets obligations retrospectively. DITAC believes, however, that the matter of legality does not arise and suggests that the Government's acceptance of the Inglis Committee recommendation concerning accumulated orders constitutes adequate authority.²³

3.33 The Committee is concerned that overseas suppliers receive adequate prior notice of the Program requirements. DAS advised that inclusion in Requests for Tenders of clauses notifying the requirement to arrange offsets is a matter of judgement but that it usually errs on the conservative side in case the contract will exceed the threshold. DITAC witnesses explained that it is up to DITAC to be alerted to accumulated orders exceeding the threshold and to raise the matter with the company concerned. A DITAC witness stated:

... our position at that point in time is that this is a commonly known policy. It is something which has been publicised in various ways and they should be aware of it when dealing with government. But we have admittedly at that point in time lost the leverage of being able to block that purchase ...²⁴

3.34 The level of the offsets threshold has little bearing on the administrative burden necessary to assess the existence or otherwise of offsets obligations arising from purchases from overseas suppliers, and in view of the poor compliance with

21. Finance Minute on Report 270, paras 63-4. See Appendix B.

22. Department of Industry, Technology and Commerce Australian Civil Offsets Program, Annual Report 1987-88, AGPS, Canberra, 1988 p. 78.

23. Finance Minute on Report 270, para 62. See Appendix B.

24. Evidence, p. 764.

notification procedures noted earlier in this chapter, it is unlikely that any threshold could be assured of consistent application.

3.35 The process of accumulating orders is simplified in the case of Defence as most purchasing is done in-house, even so, they have commented to the Committee on the difficulty of the task.²⁵

3.36 In the Committee's view the position is far from satisfactory. The uncertainty as to whether supplies will be subject to offsets and the administrative burden necessary to carry out the policy should be assessed against the advantages of maintaining the policy.

3.37 The Committee recommends that:

- Offsets authorities investigate means whereby all overseas suppliers are formally placed on notice of their potential offsets obligation prior to incurring such an obligation.

- The cost effectiveness of applying offsets to accumulated orders be assessed by the Departments of Industry, Technology and Commerce and Defence, and the results of that assessment be reported in the Finance Minute.

Compliance by Overseas Companies - Outstanding Obligations

3.38 Success in achieving any benefits under the offsets policy is largely dependent, in the first instance, upon overseas suppliers fulfilling assessed offsets obligations.

3.39 During the previous Inquiry, offsets authorities provided the following information:²⁶

	DITAC (1970-1986) \$m	Defence (1980-1986) \$m
Offsets completed	641	375
Outstanding obligations	<u>574</u>	<u>910</u>
Offsets commitments	1215	1285

25. Evidence, p. 955.

26. JCPA, Implementation of the Offsets Program, Report 270, 1987, AGPS, Canberra, para 1.10.

3.40 During the Inquiry, Defence provided the statistics (as at 21 June 1989) set out in Table 3.1. The Committee was curious as to why these figures differed from those reported elsewhere. For instance, the Table records \$29.59m offsets obligations arising during 1987/88 while the Defence Report records \$25.2m new obligations were secured during 1987-88.²⁷ In December, in answer to a question in the House of Representatives, the Minister quoted a figure of \$32.001m for the same period.²⁸

3.41 Defence indicated that there were basically three reasons why amendments were made to obligation figures - amendments to original contracts which affect the offsets requirement, amendments to proposals due to factors such as altered economic conditions, and arithmetic errors resulting, for example, from inputting incorrect exchange rates into the database.²⁹

3.42 In Report 270 the Committee expressed concern that Defence had no record of offsets obligations entered into prior to 1980 and asked that Defence report in the Finance Minute on any method developed to allow scrutiny of those figures. The Defence database now contains information in relation to all contracts since 1970.³⁰ The Finance Minute refers to research leading Defence to believe that there are no significant outstanding obligations for that period. Although the Committee had some difficulty in establishing the nature of that research, Defence advised in May 1989 that contracts and orders placed were reviewed to assess obligations and achievements. Defence advised:

... there is not a research report as such. There is a series of obligations and acquittals into our database.³¹

3.43 However, further information was subsequently provided which shows that based on research undertaken in July 1987 on the Department of Productivity's quarterly report dated 31 December 1980 and examination of the Industry Involvement and Offsets (IIO) database for this period, that only \$460m of contracts had not been included in the IIO database. These contracts gave rise to \$128m of offsets obligations of which \$117m had been achieved.³²

27. Department of Defence, Defence Report 1987/88, AGPS, Canberra, 1988, p. 32.

28. Hansard, House of Representatives, 21 December 1988, p. 3909.

29. Evidence, pp. 950-4.

30. Evidence, p. 550.

31. Evidence pp. 458, 544-5.

32. JCPA file, 1987/9 Part B(4).

Table 3.1 - SUMMARY OF AIP/OFFSETS IN NEW DEFENCE CAPITAL EQUIPMENT CONTRACTS
OVER THE PERIOD 1970 TO END JUNE 1988

Period	Contract Value \$m	AIP/Offsets Obligation \$m	AIP/Offsets Achievement \$m (Note 3)	Outstanding AIP/Offsets \$m
1970-80	917.25	256.27	178.44	77.83
1980-81	193.24	32.92	36.65	-3.73
1981-82	1,767.67	575.11	259.44	315.67
1982-83	136.23	43.23	51.58	-8.35
1983-84	122.49	52.21	33.95	18.26
1984-85	94.53	27.47	31.87	-4.40
1985-86 (to 31 Dec 85)	324.76	155.15	48.53	106.62
AIP Sub Total	3,556.17	1,142.36	640.46	501.90
Period	Contract Value \$m	Offsets Obligation \$m	Offsets Achievement \$m (Note 5)	Outstanding Offsets \$m
1985-86 (from 1 Jan 86)	600.44	184.24	30.25	153.99
1986-87	3,412.91	221.44	39.98	181.46
1987-88	674.10	29.59 (Note 4)	(Note 5)	29.59
AII Sub Total	4,687.45	435.27	70.23	365.04
GRAND TOTAL	8,243.62	1,577.63	710.69	866.94

Source: Evidence, p. 846.

- Note: 1. Figures prior to 1 Jan 1986 relate to obligations/achievements under the AIP program.
 2. Offsets obligations are secured against imported content of contracts only.
 3. In some cases achievement exceeds obligation for individual contracts.
 4. Obligation for 1987-88 has been updated since the 1987-88 Annual Report.
 5. This value is not yet available.

3.44 In attempting to assess the collectibility of the current outstanding offsets obligation, Defence advised information contained in the database indicates that approximately \$160m of the outstanding obligations are subject to best endeavours and were all in respect of contracts awarded in the period prior to January 1986. All outstanding obligations including those where the supplier has refused to accept an obligation are not written off and are maintained on the database. Attempts to secure these obligations are made when the supplier tenders for a new contract. However, it is expected that approximately \$100m of obligations will not be collected as future operations of the company concerned are in doubt and additional purchases from that company are not foreseen.³³

3.45 DITAC has advised that as at 30 June 1988, total civil obligations were estimated at \$1.75 billion. Achievements undertaken to discharge these obligations totalled \$1.58 billion leaving an amount of \$0.17 billion obligations outstanding. The achievements figure includes an amount of \$0.26 billion either accumulated in advance of expected obligations or surplus to amounts required for discharging obligations, while the obligations figure excludes an estimated \$0.6 billion of obligations implicit on orders placed on overseas suppliers against which deliveries had still to be made at 30 June 1988.³⁴ It is to be noted that these figures also exclude frozen offsets balance in respect of Partnerships for Development.

3.46 The Committee sought details of the Department's progress in correcting and updating offsets records. In November 1988 the offsets information system, COMARS, was replaced by NOMIS in an effort to address shortcomings regarding recording, monitoring and reporting of offsets obligations that have been identified during various program reviews. DITAC advised that records of 34 companies or 28 per cent of overseas suppliers are still to have offsets positions reconciled. The offsets status of these unreconciled firms is as follows:

	Aerospace	Information	Engineering Technology	Total
Total unreconciled credit positions	+\$4m	+\$3.4m	-	+\$7.4m
Total unreconciled debit positions	-\$34.9m	-\$55.9m	-\$25.3m	-\$116.1m
Total unreconciled	-\$30.9m	-\$52.5m	-\$25.3m	-\$108.7m

Source: Evidence, p. 639.

33. Evidence, p. S420.

34. Evidence, p. 637.

3.47 DITAC points out that the amount of \$108.7m is only 5.6% of the total obligations under the Program and is made up of three firms which account for 81% of the total unreconciled amount, and a number of smaller volume suppliers. Further reconciliations will be undertaken as resources permit³⁵.

3.48 DITAC estimated in 1986 that \$35m of the obligation outstanding was considered to be unenforceable - \$27m of obligations subject to old unenforceable agreements which the company refused to honour and \$8m incurred by companies gone out of business.³⁶

3.49 The Committee requested an update of these figures and action taken in respect of those debts, together with a breakdown of outstanding obligations by year to which they relate. DITAC advised that there have been no further cases of this kind, and the company concerned with the \$27m has not won any further Commonwealth business but has been advised that no further offsets clearances will be provided until the matter is resolved.³⁷

3.50 DITAC was not able to provide the Committee with a dissection of the total outstanding obligation by year. DITAC explained that computer programs were developed to transfer the records from the old database into the format of the new database but certain records of approved offsets work programs, orders and achievements could not be transferred against the particular obligations to which they related because of the method of recording used in the old database. As a result, these records were transferred as a group for each supplier without identification against the individual obligations of the supplier. In these cases, a wide variety of manual record systems from earlier offsets administrations need to be referenced in order to clearly establish the relations between some achievements and the respective obligations.³⁸ The Department also commented that even if this major task were undertaken there would be difficulties in presenting information relating to the 25 PQOS companies as achievements performed under long term work plans are independent of individual obligations.³⁹

35. Evidence, p. 639.

36. Evidence (JCPA Report 270: 1987), p. 387.

37. Evidence, p. 637.

38. Evidence, p. S236.

39. Evidence, p. 638.

3.51 However, the following Table was provided showing the progressive carry-over of unfulfilled obligations at the end of the last four financial years:

Table 3.2 Progressive carry-over of unfulfilled obligations:
1984-85 to 1987-88

	1984-85 \$	1985-86 \$	1986-87 \$	1987-88 \$
New Obligations	231m	155m	450m	242m
Progressive total (c/£ \$672m)	903m	1.06b	1.51b	1.75b
New achievements	85m	331m	380m	345m
Progressive total (c/£ \$439m)	524m	855m	1.24b	1.58b
Incomplete Obligations (progressive)	379m	203m	273m	170m

Source: Evidence, p. 237.

3.52 DITAC has concluded these figures indicate that on average the life of an obligation is about two to three years.⁴⁰ The Committee is, however, not so confident that such a conclusion can be made as the figures do not show when the \$260m accumulated in advance or surplus to requirements was achieved.

3.53 The Committee believes that it is of paramount importance for the purpose of sound administration to be able to readily identify the length of time offsets obligations have been outstanding. It is a normal business practice that any program administrator receive regular reports to enable monitoring of outstanding matters, whether it be orders, correspondence, or debts etc in order that decisions can be made as to whether appropriate action needs to be taken. 'Ageing' of offsets obligations is also an important factor in general program assessment.

40. Evidence, p. 237.

3.54 The Committee recommends that:

- . The Department of Industry, Technology and Commerce proceed with reconciliations of offsets status with overseas suppliers, as a matter of priority.
- . Urgent action be taken by the Department of Industry, Technology and Commerce to facilitate the regular production of statistics of 'aged' offsets obligations outstanding.
- . The annual report on the Offsets Program incorporate details of total outstanding offsets obligations by year to which those outstanding obligations relate.

Achievement of Targets under Partnerships for Development

3.55 Considerable criticism has been directed at the Partnerships for Development Program, a common concern being that the scheme is simply a method of assisting overseas companies in avoiding their offsets obligations. Based on information provided by DITAC, the Committee found that there was no substance to this claim. At the date of signing, the aggregate position of the first 14 partners was a net offsets credit of \$121m. This was comprised of six partners with a nil offsets balance, four with a credit offsets status totalling \$122m and four with debits totalling \$1m.⁴¹

3.56 Based on information made public, assessment of the performance of individual companies is difficult to make as figures disclosed are lumped together. It has been stated that annual targets would not be regarded as fixed commitments but rather as being indicative of expected progress towards the end of Program targets and therefore some flexibility is necessary in assessing annual performance. After the review of the first four companies it was claimed that targets for the four companies overall had been exceeded but noted that some (unnamed) companies were below expectations.⁴²

41. Evidence, p. 25.

42. Minister for Industry, Technology and Commerce, Senator the Hon. John Button, News Release 1/89, 15 January 1989.

3.57 In June 1989, the Committee was advised that the nine partners reviewed to date had sales to Government of the order of \$665m with an estimated offsets obligation of \$100m, which would have been worked off over two to three years. During the review period, the nine partners recorded R&D of \$60m and exports of \$169m. DITAC advised that even without the three times multiplier which would have applied to the R&D under the Offsets Program, the achievements under the Partnerships Program would more than have discharged their offsets obligations.⁴³

3.58 Details regarding those 'underperforming' companies were not made public, and the Committee did not seek to follow up this matter during its inquiry. The Committee will follow with interest disclosure of further details regarding performance of partners in meeting targets.

3.59 The Committee, however, was deeply disturbed at the circumstances surrounding the assessment of partner's achievements. The publicity documentation on the Partnerships Program states quite clearly:

To ensure that satisfactory progress is being made towards achieving the R&D and export commitments, a review is undertaken with each of the Partners each year. The review audits their performance in meeting the current year R&D and export targets and examines and sets in more detail the anticipated future project schedule activities.

The agreements require that Partners maintain sufficient records of R&D, export and import activities to permit the annual auditing of such activities by representatives of the Commonwealth nominated for this purpose ...

The auditors would be required to verify the Partner's annual Australian turnover and imports for the period under review. In addition the claimed achievements in respect of R&D and exports would be subject to the audit process. Verification will be sought for each R&D and export activity claimed, whether in-house or undertaken in collaboration with third parties. Claimed sales to Government will also be checked.⁴⁴

43. Evidence, p. 641.

44. Senator the Hon. John Button, Ministerial Statement on the Partnerships for Development Program, 27 September 1988, Canberra, p. 11.

3.60 The operation of the annual review and audit provisions were intended to minimise the potential for abuse, the relationship of turnover to R&D and imports to exports, to minimise creative accounting and other activities contrary to the spirit of the Program. The Committee was somewhat taken aback therefore when, upon requesting a copy of the audit report on the first four reviews, it was informed that there was no such document.

3.61 It was established that the Department had itself undertaken the reviews of partners as their 12 month review periods came up, and formal audits are to be undertaken at a later stage. The reviews involved analysis of firms' statements by departmental officers and meetings with the Partners to seek additional substantiation. DITAC has also received an audited statement from corporate auditors of one company and is expecting another.

3.62 DITAC has advised that it has resiled from its original intention to utilise accepted company auditors. A contract was let with Price Waterhouse to undertake pilot audits on three companies to establish general audit requirements and procedures after which it is intended that the audits will be put out for public tender. The Department estimates that independent audits of all partnerships for development will be completed by June 1990.⁴⁵

3.63 The Committee considers it imperative that proper independent audits be undertaken of all companies participating in the Partnerships for Development Program, particularly as it is noted that the July 1989 press release covering the review of the first nine partners discloses two revisions to figures released in January after the review of the first four companies. The percentage of R&D undertaken in conjunction with third parties was amended due to a typographical error by the Department. In addition, the July figures include:

... an adjustment to take account of mistaken reporting by one of the partners which was picked up by the Program's verification procedures. The mistaken reporting was the result of a misunderstanding on how exports should be reported. A partner had included in its figures the total overseas sales revenue it earned from an Australian product rather than the actual flow of revenue back to Australia. The company's partnership agreement was based on the same misunderstanding and as a

45. Evidence, pp. 23, 815-823, 825-6.

consequence is being revised accordingly. This will result in the Program's aggregate forecast export achievements in 1994 being reduced by some \$35 million.⁴⁶

3.64 The Committee recommends that:

- Action be taken to ensure that independent audits of partnership activities of all participating companies be undertaken prior to 30 June 1990 and that subsequent audits be undertaken promptly upon completion of review periods.
- Summaries of all such audit reports be published in the annual report on the Offsets Program.

Penalties

3.65 The 1986 Guidelines for Participants in the Offsets Program, under which Defence still operates, disclose the following policy in relation to the enforcement of offsets obligations:

Where an overseas supplier does not discharge its offsets obligations in the agreed time or at the agreed rate, consideration will be given to:

- (i) implementation of penalty clauses in the contract or Deed Agreement between the Commonwealth and the overseas supplier;
- (ii) withholding an offsets clearance for future purchases unless satisfactory alternative offsets proposal is received to acquit the outstanding obligations;
- (iii) the retention of further payments against the contract pending discharge of the outstanding offsets obligation; and

46. Senator the Hon. John Button, Minister for Industry, Technology and Commerce, News Release 89/89, Editor's Note, 5 July 1989, p. 4.

- (iv) the delinquency of the overseas supplier being made public by Ministers.⁴⁷

3.66 At the previous Inquiry, DITAC, relying on advice from the Attorney-General's Department that liquidated damages and penalty clauses were not considered enforceable, did not include any form of penalty clause in its documents. In an attempt to get around the legal complexities, Defence introduced new clauses into its contracts obligating the supplier to specific arrangements. These compared milestone achievement with under-achievements resulting in an adjustment to the total obligation at the end of the contract.

3.67 Whilst accepting that other measures may be effective in ensuring fulfilment of offsets obligations, the Committee concluded in Report 270 that the reference in the Guidelines to penalty clauses indicated that the Government's policy is to have a fall-back position if other measures fail. A re-examination of the matter with the Attorney-General's Department was suggested, and inclusion of penalty clauses in all contracts and deeds of agreement recommended.

3.68 The Committee was therefore somewhat surprised to note that in the Guidelines for Participants in the Australian Civil Offsets Program effective from March 1988 relevant enforcement measures are confined to the following:

Where an overseas supplier does not discharge its offsets obligations in the agreed time or at the agreed rate, action may be taken to:

- (i) withhold an offsets clearance for future purchases unless a satisfactory alternative offsets proposal is received to acquit the outstanding obligation; and
- (ii) have Commonwealth and State Ministers publicise the delinquency of the overseas supplier.⁴⁸

3.69 It was clear from the Finance Minute that DITAC had not pursued the matter of legal enforceability with the Attorney-General's Department. Legal advice provided by the Attorney-General's Department in 1984 indicated that although it may be possible to construct an argument based upon a loss of

47. Department of Industry, Technology and Commerce and Department of Defence, Australian Government Offsets Program, Guidelines for Participants, March 1986, AGPS, Canberra, para. 5.9.

48. Department of Industry, Technology and Commerce, Australian Civil Offsets Program, Guidelines for Participants, March 1988, AGPS, Canberra, para 2.7.

defence preparedness in the Australian manufacturing industry in order to obtain damages in relation to Defence offsets, it may be difficult to prove an actual loss and thus uphold a claim for damages in the case of civil offsets. As DITAC chose to accept that opinion, it considered retention of the provision in the revised civil guidelines was not appropriate. DITAC considers the two remaining provisions to be sufficient to ensure a high degree of compliance.⁴⁹

3.70 DITAC believes that the introduction of the PQOS scheme and Partnerships for Development has reduced the necessity for legal enforceability and will assist in minimising non-compliance.⁵⁰ Twenty-three per cent of offsets achievements are covered by PQOS arrangements and it is expected that this will increase to 50% in 1988-89.⁵¹ DITAC seeks to more effectively secure offsets obligations by requiring more detailed offsets proposals. DITAC advised:

This approach allows the offsets obligations of the supplier to be better defined and ensures that more detail in regard to Australian beneficiaries, activities to be undertaken and achievement milestones are able to be included in the agreement.⁵²

3.71 Recent Defence Deeds of Agreement include provision for liquidated damages by way of compensation to the Commonwealth and not as a penalty. Under-achievement at checkpoints increases the obligation at subsequent checkpoints, and increases the total obligation by an amount equal to a predetermined percentage of the shortfall at the checkpoint. If the total offsets obligation (as amended from time to time) is not discharged by the end of the agreed timetable, the company must pay to the Commonwealth an amount equal to a predetermined percentage of the amount by which it failed to discharge the offsets obligation.⁵³

3.72 Of the 83 contracts containing requirements for offsets placed by Defence in the period 1 January 1986 to 30 June 1989, 78 (approximately 94%) include liquidated damages provisions covering the performance of offsets obligations. The total value of these 83 contracts is \$4,118m and the value of those containing liquidated damages is \$3,450m (approximately 84%).⁵⁴

49. Evidence, p. 20.

50. Finance Minute on Report 270, paras 112, 113. See Appendix B.

51. Evidence, p. 636.

52. Finance Minute on Report 270, para 114. See Appendix B.

53. Evidence, p. 458.

54. Evidence, p. S364.

3.73 Defence advised that to date some of the smaller contracts do not incorporate offsets obligations but they probably will in future. A Defence witness said:

It has not been felt worthwhile but we have had some recent examples where companies have fairly blatantly traded on the absence of such clauses and it is likely that we will now go to the extra administrative expense of putting them in the smaller contracts as well.⁵⁵

3.74 In October 1988, the Australian Government Solicitor advised Defence that the legal effect is the same whether offsets obligations are contained in a purchase contract or a separate deed, but that the separate deed has the advantage of enabling the offsets arrangements to be settled prior to the finalisation of the purchase contract.⁵⁶ Although Defence has never had cause to test the liquidated damages clauses, it believes them to be enforceable.⁵⁷

3.75 In view of the case of a clear delinquency noted at paragraph 3.49, the Committee sought an explanation as to why that company had not been named in public. DITAC advised that before a delinquency can be made public, it must be conclusively demonstrated that the corporation involved is in breach of the offsets agreement. In this case, the wording of the agreement is ambiguous to the extent that grounds for further action are doubtful. As the agreement was negotiated in 1980 after the purchase was finalised and little leverage was available, it was necessary to accept a 'best efforts' clause in the agreement.

3.76 In canvassing the question of what would constitute a publishable delinquency, DITAC advised that it is not a simple matter of rate of discharge, time and value although these factors would be a consideration. A serious shortfall in obligation fulfilment accompanied by an unsatisfactory response to the Department's efforts to arrive at some alternative arrangements, or failure to comply with new agreements, would result in consideration being given to publicising the delinquency. Additional factors which would then be considered

55. Evidence, p. 948.

56. Evidence, pp. S417-8.

57. Evidence, p. 561.

would include the 'watertightness' of the agreement, the implications for the purchasing authority should the offending company take counter action (such as withdrawing from the market place which could result in interrupting supply of the company's products for a time), and the likely official reaction by the Government of the corporation's home country.⁵⁸

3.77 It is suggested that the threat of public disclosure of delinquent overseas suppliers has little impact as an enforcement measure unless such a threat is taken seriously. The quickest way of convincing overseas companies that the offsets authorities mean business, is to carry out the threat. To date there appears to have been only one case of a supplier being named. In April 1987 the Minister for Defence in a news release stated that

General Dynamics, currently the sole supplier of certain Standard missile systems to the Defence Force, has consistently refused to honour offsets obligations in Australia against Foreign Military Sales purchases.⁵⁹

3.78 However, the amount of the company's outstanding obligation was not disclosed. The Committee considers that the threat of exclusion from future contracts holds little sway with those suppliers in a monopoly situation.

3.79 The Industries Assistance Commission has suggested that one option which could be examined would be to let contractors discharge their previous commitments by direct cash payment to the Government. It would be no more arbitrary than the various mechanisms already in place, but would avoid the side effects.⁶⁰

3.80 DITAC does not believe this to be a feasible alternative as such payments would be inconsistent with Program objectives. The level of payment would be difficult to assess and would lead to inequity between companies which were fulfilling their obligations in good faith and those in delinquent positions able to regularise their position by making a direct cash payment.⁶¹

58. Evidence, p. 628.

59. The Hon. Kim Beazley, MP, Minister for Defence, News Release No 48/87, 5 April, 1987.

60. Industries Assistance Commission, Annual Report 1987-88, AGPS, Canberra, 1988, p. 73.

61. Evidence, pp. 636-7.

3.81 The Committee received a submission pointing out the distinction between obtaining beneficial offsets and forcing overseas firms into uneconomic arrangements. Concern was expressed that if penalty clauses were included in all contracts/deeds of agreement, there was a greater likelihood of overseas firms adding a premium to the price of their product in expectation of increased costs they would incur if they were not able to find satisfactory offsets to the percentage required in Australia.⁶² In this respect, the Committee noted the comment of a Defence witness who stated:

There is not much point in ... seeking to impose clauses which companies simply will not accept. The reason we are able to do it now is that companies believe they can actually fulfil these obligations and there is enough of a track record now of Australian industry being able to do these things competitively that companies will sign up to damages.⁶³

3.82 The Committee acknowledges that DITAC and Defence may probably have to find separate solutions to the problem of legal enforceability. As Defence is both purchaser and offsets authority, the offsets obligation can be recorded in the one contract. For civil purchases, supply and offsets contracts are arranged by separate authorities and are therefore separate contracts. However, the purchasing authority is required to ensure that standard clauses which record the existence of an offsets obligation are included in the supply contract.⁶⁴ In April 1989 the Australian Government Solicitor advised DAS that because of the separate purchase contract and offsets agreement and because the nature and extent of the offsets obligation may yet have to be settled by subsequent agreement at the time of the purchase contract, such clauses in the purchase contract would not give rise to enforceable rights in the event of a breach of an offsets obligation.⁶⁵

3.83 DITAC considers that the matter of enforceability should be seen in the overall context of the Civil Offsets Program; there is no substantial body of unfulfilled offsets obligations existing at present nor are there agreements with which the overseas supplier involved refuses to comply.⁶⁶ On the occasions where an overseas supplier's performance has been inadequate the withholding of offsets clearance has been sufficient to bring about a satisfactory resolution.⁶⁷ Notwithstanding this, the Committee believes that a legal remedy should be available if circumstances warrant. Ideally, enforcement measures should be needed only as a last resort.

62. Evidence, p. S005.

63. Evidence, p. 553.

64. Evidence, p. 411.

65. Evidence, pp. S39-40.

66. Finance Minute on Report 270, para 109. See Appendix B.

67. Evidence, p. 20.

3.84 The Committee recognises difficulties may be experienced in harmonising any sanctions with State offsets authorities, but it is interesting to note in the Finance Minute that GOPAC has expressed the view that it is reasonable to include penalty clauses or performance bonds in offsets related contracts provided that these are in accordance with legal and commercial practice and do not lead to artificial elevation of prices. DITAC accepts this view while at the same time recognising the legal and technical obstacles involved in its implementation.⁶⁸

3.85 The Committee also notes that Belgium, Greece, Spain and Canada incorporate penalty clauses in offsets agreements.⁶⁹

3.86 In Report 270 the Committee considered that some doubt still exists concerning the enforceability of the contracts/deeds of agreement and considered that the issue should be re-examined with the Attorney-General. The Committee is still of the view that the legal opinion expresses doubt rather than a clear and definite 'unenforceable', and believes that the inconsistency between participants in the Program should be remedied if at all possible.

3.87 The Committee recommends that:

- The Attorney-General's Department and the Department of Industry, Technology and Commerce investigate means whereby offsets arrangements give rise to legally enforceable obligations secured by way of liquidated damages.

Enforceability of Partnerships for Development Agreements

3.88 Seven of the fifteen Partnership for Development contracts signed by June 1989 contained a clause requiring the Commonwealth to create and maintain a sound economic and business environment in Australia.⁷⁰ DITAC advised that this clause was included as some transnational companies were not willing to commit to major R&D expenditure and export activities over a long term period unless the Government, as a partner, did what it could to ensure an economic and business environment conducive to growth. As maximisation of economic growth is a basic objective of all Governments, it was considered that such a commitment

68. Finance Minute on Report 270, para 115. See Appendix B.

69. Evidence, p. S052.

70. Evidence, pp. 702, 826.

reflected Government policy.⁷¹ During the Inquiry, the Committee was advised that DITAC's policy is not to include that clause in any future agreements, but the Department would not give an assurance that it would not appear in any future agreements.⁷²

3.89 The Committee was concerned that the inclusion of such a clause may provide the partner with a means to opt out of its obligations under the partnership agreement without sanction, or actually render the agreement meaningless. However, if the agreement is terminated by either party, then the company must revert to the normal offsets scheme. So whilst the Commonwealth would lose the benefits under the agreement, it would still be entitled, as a minimum, to the benefits due under the normal offsets scheme. It would seem therefore that the enforceability of the general offsets scheme remains the central issue. However the Committee believes that the Partnerships for Development scheme provides a potential opportunity to obtain legal enforceability to what is otherwise an unenforceable obligation.

3.90 During the Inquiry the Committee noted that the agreed past offsets status is not nominated in the Deed of Agreement for Partnerships for Development. One of the conditions applying to the attainment of PQOS status is that the offsets status of the overseas supplier must be agreed and nominated in the Deed as a starting point for the discharge of future obligations.⁷³ Although the Committee understands that most companies had no outstanding offsets obligations or were in 'credit' at the time of signing partnership agreements, the Committee considers that it would be prudent, particularly in the case of an offsets 'debit' balance, to include the past offsets status in the Partnership Agreement.

3.91 The Committee recommends that:

- . Details of agreed offsets status at the time of signing be incorporated into Partnerships for Development agreements.
- . Clauses referring to maintenance of a sound economic and business environment in Australia be excluded from all future Partnerships for Development agreements.
- . The Attorney-General's Department and the Department of Industry, Technology and Commerce investigate means whereby Partnerships for Development agreements are legally enforceable and contain penalty or damages clauses.

71. Evidence, p. 5121.

72. Evidence, p. 831.

73. Department of Industry, Technology and Commerce, Australian Civil Offsets Program Guidelines for Participants, March 1988, AGPS, Canberra, para 5.3.

Chapter 4

CONSISTENCY

Consistency with other Government Programs

4.1 In order to eliminate confusion and conflict amongst Commonwealth suppliers, the Committee recommended in Report 270 that the relationships between the offsets and other purchasing policies be clarified and/or resolved. The Committee referred in particular to the Purchasing Preference Policy and the various State offsets programs.

4.2 In response to the Review on Government High Technology Purchasing Arrangements, the Government initiated in 1988 a review by DAS and DITAC on the effectiveness of the Preference Margin Policy as an industry development mechanism. In particular, the matters to be examined were the consistency of the objectives of the policy and the Commonwealth's industry development strategy, the economic costs and benefits of the policy, economic aspects of its administration and whether it should be of general application or targeted at specific industries, the necessity of legislation and whether non-exempt Commonwealth business enterprises should continue to be required to comply with the policy. As part of that review the BIE was asked to examine and report on the economic aspects of the first four matters.

4.3 In its report the BIE identified a fundamental conflict between the Preference Margin Policy and general industry policy, and in particular, with the Partnerships for Development Program. In the BIE's judgement, the benefits of the Preference Margin Policy are likely to be exceeded by the costs.¹

1. Bureau of Industry Economics, The Commonwealth Purchasing Preference Margin as an Industry Development Mechanism, Program Evaluation Report 6, AGPS, Canberra, 1988, p. xiii.

4.4 As a result of this review, the Government has announced that as from 1 November 1989 the notional 20% component of the policy as applied by the Commonwealth will be abolished.²

4.5 As noted in Chapter 1, the commencement in March 1988 of the Australian Civil Offsets Program has effectively resolved conflicts between the various State and Commonwealth offsets programs - at least in respect of the information industries.

Consistency between the two Administering Departments -

Joint Guidelines, Directories and Annual Report

4.6 In Report 270 the Committee found that there was scope for improvement in respect of implementation of the Government's policy of uniform administration of the civil and defence aspects of the Program. Differences in administration increased the potential for confusion, inconsistency and inequity in application of the offsets policy between overseas suppliers. The Committee recommended that efforts to present the Program as a single program be increased by way of joint production of directories of local and overseas firms, revised guidelines and an annual report on the Program. Report 270 did concede however that some progress had been made towards presenting a unified program, notably the jointly published guidelines booklet.

4.7 The responses given in the Finance Minute by both DITAC and Defence appeared to blatantly disregard the Government's acceptance of the (Inglis) Committee of Review recommendation to keep the two components of the Program as consistent as possible.³ It is clear to the Committee that there has been little effort by the two Departments regarding joint publication of directories, annual report and guidelines, and in fact progress achieved to 1986 has been reversed.

4.8 Defence still operates under the 1986 joint guidelines, whereas new separate guidelines were issued by the Minister for Industry, Technology and Commerce in 1988 in respect of civil offsets. The two are not consistent in many areas eg Partnerships for Development, investments and penalty clauses. Although both

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2. Joint Ministerial Statement by the Minister for Industry, Technology and Commerce and the Minister for Administrative Services, 3 October 1989.
 3. Department of Industry, Technology and Commerce and Department of Defence, Australian Government Offsets Program, Guidelines for Participants, March 1986, AGPS, Canberra, p. 41.

offsets authorities have stated an intention to give priority to exports, Defence allows overseas companies a multiplier of three times the value of indigenously developed exports which does not apply in relation to civil exports.⁴ Gifts and donations are currently an acceptable Defence offsets activity not available in respect of civil purchases. In June 1989 Defence stated its intention to maintain this category of offsets discharge.⁵ However, they have subsequently advised that as only 1.148 per cent of total offsets obligations have been fulfilled in this manner they intend to discontinue the use of the classification 'gifts and donations' and to omit it from their new guidelines.⁶

4.9 DITAC asserts that Defence indicated that it does not wish to incorporate recent civil offsets development in the Defence program as they are not compatible with its specific strategic objectives.⁷ Defence maintains that while the principles remain common to both civil and Defence offsets program, there is sufficient difference at the detailed level to justify separate and more comprehensive guidelines.⁸ New separate Defence guidelines are in draft form and it is intended that they be issued after Ministerial approval.⁹

4.10 The Committee sought advice as to the authority by which the Government's decision to accept the Inglis Committee's recommendation for the use of common guidelines had been overturned. DITAC claimed that the decision had not been overturned and the civil and defence elements of the Program are administered under the same broad policy guidelines even though the detailed administrative guidelines differ to some extent because of the differing objectives of the two elements of the Program.¹⁰ Defence expressed a similar view, contending that the two booklets will express the same broad common policy guidelines but different administrative guidelines.¹¹

4.11 It is interesting to note DITAC's advice that in addition to the two separate guidelines booklets, its intention is to produce a third booklet outlining both civil and defence components of the Government's Offsets Policy. This booklet produced by a DITAC/Defence working party is in draft form, but will be finalised and published when the new Defence guidelines have been completed.¹²

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4. Evidence, pp. 920-1.
 5. Evidence, pp. 930-1.
 6. JPCA File 1987/9 Part B(6).
 7. Finance Minute on Report 270, para 81. See Appendix B.
 8. Evidence, p. 453.
 9. Evidence, p. 910.
 10. Evidence, p. 630.
 11. Evidence, p. 913.
 12. Evidence, pp. 17, 630.

4.12 The Committee believes that the offsets policy should be applied on a consistent basis and that overseas companies have the same options of discharge and be bound by the same rules whether they incur obligations as a result of civil or defence purchases. This information should be available in one source document.

4.13 The additional Defence objective was not an impediment to the production of the 1986 guidelines, and the Committee sees no reason why it should be now. Furthermore it is the Committee's view that the issue of three separate booklets is not in keeping with the spirit of the Inglis recommendation, as accepted by the Government, to keep the defence and civil components of the Program as consistent as possible by the use of common guidelines.

4.14 The Committee recommends that:

- . The Departments of Industry, Technology and Commerce and Defence take steps to increase the degree of consistency in respect of the discharge of offsets obligations by overseas suppliers whether they arise from civil or defence purchases.
- . The Departments of Defence and Industry, Technology and Commerce co-operate in the production and issue of joint guidelines for the Program.

4.15 In relation to the question of joint directories, Defence asserts that while companies listed in its Directory of Australian Industry Defence Capability could also undertake civil offset work, the converse is not true. Defence therefore considers it more appropriate for overseas suppliers with Defence offsets obligations to be supplied with a directory which identifies the Australian companies with the basic pre-requisites to undertake defence type work. For similar reasons its List of Participants also only include overseas contractors with defence offsets obligations.¹³

4.16 In view of the relatively small size of lists of overseas participants in the Offsets Program held by both DITAC and Defence, DITAC was asked what prohibits the production of a consolidated list. DITAC advised in June 1989 that the possibility of a consolidated list was currently being discussed with Defence but that Defence's initial reaction was that the differing objectives of the civil and defence elements of the Program and limited overlap between civil and defence suppliers cast doubts upon the value of this approach.¹⁴ Defence, however, in appearing before the Committee in late June 1989, appeared to be fully supportive of the move toward a combined listing. Defence could

13. Evidence, p. 453.

14. Evidence, p. 630.

not specify a timetable for its introduction as it claimed DITAC had to resolve the matter of contract value presentation.¹⁵ Although the Committee considers this issue to be of peripheral importance, the apparent blundering and procrastination is symptomatic of other problems associated with the Offsets Program.

4.17 The Committee recommends that:

The Departments of Defence and Industry, Technology and Commerce collaborate on the joint production of a listing of overseas offsets obligors to be issued at the earliest opportunity.

4.18 Defence's statement in the Finance Minute that 'efforts are continuing in regard to the publication of joint directories of local (and overseas) firms' appears to have little substance.¹⁶ DITAC does not produce a directory of local firms (see Chapter 2), and under questioning Defence advised in late June 1989 that it had 'taken the view so far that there really has not been sufficient commonality to merit one single publication'.¹⁷ The Committee found it frustrating not to have been given a clear statement of Defence's position in the first place.

4.19 Until such time as DITAC revises its position regarding a directory or database of local capability, the question of a joint directory is rather academic at this stage. The Committee maintains the view that such a document or database is highly desirable.

4.20 At the previous Inquiry, Defence and DITAC signalled their intention to produce a joint annual report.¹⁸ The Committee was therefore surprised to be advised that it was agreed at the IDC meeting of 5 August 1987 that a joint annual report was not appropriate.¹⁹

4.21 DITAC advised that at that time the 1986-87 annual reports of the two departments were in an advanced stage of drafting and the production of a joint document of offsets for the period was considered impracticable. The IDC considered a proposal that it could undertake the drafting of a future joint report but concluded that it lacked the resources to undertake the task. The IDC agreed that the inclusion of offsets reports in expanded departmental annual reports would satisfy the requirements of the Finance Minute and therefore concluded there was no need for a joint annual report.

15. Evidence, pp. 907-8.

16. Finance Minute on Report 270, para 84. See Appendix B.

17. Evidence, p. 885.

18. Evidence (JCPA Report 270: 1987), pp. 66, 76, 367.

19. Evidence, p. 453.

4.22 Upon the establishment of the Australian Civil Offsets Agreement with its reporting requirements and the rapid evolution of the civil program, DITAC perceived the need for a separate annual report on the Program, hence the publication of the 1987-88 annual report of the civil program.²⁰ A report on Defence offsets for 1987-88 is included in its departmental annual report.

4.23 Defence submitted an indicative summary of matters for possible inclusion in an annual report providing for expanded information in relation to offsets.²¹ Although no decision had been made as to whether this would be included in the departmental annual report or published as a separate document, Defence has stated that because of the two separate audiences, it now has no intention of producing a joint report on offsets.²²

4.24 Although the interests of participating firms may differ, the Committee believes that the overriding consideration is that one comprehensive government policy should be reported within in one document.

4.25 The Committee recommends that:

- . The Departments of Defence and Industry, Technology and Commerce produce a single comprehensive report on the Offsets Program.

The Necessity for two Commonwealth Offsets Authorities

4.26 The Committee has never been convinced of the necessity for the separate administration of Defence offsets, which seems to be solely justified on the grounds of the Defence-related goals of the Program and suggested in Report 270 that the two Commonwealth offsets authorities examine the need or otherwise for dual administration. In the Finance Minute, both departments have rejected this recommendation. Defence claimed that because defence and civil offsets have different objectives and are administered completely differently the offsets programs cannot be presented as a single program.²³

20. Evidence, p. S119.

21. JCPA File 1987/9 Part B(4).

22. Evidence, pp. 881-2.

23. Finance Minute on Report 270, para 84. See Appendix B.

4.27 In March 1989 DITAC retracted somewhat from its original position, accepting that the recommendation had some merit and possible gains in efficiency. However, it felt that any gains could be at the risk of destroying the close relationship that exists between Defence, the major Commonwealth purchaser, and its offsets arrangements.²⁴ At the public hearing in June 1989, DITAC portrayed an even more positive attitude towards the Committee's recommendation. DITAC stated:

It seems both of us are more and more sharing a common view that we need to have industry of world-class capabilities, technologies and manufacturing capabilities, and that our objective is essentially international competitiveness.²⁵

4.28 While the philosophy of co-operation is now accepted, the Department considers that the detailed issues involved in unification would present difficulties.²⁶

4.29 However, DITAC observed that the experience in Canada suggests that it is not impossible or impracticable under a Westminister-style system to effectively run a joint administration.²⁷

4.30 IBM expressed support for the integration of defence and civil offsets as dual administration may potentially create unnecessary costs and result in sub-optimal offsets work programs. IBM's concern was particularly in relation to Defence's project by project approach to offsets and the fact that it would not be credited for civil achievements under its Partnership for Development agreement.²⁸ Defence is however now also encouraging overseas firms to enter into longer term programs and to register these under Offsets Accumulation Deeds. Defence advised in April 1989 that programs established under civil partnership arrangements may qualify under these deeds and that they were exploring putting a clause to this effect in DITAC deeds.²⁹

4.31 Although a company with a defence-related offsets obligation can discharge that obligation with civil activities, Defence advised that there have been very few such cases and that there are very few firms, mainly aircraft manufacturers, with substantial defence and civil obligations. Defence believe high technology civil aircraft engines to be just as useful a contribution to defence self-reliance, as Defence aircraft engines.³⁰ It is in this area that the two departments are

24. Evidence, p. 18.

25. Evidence, p. 771.

26. Evidence, pp. 771-3.

27. Evidence, p. 772.

28. Evidence, pp. 581, 588.

29. Evidence, p. 454.

30. Evidence, p. 890.

actively exploring the feasibility of foreign suppliers entering into a single set of long term industry programs through which offsets credits applicable to both civil and defence offsets commitments could be obtained.³¹

4.32 In May 1989 the Minister for Defence announced that:

The offsets program is now starting to run down because of the success of our overall efforts to encourage local industry involvement ... We have reached the point where Australian firms are able and more than ready to take on the role of prime contractor for major Defence programs. Obviously this means a progressively lower foreign content in such programs and a commensurate decline in new offsets obligations. Nevertheless, the program continues to provide valuable assistance for Australian companies.³²

4.33 The Committee is encouraged by this and is optimistic that the current situation, and the emphasis by both authorities on exports, may provide a foundation for serious re-consideration of its original recommendation. The Committee believes that there are even less reasons now for maintaining separate administrations than at the time of its previous report.

4.34 The Committee recommends that:

The Departments of Defence and Industry, Technology and Commerce examine the need or otherwise for the current dual administration of offsets, and in particular, investigate means whereby the administrative role can reside solely within the Department of Industry, Technology and Commerce whilst maintaining suitable links with defence industry policy.

31. Department of Industry, Technology and Commerce, Australian Civil Offsets Program Annual Report 1987-88, AGPS, Canberra 1989, p. 12.

32. The Hon Kim C Beazley, MP, Ministerial Statement on Defence Industry, 10 May 1989.

The Standing Interdepartmental Committee on Offsets

4.35 The Committee reported in 1987 that the Standing Interdepartmental Committee on Offsets (IDC) had not met since 1984 despite the fact that the Government had accepted the Inglis recommendation to utilise the IDC as a mechanism to ensure consistency between the civil and Defence components of the Program.³³ The Committee recommended that the IDC urgently reconvene and meet frequently and regularly. It also recommended that its terms of reference be revised in accordance with the Government's decision following the Inglis Report.

4.36 DITAC advised that the IDC has reconvened and met in April and August 1987,³⁴ and in November 1988.³⁵ In view of the number of unresolved issues involving offsets, particularly notification procedures, the Committee noted with concern DITAC's comment that:

... since the role of the IDC on offsets is to consider changes in offsets policy, it is convened only when changes are contemplated.³⁶

4.37 This does not seem to be consistent with either the intended purpose of the IDC in ensuring consistency or its revised terms of reference (approved in early 1988³⁷) which are:

- a. monitor and advise on the broad policy direction of the Offsets Program with a view to bringing to Australian industry advanced technologies, skills and capabilities to meet the goals of:
 - (i) establishing internationally competitive activities within Australia; and
 - (ii) supporting Defence industry capability objectives;

33. Department of Industry, Technology and Commerce and Department of Defence, Australian Government Offsets Program, Guidelines for Participants, March 1986, AGPS, Canberra p. 41.

Participants, March 1986, p41.

34. Evidence, p. 16.

35. Finance Minute on Report 270, para 75. See Appendix B.

36. Finance Minute on Report 270, para 78. See Appendix B.

37. Evidence, p. 629,

- b. having regard to the above civil and defence goals, advise on the development and maintenance of comprehensive offset policy guidelines for endorsement by the Minister for Industry, Technology and Commerce and the Minister for Defence;
- c. advise on procedures and other measures to ensure that the offsets policy is properly and universally applied by all Departments and Statutory Authorities; and
- d. assist in integrating offsets with the Government's broader policy objectives and programs in respect of industry development, technology, trade and defence.³⁸

4.38 The various departments appearing before the Committee, which are members of the IDC, clearly did not share the Committee's concern. The terms of the IDC have been interpreted to encompass only broad policy matters and not to extend into the actual detailed administration of the Program.³⁹ The Committee was advised that in addition to the formal meetings noted above, some out of session consultations also took place to discuss particular issues.⁴⁰ DITAC also put the view that in matters directed at achieving consistency between DITAC and Defence, it is a more efficient use of the IDC's time if those two departments reach agreement on the issues prior to IDC discussion.⁴¹

4.39 DITAC did agree that in respect of the IDC's third point of reference above, it would be appropriate for the IDC to play a more active role in resolving the unsatisfactory situation regarding notification procedures.⁴² There does however appear to be some disagreement as to the function of the IDC on this point as Defence took the view that this was purely an administrative matter for DITAC and DAS to resolve.⁴³

4.40 Nevertheless, the Committee observes that the matter was included for consideration at the IDC meeting scheduled for late June 1989.⁴⁴

 38. Evidence, p. 361.
 39. Evidence, pp. 397,765.
 40. Evidence, p. 404.
 41. Evidence, p. 768.
 42. Evidence, p. 766.
 43. Evidence, pp. 878-9.
 44. Evidence, p. S360.

Consistency for Participants -

Register of Precedents

4.41 In order to safeguard accountability, promote consistency and equity in decision making and provide participants with helpful insights into the operation of the policy, the Committee recommended in Report 270 the establishment of a comprehensive register of precedents. Whilst the Finance Minute records acceptance of the proposition in principle, to date there is little practical evidence of any real commitment to the task.

4.42 The initial response in the Finance Minute was that 'Defence has commenced the establishment of such a register but in its present form would not be suitable for public issue. Before any such publication, further consultation with DITAC on the format and content will be necessary'.⁴⁵ It would now appear that the Department has moved away from this position. Defence has indicated to the Committee that although it was originally intended that the register be a joint publication, it now proposes to provide more comprehensive detail and definitive information in its new guidelines in respect of areas of ambiguity. Defence also stated:

... we have far less case law because of the way we are doing business, so it has not had the high priority that it might otherwise have had.⁴⁶

4.43 The Administrative Arrangements of the Australian Civil Offsets Program provide for the establishment of a body of precedents.⁴⁷ DITAC has communicated its intention to incorporate these precedents in both the Offsets Procedures Manual and the annual report but point out that since the Australian Civil Offsets Program was only established on 1 March 1988, a significant volume of precedents has not yet developed.⁴⁸

4.44 The Committee is of the view that maximum benefits would be attained by the establishment of a single comprehensive register.

45. Finance Minute on Report 270 para 97. See Appendix B.

46. Evidence, pp. 921-2.

47. Finance Minute on Report 270 Attachment 5, Annex 1.
See Appendix B.

48. Finance Minute on Report 270 para 96. See Appendix B.

4.45 The Committee recommends that:

The results of decisions by the offsets authorities be documented in a comprehensive register of precedents and significant precedents published in the annual report on the Offsets Program.

New Work Criterion

4.46 The Guidelines define the 'new work criterion' as follows:

To meet this criterion offsets must be in addition to, or an extension of, the activities presently undertaken by overseas suppliers in Australia. They must be activities which:

- (a) are new to individual Australian firms or which enhance existing activities with work which would not otherwise be undertaken in Australia; or
- (b) result in local research, design, development, production or support which would otherwise have been undertaken overseas; or
- (c) open up markets new to Australian products.⁴⁹

4.47 The Committee considered that the requirement that the activity must be new to the firm's business plan was discriminatory and that to insist that only activities for which offsets are the principal or only incentive are eligible was unnecessary, difficult and potentially inequitable. Thus it was recommended in Report 270 that this criterion be redefined as a new activity for the company in Australia which is unrelated to customer support, distribution or marketing of existing products.

4.48 DITAC advised that although it accepted this recommendation in principle, it was not possible to reach agreement with the States on a revised wording for this criterion prior to the publication of the revised civil guidelines in March 1988. The States felt that the Committee's recommendation was implicit in the wording of the 1986 guideline and so this clause was carried through unaltered into the 1988 edition. The Department has intimated that the guidelines will need to be further developed over the next year or two to incorporate new initiatives and developments in the Program and that the Committee's recommendation will be taken into account at that time.

49. Department of Industry, Technology and Commerce and Department of Defence, Australian Government Offsets Program, Guidelines for Participants, March 1986, AGPS, Canberra, p. 8.

4.49 Defence has accepted the Committee's recommendation and in the July 1989 draft Australian Defence Offsets Program, Guidelines for Participants, has redefined the definition to make it clear that the normal after sales customer support, distribution or marketing activities which are a part of the normal commercial activities undertaken by suppliers in Australia, are not acceptable as offsets.

Exempt Organisation Status

4.50 The Government has exempted the following Commonwealth authorities from the requirements of the offsets policy on the basis that major trading activities are undertaken in competitive markets:

Australian National Line
Commonwealth Banking Corporation
Snowy Mountains Engineering Corporation
Medibank Private
Housing Loan Insurance Corporation
Commonwealth Serum Laboratories
Australian Industry Development Corporation
Export Finance and Insurance Corporation
Australian National Railways^{50, 51}

4.51 Although upon entry into the Australian Civil Offsets Program some State organisations, were exempted, the list has remained unchanged since 1986.

4.52 In practical terms, application of this policy means that if an overseas company makes a sale of \$10m of computing equipment to both the Department of Finance and to the Commonwealth Banking Corporation, offsets must only be provided in respect of the former sale.

4.53 In reply to the Committee's request for additional advice as to procedures and rationale surrounding the offsets 'exempt organisation' status, DITAC advised that the list of organisations had been decided by the Government in 1986. The organisations did not benefit from a government bestowed advantage and it was considered they would be disadvantaged in the market place if they were required to comply with the requirements of the Program whilst their competitors did not. DITAC has advised that the list of exempt Commonwealth and State organisations will be reviewed by GOPAC this year.⁵²

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50. Department of Industry, Technology and Commerce and Department of Defence, Australian Government Offsets Program, Guidelines for Participants, March 1986, AGPS, Canberra, p. 10.
51. Department of Industry, Technology and Commerce, Australian Civil Offsets Program, Guidelines for Participants, AGPS, Canberra, 1988, Appendix 3.
52. Evidence, p. 23.

4.54 The Committee believes that criteria for determining exempt status should be clearly stated and made public. In May 1988 the Minister for Transport and Communications announced that continued application of the offsets policy to Australian Airlines will be reviewed in the light of general airline industry developments prior to the termination of the Airlines Agreement in 1990. In conjunction with this review, the continued application of the offsets policy to the competitive activities of Telecom, OTC, AUSSAT and Australia Post will also be reviewed prior to the end of 1990.⁵³ The Committee suggests that when reviewing these particular matters, it would be an appropriate time to consider and settle guidelines for the determination of offsets exempt organisations generally.

4.55 The Committee recommends that:

- . The Departments of Industry, Technology and Commerce and Defence report in the Finance Minute on the outcome of the GOPAC review of exempt organisations.
- . Guidelines for Participants include expanded documentation in relation to exempt offsets status addressing such matters as the approval process for the inclusion and deletion of organisations, and provide practical working definitions of such terms as 'major trading activities', 'competitive markets' and 'government bestowed protective advantage'.

Consistency within Administering Departments -

Procedures Manual

4.56 In Report 270 the Committee recommended that a procedures manual relating to offsets be completed as soon as possible. At the time of the previous Inquiry DITAC was in the process of compiling such a manual. In June 1989, DITAC described the document as 'a working draft, which we find now to be less than satisfactory'.⁵⁴

53. Reshaping the Transport and Communications Government Business Enterprises, Statement by the Minister for Transport and Communications, 25 May 1988, AGPS, Canberra 1988, pages 17, 25, 28, 30 and 34.

54. Evidence, p. 808.

4.57 The Committee is totally exasperated to find that DITAC still does not have a definitive manual for administrative staff. Despite the fact that this matter was drawn to the attention of DITAC by the Auditor-General in 1984, and despite the Department's acceptance of the Committee's recommendation, the situation still has not been rectified. Recent changes to administrative arrangements within DITAC to integrate offsets activities with industry divisions and branches, whilst beneficial in terms of facilitating consistent approaches to specific industry development, have accentuated the need for administration manuals.

4.58 The Committee regards such manuals as critically important in ensuring consistency in assessing offsets proposals and performance, defining the scope of staff discretion and as a basis for authoritative and effective decision making. Procedures manuals also assist in minimising the effects of staff turnover, are an effective vehicle for communicating policy decisions down the line, provide a criteria by which to judge performance and encourage thoughtful decision making thus avoiding undesirable 'ad hocery'.

4.59 The Committee recommends that:

The procedures manual for staff of the civil offsets authority, which was first recommended by the Inglis Committee and again by the Public Accounts Committee in its Report 270, be completed forthwith.

Security

4.60 During the course of the Inquiry, two matters relating to security were brought to the attention of the Committee.

4.61 The first concerns staff of offsets authorities who resign to take up employment in the private sector. Although the Committee does not in any way wish to cast aspersions upon the integrity of present or former staff of the authorities, the fact is, that staff do have access to what is described as commercial-in-confidence material. The potential for innuendo of an unfavourable nature is obvious.

4.62 In a recent report of the Senate, attention was drawn to 'what appears to be a disturbing tendency, exemplified by (Offsets and Partnerships for Development) programs whereby former departmental officers involved in framing quite complex systems to implement government policy subsequently take up positions in the private sector advising industry on the very systems or policies they helped to frame'.⁵⁵ In this regard the Committee heard during this Inquiry, serious allegations of deliberate malpractice against a particular individual. The Committee found no evidence to support that allegation.⁵⁶

4.63 Although the responsibility of former of current Commonwealth officers in such matters is clearly set out in section 70 of the Crimes Act 1914, the Committee suggests that, for the protection of the departments and staff concerned, administrative manuals specify procedures to be followed in the event of the impending resignation of an officer involved with offsets.

4.64 The second matter concerns contractual dealing by the Commonwealth with overseas companies subject to prosecution.

4.65 The Office of the United States Inspector General produces a half yearly summary of major indictments, convictions or recoveries obtained by the Department of Defence Criminal Investigative Organisations. Several US companies with which Australian Offsets Authorities are doing business have been mentioned in recent reports.⁵⁷

4.66 Defence indicated that in its view as offsets are not an area of fraud - either companies achieve offsets requirements or not - it has not felt the need to take special measures to monitor compliance with the offsets obligations of these companies.⁵⁸ Nevertheless, whilst the Committee has no knowledge of whether in any particular case the reasons behind convictions bear any relevance to contracts with the Commonwealth and has received no indication that the companies mentioned are not satisfactorily fulfilling their offsets obligations, the Committee is concerned to ensure that wherever possible, purchasing and offsets authorities are aware of such convictions in order to be able to assess whether any special action needs to be undertaken.

4.67 Although the Committee is advised that Defence is currently taking steps to address this matter, the Committee is concerned that all purchasing authorities are made cognizant of any situation requiring particular care.

55. Senate. Estimates Committee A, Report to the Senate, November 1988.

56. Evidence, pp. 713, 741-751.

57. Evidence, pp. S519-20.

58. Evidence, p. 907.

The Committee recommends that:

- The Departments of Defence and Industry, Technology and Commerce pursue methods whereby purchasing and offsets authorities are made aware of, wherever possible, any criminal convictions of overseas companies with which they have, or intend to have, dealings.
- In addition to those matters identified in Report 270, the manuals for both offsets authorities should:
 - detail procedures to be followed upon notification of an offsets officer's impending resignation to take up employment in the private sector; and
 - prescribe procedures to be followed upon awareness of a successful prosecution against an overseas company participating in the Offsets Program.

Chapter 5

EVALUATION AND VALUATION OF OFFSETS PROPOSALS

5.1 A particular point of concern to the Committee was the apparent level of administrative discretion utilised by offsets personnel in applying guidelines. The area of valuations, particularly the valuation of technology transfer, was seen as having the greatest potential for abuse.

5.2 As a way of overcoming criticism in this area, and in an attempt to find a more consistent and objective valuation mechanism without curtailing flexibility where warranted, the Committee recommended a clearer and more rigorous set of guidelines especially for the criteria and valuation of acceptable offsets, thorough independent assessment of offsets proposals and a revision to the method of valuing technology transfer to focus on real outcome.

5.3 DITAC advised that it has sought to reduce the level of administrative discretion in relation to the valuation of offsets work by emphasising the actual value of consequent exports as the primary measure of offsets activities in the revised guidelines released in March 1988 relating to civil offsets. Guidelines have been restructured to more closely link acceptable activities with their valuation and include improved definition of both offsets activities and valuations.¹ The Committee is also pleased to see that the Australian Civil Offsets Agreement incorporates a clause expressing the desirability of minimising the extent of administrative discretion so as to ensure efficient administration.²

5.4 In assessing the valuation of technology transfers, in addition to supplier's transfer costs and licence fees or royalties foregone, extra offsets value is now allowed based on the value of purchases of Australian products and services resulting from the technology transfer.³ A sunset clause limiting the duration of offsets approvals is now also included in the guidelines, thus reducing the possibility of double counting.⁴ Offsets credits are given for exports for a maximum of two years, but there is a provision whereby exports may attract credits for

1. Evidence, p. 19.

2. Finance Minute on Report 270, Attachment 5, para. 3(j). See Appendix B.

3. Finance Minute on Report 270, Attachment 3, para. 4.2(a). See Appendix B.

4. Evidence, p. 19.

an additional three years for sales over and above the average level of exports in the first two years.⁵ However, the new sunset clauses only apply to those companies entering into offsets arrangements since March 1988.⁶

5.5 The civil guidelines state that the transfer of technology should have the potential to increase productivity and/or provide a new product or service and be associated with export oriented activity.⁷ The Committee received a submission expressing the view that DITAC is interpreting that provision so that offset credits will not accrue unless the technology transfer generates export activity.⁸ DITAC agreed that that interpretation is being put upon the clause.⁹

5.6 During the Inquiry there has been a good deal of disquiet amongst some members of the Committee regarding the mechanism of discharging offsets obligations afforded to SNECMA. Under the terms of agreement with that company, offsets credits have been given in respect of work to identify Australian firms that may be encouraged into the export market by a firm of consultants acting as agents for SNECMA. Although DITAC maintains that the result will be worthwhile and beneficial in terms of the development of high technology industry in Australia, the agreement has not resulted in one export to date.¹⁰

5.7 DITAC, when asked how the emphasising of actual value of consequent exports fitted in with the SNECMA case, advised that that arrangement is on the understanding that no credits would be given for exports, when they arrive, until they exceed the value of credits already given for technology transferred.¹¹

5.8 This arrangement appears to be contrary to the stated policy. The Committee notes DITAC's advice that this is not a mechanism which has been used elsewhere, and does not cover the whole of the SNECMA obligation.

5.9 Although Defence supports the sentiment behind the Committee's recommendation to base valuations of technology transfers on outcomes, it believes that it ignores the question of strategic value. In Defence applications the valuation of technologies is based on the strategic benefit and saving to Defence by having the technology 'in country' to support the

5. Finance Minute on Report 270, Attachment 3. para 4.3. See Appendix B.

6. Evidence, p. 794.

7. Finance Minute on Report 270, Attachment 3. Para 4.2(a). See Appendix B.

8. Evidence, p. S007.

9. Evidence, p. 798.

10. Evidence, pp. 663-4.

11. Evidence, p. 790.

equipment through its service life.¹² For instance, in some cases Defence has consciously acquired technologies which have not been utilised but shelved for future contingencies.¹³ Defence was unable to estimate whether its method of technology valuation would result in a higher or lower valuation than DITAC's method.¹⁴

5.10 At the time of the previous Inquiry, only one civil transfer of technology case had been settled. In 1987-88, 7.7 per cent (\$26.4m) of offsets obligation were discharged by way of transfer of technology.¹⁵ In relation to Defence purchases, of the total offsets achievement of \$70m for the period 1 January 1986 to 30 June 1989, approximately \$11m related to technology transfer.¹⁶

5.11 The Committee believes that while offsets authorities must have some degree of flexibility regarding offsets proposals so as to maximise benefits to Australian industry, those benefits will only be derived from real rather than potential outcomes. In order to avoid inconsistency between suppliers, eliminate potential for abuse, and ensure real results, the Committee still considers that the valuation of technology transfers should be based solely on resulting exports. This also accords with the greater emphasis being given to exports by both offsets authorities. The Committee does accept, however, that there may be some cases in Defence where, in view of the self-reliance objective, this basis of valuation may not necessarily be applicable.

5.12 The Committee's recommendation to seek independent advice was accepted by both authorities, however, Defence advised that it had more than sufficient expertise in-house to be able to do it.

5.13 Defence is able to tap the not inconsiderable expertise in the Defence Science and Technology Organisation (approximately 3000 personnel) to assess how valuable particular technologies are to self-reliance as well as access to international technology sources through arrangements with allies for defence technology.¹⁷

5.14 DITAC does not have such a body of in-house talent. In DITAC a technology transfer proposal is initially examined by the officer responsible for the company that has the offsets obligation and discussed with other appropriate officers, engineers and scientists within the Department familiar with the

12. Evidence, p. 456.

13. Evidence, p. 942.

14. Evidence, p. 939.

15. Department of Industry, Technology and Commerce, Australian Civil Offsets Program, Annual Report 1987-88, AGPS, Canberra, 1989 p. 30

16. Evidence, p. S420.

17. Evidence, pp.924, 927.

area. If still uncertain after discussing the matter with the head of the Branch, the Branch head would initiate outside inquiries. Depending on the size of the obligation acceptance or otherwise of any proposal is the responsibility of the Branch Head or Deputy Secretary.¹⁸

5.15 As well as the valuation referred to above, technology transfer proposals - in fact, all offsets proposals - must also meet criteria in respect of technology, commercial viability, price and new work.¹⁹ It is unlikely that DITAC staff are able to make competent assessments of proposals against all these criteria.

5.16 One witness expressed concern that the offsets authorities do not understand commercial research and development and would experience difficulty in assessing its valuation for offsets purposes. It was suggested that representatives from industry and perhaps government organisations like CSIRO and Telecom should supervise the new work criteria.²⁰

5.17 DITAC advised that on occasions when it felt that assessment of proposals was beyond the capacity of the Department it had sought advice from CSIRO. Experts at Telecom, universities and Defence have also been approached informally for advice.²¹ DITAC pointed out that it is difficult to locate within Australia a source of advice which does not have a major conflict of interest and expressed a concern that it may be more difficult in the future to identify people in CSIRO free from conflicts of interest as CSIRO moves more actively in the field of contract research.²²

5.18 DITAC conceded, in discussing evaluation concerning the technology criteria and speed of technological change, that it would also seek views from Australian companies. DITAC also stated that one of the first tests of the significance of the technology transfer is to talk to the company which is receiving the technology to see what sort of value it places on the technology.²³

5.19 In the Committee's view there are inherent dangers in seeking advice from these sources; neither objectivity nor independence is assured, for, as was established at a public hearing of Senate Estimates Committee A held on 9 October 1989, recipients may in turn obtain valuations from the original overseas supplier.²⁴

18. Evidence, pp. 783-4, 788.

19. Finance Minute on Report 270, Attachment 3 para 3.1. See Attachment B.

20. Evidence, p. 733-4.

21. Evidence, p. 779, 803.

22. Evidence, p. 780.

23. Evidence, p. 784.

24. Senate. Estimates Committee A, 1989, Debates, pp. A198-9.

5.20 The current unsatisfactory situation regarding valuation of civil offsets proposals is crystallised in the following extract from the Estimates Committee hearing:

Senator BISHOP - Yet we have no guidelines, no manual and no determined test by which you can measure whether that is a realistic valuation of the work in process or whether it is a figment of somebody's imagination. There is no test, is there?

Dr Fitzpatrick - There is no test.²⁵

5.21 The Committee considers that it is absurd that a program is being handled in this fashion.

5.22 The Committee accepts that some degree of administrative discretion is a necessary part of program management but, in view of the huge sums involved in this particular program, believes that the level of discretion should be kept to a minimum.

5.23 During the Inquiry the Committee floated the idea of establishing a panel of expertise.²⁶ The Committee believes the potential problem of choosing personnel free of conflicts could be avoided by careful selection. The panel would avail the Department of a permanent body of knowledge not otherwise available as well as provide a much needed boost to the public confidence in the Program by reducing the level of administrative discretion.

5.24 The Committee recommends that:

- . The offsets authorities reconsider the Committee's recommendation to value transfer of technology based solely on valuation of exports, except where defence objectives of self-reliance dictate otherwise.
- . A permanent panel of independent experts in appropriate fields be established to assist the Department of Industry, Technology and Commerce in evaluating and valuing offsets proposals.
- . All civil offsets proposals entailing difficult measurement or subjective judgement be referred to that permanent panel for approval, and the requirement to do so be specified in the guidelines and procedures manual.

25. Senate. Estimates Committee A, 1989, Debates, p. A213.

26. Evidence, p. 804.

Chapter 6

PROGRAM ACCOUNTABILITY AND EVALUATION

Annual Reports

6.1 Defence and DITAC have been charged with responsibility for carrying out the Government's offsets policy, therefore these two departments must be accountable for the delivery of the policy and its desired aims. A precondition for accountability is the ability to provide the information necessary to measure or assess the performance of the parties charged with responsibility for carrying out the policy.

6.2 One of the most visible expressions of public accountability by departments is a quality annual report. Annual reports are essential to enable the Parliament and the public to make an informed assessment of the effectiveness and probity of the Program.

6.3 In April 1986 DITAC stated its intention to produce a report for 1986-87 covering Program achievements, an assessment of prospects and general comments on the operations of the scheme.¹ That intention did not materialise. Despite repeated calls for such a document, the Australian Civil Offsets Program Annual Report 1987-88 was not tabled until 31 May 1989.

6.4 The Committee welcomes the release of this substantial document, but from the Committee's viewpoint it has two fundamental deficiencies for overall Program evaluation. The report is exactly as its title states:

- (a) it is concerned only with civil offsets; and
- (b) it provides, in the main, statistics only in respect of 1987-88.

1. Evidence (JCPA Report 270: 1987), p. 76.

6.5 In addition, the report frontispiece intimates that the report coverage will embrace 'Program status, achievements, problems and prospects'. Despite this purported, and commendable, commitment to accountability, the report pays scant attention to some of the continuing fundamental problems in implementing the policy, e.g. notification procedures.² However, DITAC acknowledged the problem in subsequent public hearings describing the response rate from the Department as 'very patchy'. As discussed in Chapter 3, this is a matter of long standing concern. Annual reports provide an excellent opportunity for departments to not only display their effectiveness in carrying out policies for which they are responsible, but to also alert Ministers, Parliament and the public to any problems they are experiencing in their efforts to carry out those policies. In fact, a report which does not reveal problems has the potential to mislead the reader.

6.6 In early June 1989 DITAC advised the Committee of very great pressures within the Department resulting from resource constraints following the July 1987 Machinery of Government changes. In the offsets area, additional resources would be applied, if they became available, to increased marketing of the Program and provision of information to potential local participants, increasing the capture rate of contracts to which offsets apply, increasing the degree of auditing of performance and speeding up the production of operating manuals.³

6.7 The Committee has subsequently been advised that agreement has been reached between the Department of Finance and DITAC for an increase in DITAC's base level of resourcing by \$1.2m which will enable a staff increase of approximately 20. As a result, six additional officers and matching running cost provisions have been placed in the administration of the Offsets Program and will be applied to the areas identified above.⁴

6.8 However, notwithstanding the above criticisms, the type of information provided in the 1987-88 report, e.g. achievements by commodity classification, offsets activity etc. will be invaluable in assessing the impact of the policy on the Australian economy. Information on the Defence side of the Program is sadly still confined to a minimal account of the year's activities which is included in the general departmental annual report. In 1987-88 less than half a page of information was provided. Ministerial releases on an ad hoc basis providing details of offsets achievements do not suffice as a substitute for a comprehensive annual report. The Committee recognises that report production is time and resource consuming, but nevertheless, comprehensive reports are an essential mechanism for public accountability.

2. Evidence, p. S238.

3. Evidence, p. 642.

4. Evidence, p. S233.

6.9 As noted in the discussion at paragraph 4.23 concerning the desirability of a joint annual report on the program, Defence has submitted to the Committee an indicative outline of matters that its report could cover in future. The Committee believes that, at a minimum, statistical information comparable to that in the DITAC report should be disclosed.

6.10 The Committee recommends that:

Annual report disclosure on matters pertaining to defence offsets be expanded to encompass relevant statistical data necessary to facilitate a meaningful assessment of the Program's status, achievements, problems and prospects.

Evaluation of the Offsets Policy

6.11 It is important that not only should departments be scrutinised in their effectiveness in carrying out policy, but that the effectiveness of the policy itself be evaluated in terms of achieving its aims. To this end it is necessary to assess the outcomes of the policy against objectives and to monitor those benefits against the costs involved.

6.12 The prime objective of the policy is the establishment of internationally competitive activities within Australia. In Report 270 the Committee took the view that this may be better achieved by discounting the value of technology if it was transferred to a subsidiary company of the overseas supplier. Both offsets authorities have rejected this view.

6.13 In DITAC's view, the question of company ownership has little bearing on diffusion of technology throughout Australian industry; technology diffusion is achieved via individuals, as recipient companies, whether foreign or Australian owned, have a vested interest in keeping technology to themselves.

6.14 DITAC believes that policy objectives will be fulfilled more effectively by treating all companies equally regardless of their corporate links.⁵ Improvement in international competitiveness of any company in Australia is seen as having positive benefits for Australia and the current approach avoids difficulties in tracing company ownership. In this respect Australia, Canada and Western European countries take a different approach to that of Japan and Korea, which insist on technology transfers to locally owned companies.⁶

6.15 The Committee sought an indication of the incidence of such transfers to subsidiaries. About 18% of civil technology transfers were made to subsidiaries.⁷ Prior to 1 January 1986 approximately 20% of Defence technology transfers were made to subsidiaries, but no transfers to subsidiaries have been made since that time.⁸

6.16 Defence has no great concerns about technology being in the hands of subsidiaries of foreign owned companies as, in a case of a Defence emergency situation, the Commonwealth Government can simply take steps to ensure that production continues in Australia. In a small number of cases, however, Defence does protect sensitive indigenous technologies for Australian-only access, through provisions known as Australian Ownership and Control of Information.⁹

6.17 In relation to the question of ownership, the Committee received a strong submission from the Institution of Engineers Australia calling for a change in the Program's definition of 'Australian firm'. The Institution is similarly concerned to ensure that intellectual component of manufacturing and manufacturing capability remain resident in Australia. In relation to technology transfer the Institution said:

... it seems to us now necessary to make a distinction between those firms that have majority overseas ownership and those firms that have majority Australian ownership. We believe it is only the latter which can fully retain the technology in Australian hands, and use the technology to make sure that Australian industry and Australian exports can prosper.¹⁰

5. Finance Minute on Report 270, para.103. See Appendix B.
6. Evidence, pp. 798-802.
7. Evidence, p. S120.
8. Evidence, p. S420.
9. Evidence, pp. 943-4, 947.
10. Evidence, p. 302.

6.18 The Institution recommended expansion of the definition to provide that an Australian firm is one which has full administrative and technical control of operations in Australia, committed to an ongoing presence in Australia in such a way that it participates in training and in the development and retention of technical skills for on-going use within Australia and overseas as an Australian firm, and has greater than 50% Australian holding by Australian nationals domiciled in Australia.¹¹

6.19 It is noted that the civil guidelines require that any commercially viable results of R&D undertaken under the Offsets Program are exploited for the benefit of Australia. The Committee empathises with the view that in order to achieve this, there is a requirement for Australian control and ownership of the intellectual property resulting from that R&D.¹²

6.20 Unquestionably this is a difficult area, but the Committee has not been persuaded from its original point of view.

6.21 The Committee recommends that:

If a notional value of technology is given at the time of technology transfer, that valuation should be discounted if the transfer is to a subsidiary or otherwise associated company of the overseas company.

6.22 The Committee heard in evidence that the Program still impacts upon only a small wedge of Australian industry.¹³ The Australian Civil Offsets Program Annual Report 1987-88 notes that a total of 478 Australian firms and institutions have benefited from offsets work over the life of the Program to 30 June 1988 and that 23 organisations became involved in offsets for the first time in 1987-88.¹⁴

11. Evidence, p. 307.

12. Evidence, p. 322.

13. Evidence, p. 290.

14. Department of Industry, Technology and Commerce, Australian Civil Offsets Program, Annual Report 1987-88, AGPS, Canberra, 1989 p. 22.

6.23 In seeking to establish whether the number of Australian firms involved in offsets work was expanding or contracting, DITAC advised the number of participating firms during the 1980s were as follows:

Year	Number of Firms
1980-81.....	26
1981-82.....	48
1982-83.....	60
1983-84.....	117
1984-85.....	108
1985-86.....	191
1986-87.....	146
1987-88.....	79

Source: Evidence, pp. 618-9.

6.24 However, DITAC also advised:

The comparability of the above figures is open to considerable doubt as during this period the method of recording offsets activities underwent significant change. The number of participants were recorded as part of the COMAR system up to and including 1986-87 and under NOMIS in 1987-88. It is thought that COMAR data included sub-contractors for offsets activities whereas NOMIS includes only the prime contractors and those major subcontractors subject to a separate contract with the offsetting firm.¹⁵

6.25 Information submitted from Defence shows that only approximately 120 companies in Australia have benefited from the Defence Offsets Program.¹⁶

6.26 The statistics would appear to indicate a minimal impact of the policy on Australian industry. However, these figures, like the level of offsets obligations and achievements, are not by themselves adequate indicators of program performance. The effectiveness of the policy itself must be evaluated in terms of its aims. The outcomes of such an evaluation, successful or otherwise, should provide the rationale for continuance of the policy.

15. Evidence, pp. 618-9.

16. Evidence, p. S197.

6.27 The costs of the Program have been widely discussed in recent years. Some of these are as follows:

- (a) Direct and indirect administrative costs of the Offsets Authorities in arranging, assessing and overseeing offsets proposals, for example, Defence and DITAC salaries, travel, general overheads, audit costs. (Defence estimate their administrative costs at roughly \$1m per annum).¹⁷
- (b) Direct administrative costs to the overseas supplier in complying with the policy.
- (c) Increases in purchase price of overseas goods. Despite the Program requirement that offsets proposals do not result in any price increases in the goods purchased by Government, there are documented cases where application of the policy has resulted in premiums being paid for overseas sourced goods.¹⁸
- (d) The requirement to satisfy offsets requirements reduces the number of potential suppliers.¹⁹
- (e) The hidden costs to the Australian taxpayer to support R&D and bounty payments. In view of the emphasis given to research and exports under the Partnerships for Development scheme, the Committee sought advice from DITAC as to whether any studies had been done prior to the announcement of that scheme, to gauge the potential impact of the scheme on budget outlays for computer bounties and the level of R&D tax concessions. No such studies were undertaken. It was considered that as the computer bounty was due to expire in 1990 the impact of the scheme was likely to be small given that Partners build up their activities over seven years. Similarly the R&D tax concession was expected to expire in 1991 and the extra cost to revenue was not thought to be significant in the context of the overall R&D tax scheme.²⁰

17. Evidence, p. 866.

18. Bureau of Industry Economics, The Australian aerospace industry structure, performance and economic issues, Research Report 20, AGPS, Canberra, 1986, p. 311.

19. Advisory Group on Australian Airlines, March 1988, AGPS, Canberra, 1988, p. 75.

20. Evidence, p. 640-1.

(f) Other hidden costs to the Australian economy as a whole. Concerns have been expressed that one likely effect of the Partnerships for Development scheme is to aggravate a shortage of skilled engineers and technicians due to the increased level of R&D and local manufacture. Small Australian companies in the field could lose key personnel and the shortage of suitable labour is such that smaller businesses could face difficulties.²¹ Of a more general nature are the concerns that:

- . the offsets policy, by placing work with companies in Australia not through open competition but as a result of government intervention, may encourage support for activities which will not be competitive in the long term;
- . that resource allocation within Australia may be adversely affected as the policy may encourage the expansion of inefficient firms at the expense of potentially efficient infant industries;
- . that maintenance of the policy weakens the Government's claims against other counter-trade policies prejudicial to Australian exports; and
- . that the policy, particularly the Partnerships for Development scheme, may actually inhibit the growth of Australian firms and encourage the expansion of foreign-owned subsidiaries.

6.28 Theoretically the offsets policy, utilising the enormous purchasing power of Commonwealth and State governments, has great potential to boost Australian manufactured exports, but whether an actual direct relationship can be established is questionable. In the words of the Industries Assistance Commission:

The civil offsets program assists select industries to an unknown extent and imposes an unknown level of costs on the rest of the community. There is therefore a need to improve the transparency of the program to make the benefits and costs more amenable to measurement.²²

21. W J Henderson, OBE, Address to Australian Chamber of Manufacturers, 7 April 1988.

22. Industries Assistance Commission, Annual Report 1987-88, AGPS, Canberra, 1988, p. 72.

6.29 In achieving the objective of defence preparedness, the BIE believes offsets play a limited role. It is designated work that provides strategically important technology and skills. Therefore as Defence related offsets work is usually preceded by designated work of the same type, offsets may increase production but do not necessarily lead to greater defence capacity or the development of new skills.²³

6.30 Like policy costs, the perceived benefits of the policy, such as increased access to international markets and technologies are extremely difficult to assess and not readily quantifiable. Nevertheless, program assessment must be based, to the extent possible, on objective measurement; therefore appropriate records must be available.

6.31 Defence's present database has the facility to classify offsets activities in various ways but to extract that data would be a 'massive task'. For this reason the Department was not able to comply with the Committee's request for a breakdown of offsets achieved by activity - information which the Committee considers should be readily available for adequate program monitoring. This information has never been extracted.²⁴

6.32 The Finance Minute reports the completion in November 1987 of enhancements to the Defence system to provide improvements in data assimilation and reporting flexibility. The Defence database is currently being updated again so as to enable faster and more flexible report production, facilitate inclusion of greater detail and permit simultaneous access by more than one person.²⁵

6.33 As discussed at paragraphs 1.23 - 1.26, the BIE has undertaken the first stage of a three stage study to monitor the costs and benefits of the civil offsets program. In its report 'Monitoring of the Offsets Program' the BIE stresses the importance of post-offsets work in assessing the success of the Program. Receipt by companies in Australia of follow-up exports not as a result of offsets provisions would indicate policy success. The BIE proposed that the Offsets Branch establish annual contact with firms benefiting from the Program to establish the extent of their post-offsets activity.²⁶ The Committee believes that the point is of equal import to Defence.

23. Bureau of Industry Economics, The Australian aerospace industry structure, performance and economic issues, Research Report 20, AGPS, Canberra, 1986, p. 320.

24. Evidence, p. 931.

25. Evidence, p. 883.

26. Bureau of Industry Economics, Monitoring of the Offsets Program, Program Evaluation Report 3, AGPS, Canberra, 1987, p. 35.

6.34 Subsequent to the public hearings where this matter was discussed, Defence has advised that under a management improvement initiative they are developing a program to survey (by questionnaire) all Australian companies that have undertaken defence-related work. The purpose of the survey is to establish a database which provides information to Defence on the extent of capabilities that exist in Australia, not only those acquired through the Offsets Program but also resulting from doing business with Defence.²⁷

6.35 The BIE report also highlights deficiencies in the DITAC database and suggested that:

- (a) for effective program monitoring, more effort should be devoted to obtaining necessary data on delivery or payment dates and final prices; and
- (b) details of major subcontractors to Australian beneficiaries be included in the database to assist in assessing the benefits from diffusion of technology transfer, training and R & D. The BIE also suggested inclusion of additional database fields to record more details of the Australian beneficiaries' operations such as industry, size of workforce, turnover and proportion devoted to offsets, ownership and export performance of Australian beneficiaries.²⁸

6.36 DITAC has as yet no timetable to develop and expand its database as the issue of data capture is still being examined. In June 1989, DITAC has advised that enhancements to the information collecting process, planned to be implemented over the next few months, will address the BIE's concerns about reporting of purchases and collection of final prices and payment. The recommendations relating to the activities of Australian beneficiaries have been implemented in part but need to be discussed further with State authorities.²⁹

6.37 Although the BIE originally expected to initiate stage 2 of their study in early 1988 when the 1986 guidelines had been in force for a reasonable settling-in period, because of the extent of recent changes to the Program it is now expected that the next stage of the review will be commenced in 1990. Following this, a judgement will be made as to when the final stage could be initiated.³⁰

27. Evidence, p. S275.

28. Bureau of Industry Economics, Monitoring of the Offsets Program, Program Evaluation Report 3, AGPS, Canberra, 1987, pp. 34-5.

29. Evidence, p. 639.

30. Evidence, p. 640.

6.38 The Committee recommends that:

- . The NOMIS database enhancements be completed at an early date to enable adoption of the recommendations of the Bureau of Industry Economics.
- . The Department of Defence report in the Finance Minute on the progress of improvements to its offsets database and that those improvements take into account the recommendations of the Bureau of Industry Economics in relation to the Department of Industry, Technology and Commerce database.
- . The Department of Defence report in the Finance Minute on the results of its survey as it specifically relates to the Offsets Program.
- . At the earliest opportunity, an independent full scale assessment be undertaken of the national significance of the offsets policy, in particular to identify and quantify all policy implementation costs, and assess the success or otherwise in meeting both its civil and defence objectives.


6.39 The Committee received a submission from the Department of Finance stating:

It is questionable whether offsets, with their lack of transparency, uneven application and administrative overheads constitute an efficient instrument; industries deemed to be worthy of assistance could well be much better assisted by bounties (such as presently exists for the computer industry) or even tariffs.³¹

6.40 Whilst the Committee has insufficient expertise to judge the efficacy of the suggested alternatives, the Committee is in complete accord with the thrust of the statement. For this reason, the Committee views the final recommendation above, as its most significant.

31. Evidence, p. S037.

6.41 If, after nearly 20 years of operation, it cannot be conclusively demonstrated that policy objectives are being achieved and outweigh all direct and hidden program costs, then, it is suggested, serious consideration should be given to the abolition of the offsets policy.

A handwritten signature in black ink, appearing to read 'R E Tickner', with a horizontal line underneath it.

R E Tickner, MP
Chairman,
29 November 1989

JCPA REPORT 270 - IMPLEMENTATION OF THE OFFSETS PROGRAM

Summary of Recommendations

The Committee's recommendations listed below are cross-referenced to their locations in the text of Report 270. The Committee's analysis in the text should be referred to when considering these recommendations.

The Committee recommended that:

- . The Department of Industry, Technology and Commerce develop a comprehensive database and directory on the capabilities, technologies and interests of local industry by 31 December 1987. (paragraph 2.16)
- . The offsets authorities forthwith publish and distribute to local industry seeking offsets work, a comprehensive directory of overseas firms participating in the offsets program. The directory must include:
 - details of each firm's business in terms of products, technologies and interests;
 - the nature and scale of its offset obligations; and
 - non-sensitive information on the nature and scale of its acquittal plans. (paragraph 2.29)
- . All organisations subject to the Offsets Program publish forward procurement plans as early as practicable consistent with their operating and commercial circumstances. (paragraph 2.46)
- . An industry advisory group concerned solely with the offsets program, and with terms of reference similar to the former Offsets Advisory Committee be re-established by 30 September 1987. (paragraph 2.57)

- . The Departments of Industry, Technology and Commerce, and Local Government and Administrative Services report in the Finance Minute on the extent to which purchasing authorities comply with the existing reporting procedures. (paragraph 3.9)
- . The Departments of Industry, Technology and Commerce, and Local Government and Administrative Services recommend procedures with a view to making collection of data more rigorous and report in the Finance Minute. (paragraph 3.9)
- . The Department of Industry, Technology and Commerce report in the Finance Minute on both the cost-effectiveness and legality of applying offsets to accumulated orders. (paragraph 3.16)
- . The Standing Interdepartmental Committee on Offsets take responsibility for clarifying the relationship between the Offsets and Purchasing Preference Policies and eliminate any confusion amongst affected suppliers to the Commonwealth. (paragraph 3.24)
- . The outcome of efforts directed to resolving the confusion and conflict between the various State and Commonwealth offsets programs be reported in the Finance Minute. (paragraph 3.29)
- . The terms of reference for the Standing Interdepartmental Committee on Offsets be revised in accordance with the Government's decision following the Inglis Report. (paragraph 3.37)
- . The Standing Interdepartmental Committee on Offsets reconvene as a matter of urgency and meet frequently, regularly and at a senior level to ensure adequate interdepartmental liaison on the offsets program. (paragraph 3.37)
- . The civil and defence offsets authorities increase their efforts to present the offsets program as a single program and, to this end:
 - co-operate closely in the joint publication of the proposed directory of relevant local firms;
 - agree on specific plans for both the joint publication of a directory of overseas firms and an annual report; and
 - revise the guidelines, on a joint basis, as required. (paragraph 4.16)

- The Departments of Defence, and Industry, Technology and Commerce examine the need or otherwise for the current dual administration of offsets, and in particular, investigate means whereby the administrative role can reside solely within the Department of Industry, Technology and Commerce whilst maintaining suitable links with defence industry policy. (paragraph 4.27)
- The 'new work' criterion in the guidelines be redefined as a new activity for the company in Australia which is unrelated to customer support, distribution or marketing of existing products. (paragraph 5.14)
- The guidelines booklet be revised and updated as a matter of priority. In addition to the matters covered in this report, the thrust of the revision should be to clarify areas of uncertainty and anomaly, and to reduce areas of unnecessary administrative discretion. (paragraph 5.50)
- The results of decisions by the offsets authorities be well documented and published in order to establish a comprehensive register of precedents to ensure consistency and equity in subsequent decisions. Furthermore, significant precedents should be reported to the Minister and described in the annual report of the program. (paragraph 5.50)
- In any entirely new circumstances (especially those that may be open to challenge), the offsets authorities arrange or undertake an independent assessment of the situation prior to entering any negotiations with the overseas supplier. (paragraph 5.53)
- When valuing technology transferred, the offsets authorities should use:

 - (i) paragraph 6.3 (a) (iii) of the Guidelines for Participants ie 'the selling price of all incremental sales of locally produced items derived from the technology over an agreed period.'; or, if this is not possible,
 - (ii) a discounted valuation if a notional valuation of technology is given at the time of technology transfer and it is transferred to a subsidiary or otherwise associated company of the overseas company. (paragraph 5.63)

- . The proposed manual for staff of the civil offsets authority be completed as soon as possible. The manuals for both authorities should:
 - specify a time limit for response to offsets proposals;
 - detail the areas and limits of staff discretion including the levels of delegated authority;
 - dictate a methodical and reliable procedure for recording all offsets data;
 - be regularly revised; and
 - prescribe information that is to be made available to the public. (paragraph 5.75)
- . Penalty clauses be included in all contracts/deeds of agreement entered into. (paragraph 6.28)
- . The work being undertaken to correct and update the records of both offsets authorities, together with any other work yet to be commenced and the timetable for its implementation, be reported in the Finance Minute. (paragraph 6.35)
- . The planned study by the Bureau of Industry Economics on civil offsets be upgraded to a full cost-benefit evaluation and completed as soon as possible. (paragraph 7.16)



MINISTER FOR FINANCE

PARLIAMENT HOUSE
CANBERRA ACT 2600

17 OCT 1988

Mr R.E. Tickner, MP
Chairman
Joint Parliamentary Committee
of Public Accounts
Parliament House
CANBERRA ACT 2600

Dear Mr Tickner

In accordance with the agreed arrangements I enclose the Department of Finance Minute on your Committee's 270th Report entitled "Implementation of the Offsets Program".

I also note that in your letter of 29 September 1988 you wrote to me expressing the Committee's concern with delays in responses to Finance Minutes and in particular to Report 270.

I propose to write to you shortly on this issue.

Yours sincerely

PETER WALSH

DEPARTMENT OF FINANCE MINUTE

1. This minute has been prepared on the basis of responses received from the Departments of Industry, Technology and Commerce, Administrative Services, Attorney-General's, Finance, Treasury, Defence, Foreign Affairs and Trade and the Australian Trade Commission.

2. In this chapter each of the Committee's recommendations is reproduced in turn and is followed by the response. In addition to the responses, the following general comments are made.

3. In preparing its response to the Committee's recommendations and conclusions in the Finance Minute, the Department of Finance considers that the inclusion of a general comment on the cost-effectiveness of the Offsets Program is appropriate. Following inclusion of Finance's general comments, DITAC expressed a desire that their general comments on the program should also be included. Both general comments appear hereunder.

General Comments from the Department of Finance.

4. The Offsets Program involves economic penalties in that it creates additional costs because suppliers are obliged to engage in activities which they would not otherwise undertake for normal commercial reasons. The types of costs involved are:

- . administrative (eg staff employed specifically to arrange offsets and obtain approvals plus overheads such as overseas travel); and
- . intangible (eg if the offset is high technology, there is a learning curve for a local company).

These costs entail a price premium which may be charged to purchasing authorities.

5. As a form of industry assistance the Offsets Program also has weaknesses. It adds an extra layer of protection to Australian firms involved in the program and raises the question about whether the program may encourage inefficient resource allocation. As well, the protection is opaque in the sense that the costs of the policy are not readily amenable to public scrutiny.

6. Reviews of the Offsets Program have noted the difficulties with obtaining information on price premiums paid by the Government on purchases subject to offsets. In this regard, the Bureau of Industry Economics was assigned the task of developing an independent system to monitor the costs and benefits of the offsets policy following the Government's consideration of the report of the Inglis Committee of Review on Offsets.

7. In its 270th Report, the Committee has made recommendations about the operation of the offsets program following the acceptance by Government of a majority of recommendations in the Inglis Report. The recommendations are primarily concerned with:

- . the availability of appropriate directories providing details of the overseas suppliers involved in the Offsets Program and the capabilities of Australian industry;
- . measures to assist local firms to become involved in the program;
- . introduction of measures to ensure compliance with the Offsets Program requirements by overseas suppliers and by purchasing authorities;
- . the establishment of appropriate industry and official consultative mechanisms to provide input to the administration of the Offsets Program; and
- . clarification of the Offsets Program guidelines to minimise the level of administrative discretion.

The Department of Finance supports the broad thrust of the Committee's recommendations in that they seek to increase the transparency of the Offsets Program and promote greater accessibility and organisational simplicity. However, Finance does not support unnecessary duplication of activities already undertaken within the public sector or those able to be provided commercially. To this extent Finance opposes adoption of Recommendation 1 of the Committee's Report.

General Comments from the Department of Industry, Technology and Commerce

8. The Department of Industry, Technology and Commerce (DITAC) considers that the Australian Civil Offsets Program is an important element in the Government's strategy to "internationalise" Australian industry. It provides considerable leverage to Australian industry to gain access to markets and technologies which would otherwise not be readily available. The criteria for eligible offsets ensure that only commercially viable, internationally competitive, export oriented activities are undertaken.

9. DITAC supports the thrust of the Committee's recommendations designed to increase the number of Australian firms that can benefit by the program and to ensure that overseas suppliers fulfil their offsets obligations. The introduction of the Australian Civil Offsets Program in March 1988, co-ordinating Commonwealth-State offsets programs, will achieve these objectives and provide an appropriate consultative mechanism and management information system. Also a large number of overseas suppliers in the aerospace and information industries have now entered into long term arrangements, either Pre-Qualified Offsets Supplier (PQOS) Agreements or Partnerships for Development Agreements. These agreements are encouraging transnationals to invest in Australia as part of their global corporate strategy rather than simply meeting offsets obligations as a result of selling to Government.

10. DITAC considers the program involves minimal administrative costs and there is no quantifiable evidence that there are costs in terms of a price premium on Government purchases. The Department's overall assessment is that offsets are of considerable net benefit to Australian industry.

Recommendation 1 (paragraph 2.16 of Report 270)

The Committee recommends that:

The Department of Industry, Technology and Commerce develop a comprehensive database and directory on the capabilities, technologies and interests of local industry by 31 December 1987.

Response by the Department of Industry, Technology and Commerce

11. DITAC accepts the need for comprehensive databases and directories on the capabilities, technologies and interests of local industry.

12. However, there are currently in excess of 650,000 firms in Australia and the development of one comprehensive industry data base would be a costly and time-consuming exercise which the Department does not have the resources to undertake. Furthermore, the extent of such a directory would far exceed the needs generated by the Offsets Program.

13. A national offsets program came into operation on 1 March 1988. Under the program State Offsets Authorities have primary responsibility for the involvement of additional local companies and will initially use their existing industry data bases to assist this activity. A number of States have indicated that they are currently involved in the further development of their data base. The National Industry Extension Service (NIES) subscribes to the Austrade (APSYS) data base and is currently developing ways in which this data can be enhanced to make it more suitable for their needs. DITAC has access to APSIS through NIES and will participate in the development of the information held.

14. Generally speaking, it is the responsibility of the overseas supplier to propose suitable offsets arrangements and to locate an Australian beneficiary. While the existence of an industry capability directory may be of some assistance in this respect, Australian firms need to play a more active role if the Offsets Program is to operate effectively and to the benefit of Australian industry. There is a need for Australian industry to prepare proposals to overseas suppliers of a standard which will win recognition and acceptance. Firms should have a good understanding of the Offsets Program, and to have developed a strategy as to how the program can assist the firm achieve its corporate objectives.

15. DITAC sees its role in respect of the Government's Offsets Program as that of gathering intelligence in relation to the capabilities required of local industry by overseas suppliers. State Authorities assist local firms take advantage of the opportunities which are available under the Program and provide detailed advice to overseas suppliers in regard to the capabilities of Australian companies in their area of responsibility. However DITAC, in conjunction with the relevant State Government Authorities, proposes to produce a list of Australian industry directories for distribution to overseas suppliers at an early date. The necessary information has been requested from the National Industry Extension Service (NIES) and the States.

16. The development of a specific data base for offsets purposes was not supported by the Government Offsets and Procurement Advisory Committee (GOPAC) which took the view that the existing NIES and Industrial Supplies Office network should be utilised and, if necessary, augmented.

17. DITAC believes that if anything more is justified then it should be developed by those who have a commercial rationale for doing so and is therefore a function more appropriately performed by the private sector. A number of privately developed directories already exist or are in the process of being developed.

Recommendation 2 (paragraph 2.29 of Report 270)

The Committee recommends that:

The offsets authorities forthwith publish and distribute to local industry seeking offsets work, a comprehensive directory of overseas firms participating in the offsets program. The directory must include:

- details of each firm's business in terms of products, technologies and interests;
- the nature and scale of its offset obligations; and
- non-sensitive information on the nature and scale of its acquittal plans.

Response by the Department of Industry, Technology and Commerce

18. DITAC currently produces a list of overseas companies participating in the Australian Civil Offsets Program and their contact points, which is widely distributed to local industry. This list is updated regularly and a current copy is attached (Attachment 1). It does not, however, include all the details recommended by the Committee. The following paragraphs comment on the three aspects raised in the Committee's recommendation.

19. The offsets administration tends to be most familiar with business activities of its suppliers insofar as they relate to the product purchased by the Commonwealth. Some of these suppliers have a single well known product line, others are diverse corporations with many activities. In general it has proven difficult to involve divisions of corporations which are not suppliers to the Government in the offsets obligations of another division of the same corporation. To indicate otherwise would be to mislead local industry. Nevertheless the Offsets Authority is expanding its knowledge base on major overseas suppliers and is actively negotiating at the corporate level to involve other divisions in meeting offsets obligations.

20. The Government accepted the recommendations of the Inglis Committee of Review on Offsets that the commitments of individual companies not be published, except in the case of major delinquencies. Since the introduction of the revised offsets policy in March 1986, considerable work has been done on establishing an agreed offsets position with the majority of overseas suppliers. This has involved a systematic process of reconciliation particularly in the context of the Pre-Qualified Offsets Supplier Scheme. However, previous experience is that the release of such information would provoke a strong reaction from many overseas suppliers who would dispute the accuracy of the figures quoted. There are a number of difficulties associated with releasing such information:

- the information rapidly becomes dated as the nature and scale of a supplier's offsets obligations are subject to constant change as the supplier incurs new obligations and progresses towards the fulfilment of existing ones;
- gross figures on obligations do not provide any indication of the time-scale of the obligations or the existence of any long-term agreement to acquit these obligations; and
- the existence of a large obligation arising from a recent major purchase may give the impression of delinquency giving the overseas supplier unwarranted adverse publicity.

21. DITAC's list of overseas companies participating in the Australian Civil Offsets Program lists contact points for those companies; where possible, Australian contacts are also listed. This information is made available to those Australian companies who wish to seek offsets work. It is strongly recommended that inquiries be made first to the Australian contact of the overseas supplier. Listing in this publication does not imply anything about the performance of overseas companies in meeting their offsets obligations. Rather it provides an indication of those companies that have supplied and expect to continue to supply goods and services to the Commonwealth and will thereby incur offsets obligations.

22. There are some general observations which DITAC would make in regard to this recommendation, which are set out below.

23. Overall, DITAC believes that it is unrealistic to expect that publication of a list of overseas companies with outstanding offsets obligations will assist local industry better to participate in the Program. The reasons are outlined below:

- overseas suppliers to the Government are generally very large corporations often with a single or limited range of products; it is therefore difficult to match the aspirations of a small Australian company with the corporate goals of a transnational;
- while the Civil Offsets Authority has developed new guidelines to assist small local firms to participate in the Offsets Program (for example, the introduction under the Program of venture capital funds specialising in seed and early start-up investments) it is always likely to be difficult for small firms in many areas to participate:
 - . Australian companies need to be aware that a great deal of time and effort is often required to secure ongoing contracts with overseas suppliers particularly when the overseas supplier already has established sub-contractors and suppliers;
 - . these companies need to be able to perform in terms of quality, price and delivery and demonstrate a capability and a willingness to become involved in the Program;
- DITAC's experience indicates that to make the information available, with all the necessary extensive explanations and qualifications, is not likely to assist additional local firms win offsets. The present system, which encourages local firms to target appropriate overseas suppliers and then to discuss offsets prospects with the Department, State Authorities, Austrade and Defence, tends to inform local firms more fully and help them to avoid many of the pitfalls which exist in winning their first offsets order; and
- local firms should be targeting those overseas suppliers whose activities are most relevant to their own activities rather than on the basis of the size of the outstanding obligation. Furthermore it may well be the case that overseas suppliers with little or no outstanding obligations are the companies most likely to be receptive to proposals put to them by local firms. In this respect it should be noted that overseas suppliers are able to accrue credits to offset anticipated obligations.

24. With regard to the first part of the recommendation, DITAC engaged a consultant to acquire information on overseas companies in the information technology area to assist in the negotiating process. The information sought by DITAC included details of the global strategy for manufacturing and research and development of a number of major transnational corporations in the information technology area and of the investment incentives provided by other countries:

- this information has been made available to the State Offsets Authorities for dissemination to local industry; and
- a similar exercise is currently being undertaken in the aerospace industry in regard to individual corporations.

25. DITAC has developed a bi-monthly magazine entitled the "Australian Technology Magazine" with the primary objective of disseminating information on new developments and opportunities arising under the Department's programs. It is proposed to use this magazine to convey information to local industry on the opportunities available under the Offsets Program and non-sensitive information on the nature and scale of a supplier's acquittal plans. (Copies are available on request from DITAC.) Initial copies of the magazine were included in the Financial Review.

26. The inclusion of the States under a national Offsets Program is also likely to improve local industry's access to information and opportunities related to the Civil Offsets Program. The States will have access to the Department's management information system for the Civil Offsets Program and will be responsible for much of the delivery of the program.

27. The progressive expansion of the concept of longer term agreements not related to specific purchases such as Pre-Qualified Offsets Supplier Agreements, Partnerships for Development Agreements and other forms of corporate Agreements will in the short term cover those overseas corporations which between them contribute a substantial majority of all offsets obligations. As these agreements are of necessity closely linked to corporate development plans the corporations involved regard them as highly confidential.

28. The information contained in these agreements has little short term relationship to a corporation's offsets obligations and if the acquittal plans were made non-sensitive to a degree acceptable to the corporations involved, it is DITAC's view that they would be so vague as to be meaningless. The Department reiterates its view that local firms should be encouraged to contact offsets authorities for guidance in this matter.

Response by the Australian Trade Commission

29. In regard to this recommendation, the Australian Trade Commission (Austrade) experience is that the information on offsets obligations already provided by DITAC, together with other initiatives designed to inform Australian industry of offsets opportunities, adequately serves the purpose of encouraging Australian companies to seek export markets through the offsets vehicle. Additionally, the form in which it is made available encourages firms to seek advice and assistance from Austrade offices both in Australia and overseas. This in turn provides Austrade with the opportunity to provide professional support aimed at ensuring many of the pitfalls and problems which could be encountered, are avoided.

Response by the Department of Defence

30. The concept of distributing a comprehensive directory of overseas firms participating in the Offsets Program is agreed, and Defence has already prepared a directory to meet this need. The directory includes the name of the overseas firm, telephone and telex contact numbers, information on the contract value and a statement of what industry the firm is involved in. Difficulty has arisen and will continue to arise when addressing acquittal plans. Local industry also has alternative avenues for getting a more detailed insight into overseas firms obligations/intentions through its existing relationships with such firms, contract data published in the Australian Government Purchasing Gazette and contacting offsets authorities for advice.

Recommendation 3 (paragraph 2.46 of Report 270)

The Committee recommends that:

All organisations subject to the Offsets Program publish forward procurement plans as early as practicable consistent with their operating and commercial circumstances.

Response by the Department of Administrative Services and the Department of Industry, Technology and Commerce

31. In December 1981 the (then) Public Service Board issued guidelines for the Production of ADP Strategic Plans. Those guidelines were superseded by Corporate Information Technology Planning Guidelines issued by the Department of Finance in October 1987. Finance's Guidelines provide for the development by Commonwealth agencies of forward procurement plans identifying requirements for information technology equipment and services for the three year period of the agencies' strategic plans. The forward procurement plans are to comprise a detailed schedule of information technology equipment to be acquired, together with proposed costs and timings for procurement.

32. The Inglis Committee of Review on Government High Technology Purchasing Agreements, which reported to the (then) Minister for Local Government and Administrative Services and the Minister for Industry, Technology and Commerce in February 1987, made a series of recommendations in relation to forward procurement plans. These recommendations included:

- . that all Commonwealth agencies prepare forward procurement plans identifying requirements for technology intensive products and services for a period up to three years in advance and updated annually; these plans should be consistent with any Government decisions on the forward estimates of those agencies dependent on Budget appropriations;
- . that the Department of Finance and the (then) Department of Local Government and Administrative Services develop appropriate rules and guidelines for this process in consultation with agencies; and
- . that forward procurement plans be consolidated and published annually by the (then) Department of Local Government and Administrative Services, bearing in mind national security, commercial and like considerations.

33. Recommendations in the Inglis Report accepted by the Government form the basis for the work of an Inglis Report Implementation Task Group comprising officers of DITAC and the Department of Administrative Services. This Group is responsible for implementation of the Inglis recommendations and one of its priorities is the development of forward procurement plans. The Task Group commenced operating in June 1988 and progress will be regularly monitored by the Departments involved.

34. The National Preference Agreement, in its Memorandum of Understanding, also includes a commitment for Commonwealth and State purchasing agencies to work towards the publication of forward procurement plans with a view to achieving greater uniformity. In this context the Government Offsets and Procurement Advisory Committee (GOPAC) considered that the three years proposed by the Inglis Committee should be a minimum figure and be supported by longer term projections where possible.

Response by the Department of Defence

35. Defence advised that it has in place a system for the early release of consolidated information on minor capital procurement plans and is considering a similar release of the unapproved major capital program to industry.

Recommendation 4 (paragraph 2.57 of Report 270)

The Committee recommends that:

An industry advisory group concerned solely with the offsets program, and with terms of reference similar to the former Offsets Advisory Committee, be re-established by 30 September 1987.

Response by the Department of Industry, Technology
and Commerce

36. DITAC is committed to the concept of an industry consultative mechanism associated with the administration of the Civil Offsets Program. While recognising the need to ensure effective consultation with industry, the Department is of the view that it is not necessary to have a separate industry advisory group when the mechanism currently exists which will provide industry with the opportunity to convey its views on the operation of the Civil Offsets Program. DITAC is also concerned to reduce the number of committees and working groups currently serviced by the Civil Offsets Authority.

37. Accordingly, the functions of the Offsets Advisory Committee (OAC) have been combined with those of the State Preferences and Industry Restructuring Advisory Committee (SPIRAC) to form a new tri-partite committee called the Government Offsets and Procurement Advisory Committee (GOPAC). The membership is based upon that of SPIRAC with enhanced industry representation. Industry representation on GOPAC ensures effective co-ordination with industry policy developments in relation to the information, aerospace, electronics and scientific and medical equipment industries. A number of the industry members of GOPAC were previously members of OAC. (List of GOPAC members is at Attachment 2).

38. Furthermore, an advisory body which incorporates representatives of State Governments is now essential to the operation of the Australian Civil Offsets Program. Under the national program the relevant State Departments will have a similar role to that of industry representatives, that is, promotion of the offsets program, advising on industry capabilities, providing input on policy issues and reviewing progress of the Program. The States will have much of the responsibility for the delivery of the Civil Offsets Program and GOPAC will provide an effective mechanism for State representatives to consult with representatives from industry.

39. GOPAC's role in relation to the Offsets Program is to:

- . provide advice on the development and implementation of government offsets policies;
- . develop a uniform Commonwealth-State approach to offsets policy;
- . promote the Offsets Program and review progress; and
- . identify particular industry or product groups which could be assisted by the Program.

Meetings will be of sufficient frequency and structured to allow adequate time for discussion of offsets issues. GOPAC met for the first time on 4 June 1987 and again on 28 August 1987 and 7 July 1988. It is expected that the Committee will meet two or three times a year. A Standing Sub-Committee has been established which will meet more frequently to deal with particular matters referred by GOPAC.

40. GOPAC has already considered a range of issues including:

- . DITAC's response to the recommendations of the JCPA Report on the Implementation of the Offsets Program;
 - in particular GOPAC has considered this recommendation and suggests that given the emergence of the Australian Civil Offsets Program the present arrangements are more appropriate;
- . proposed revisions to the Australian Civil Offsets Program Guidelines (guidelines are at Attachment 3);
- . Partnerships for Development Agreements.

41. Industry has also had the opportunity to provide comments on the operation of the Offsets Program through other mechanisms, for example, the Industry Councils. At the last meeting of the Australian Manufacturing Council a proposal for a joint councils' working party on offsets was endorsed. The working party which has met on a number of occasions with Departmental representatives present, also provided comments on the proposed changes to the Civil Offsets Program Guidelines, and these comments were taken into account in finalising the guidelines.

Response by the Australian Trade Commission

42. Austrade, as a member of GOPAC, is able to put forward its views on the use of the Offsets Program as a marketing tool. Membership also provides the opportunity for closer liaison with the States which facilitates better co-ordination of support provided to firms seeking involvement in the offsets program.

Response by the Department of Defence

43. The Defence Industry Committee, which is chaired by a senior businessman (Mr John Hooke, CBE) and comprises senior commercial, Service and Government civilian personnel, advises the Minister for Defence on the implementation of the Defence Offsets Program. Defence supports the reforming of a committee similar to the Offsets Committee and will serve on it.

Recommendation 5 (paragraph 3.9 of Report 270)

The Committee recommends that:

The Departments of Industry, Technology and Commerce, and Local Government and Administrative Services report in the Finance Minute on the extent to which purchasing authorities comply with the existing reporting procedures.

Response by the Department of Industry, Technology and Commerce

44. The Civil Offsets Authority has worked with the Department of Administrative Services (DAS) and the Bureau of Industry Economics (BIE) seeking to identify areas of non-compliance with the existing offsets reporting procedures or areas of Government purchasing to which the offsets policy has not been applied.

45. No major areas of non-compliance were identified and it is considered that the recent higher profile of the program has served to create greater awareness in purchasing authorities. A number of areas such as purchases by hospitals and Commonwealth purchases made against State period contracts were identified and will be addressed in the context of Commonwealth/State consultation under the Australian Civil Offsets Agreement. Overall DITAC's impression remains that compliance is generally satisfactory and that action now in hand will result in a further marginal improvement. (See BIE Review of Offsets Program at paragraphs 126 to 133 below.)

46. Details of many of the factors contributing to improved compliance by both suppliers and purchasing authorities have been addressed elsewhere in the response. (See response to Recommendation 20, para 6.28; at paragraph 113 below). The promotion of the Australian Civil Offsets Program held early in 1988 better informed purchasing authorities of the new Offsets Program requirements. The development of the new Offsets clauses in Requests for Tenders and redrafting of contract clauses by the Commonwealth and State offsets authorities, including redrafting of the offsets section of the Commonwealth Purchasing Manual, will improve purchasing authorities' understanding of the program.

Response by the Department of Administrative Services

47. The basis for the current Offsets Program is set out in the joint statement made by the Minister for Industry, Technology and Commerce and the Minister for Defence on 15 January 1986. The statement indicated that the Government had accepted the thrust of the recommendations of the December 1984 Report of the Committee of Review on Offsets.

48. One recommendation was that a directive be given to all Government purchasing authorities requiring them to provide a return each financial year to the Offsets Authority in DITAC detailing their overseas purchases. Purchasing authorities were also to be required, in the case of civil purchases, to provide copies of all Requests for Tender where contracts were expected to exceed offsets thresholds to the Offsets Authority.

49. Although no directive was in fact issued to purchasing authorities in the terms recommended by the Committee, the Offsets Authority has established appropriate reporting links with Commonwealth purchasing authorities. Under the arrangements established by DITAC, purchasing authorities provide advice to the Offsets Authority of Requests for Tender where contracts are expected to exceed the offsets threshold and are required to ascertain from the Offsets Authority whether overseas suppliers have offsets clearance before entering into contracts.

50. Advice of tenders invited and contracts arranged by purchasing authorities subject to the Audit Act is published in the Commonwealth (Purchasing and Disposals) Gazette. The Gazette thereby provides a mechanism for the Offsets Authority to check that the separate reporting procedures it has established with purchasing authorities are operating satisfactorily. Where procurement is carried out by way of exemptions procedures provided for under the Finance Regulations, the contracts arranged notification is the only mechanism available at present to the Offsets Authority for identification of purchases subject to the Offsets Policy for which tenders were not called.

51. The requirement to advertise tenders invited and contracts arranged is prescribed in Finance Direction 25/2A and Regulation 53 respectively. The requirement that tenders are to be publicly invited for supplies, the estimated cost of which exceeds \$20,000 (ie above the public tender threshold), flows from the provision of Finance Regulation 52, although this Regulation does not specify the medium by which the invitation is to be effected. Finance Direction 25/2A requires that invitations to tender be published in the Gazette as soon as possible after the tender documentation has been prepared and prior to the issue of the documentation. The inclusion of contracts arranged in the Gazette is prescribed in Finance Regulation 53 which states that all contracts over \$2000 must be notified in the Gazette as soon as possible after the contract has been awarded.

52. While the existing reporting procedures established by DITAC with purchasing authorities should provide adequate information to the Offsets Authority of single orders placed overseas where the duty free price of the purchase exceeds the offsets threshold of \$2.5m, they do not necessarily ensure that the Offsets Authority will receive advice of orders below the offsets threshold which are subject to the cumulative orders provisions of the Offsets Program.

53. This point has been taken up with DITAC with a view to reporting procedures being more clearly specified in the Commonwealth Purchasing Manual. The Offsets chapter of the Manual, which is issued by DAS, is being revised in the light of changes to the Offsets Program arising from the negotiation of the Australian Civil Offsets Agreement with the States.

54. The requirement for public notification through the Commonwealth (Purchasing and Disposals) Gazette of tenders invited and contracts arranged is being reviewed as part of the Financial Management Improvement Program (FMIP) Review of Commonwealth-wide Procurement. This Review aims to reform government purchasing service-wide and to promote greater efficiency, effectiveness and economy with a view to improving the regulatory framework of Commonwealth procurement and existing policies and procedures. It is anticipated a submission will be considered by the Government in the near future.

The Committee recommends that:

The Departments of Industry, Technology and Commerce, and Local Government and Administrative Services recommend procedures with a view to making collection of data more rigorous and report in the Finance Minute.

Response by Department of Industry, Technology and Commerce

55. DITAC accepts this recommendation. Since the introduction of the revised Offsets Program in March 1986 much has been done to improve the regular acquisition of data from participating companies. There has been a significant increase in the volume of returns now received.

56. The collection of information on Government purchases of goods and services from overseas suppliers has, in the past, been a major difficulty in the administration of the Australian Government Offsets Program. There is no central source of information on Government purchases and purchasing agencies have generally not accorded a high priority to maintaining up to date records which they are able to provide to the Offsets Authority.

57. DITAC has addressed this problem in a number of ways:

the announcement of the new policy itself helped to raise its profile with purchasing authorities; clearer policy objectives and guidelines have also improved notification and compliance;

the introduction of Pre-Qualified Offsets Supplier (PQOS) Agreements has meant that suppliers who are party to these agreements are required to report to the Offsets Authority on a regular basis providing details of all sales to the Government;

the broad application of PQOS and "Partnerships for Development" Agreements particularly in the information technology area will make a significant contribution to overcoming the problems associated with data capture;

a number of companies (19 as at 31 August 1988) in the information technology and aerospace areas have now signed PQOS agreements and negotiations are currently underway with an additional thirty companies in respect of PQOS or Partnerships for Development Agreements.

the introduction of Partnerships for Development Agreements as an alternative to PQOS or the contract by contract approach to offsets will also make a significant contribution to overcoming the problem of notification of purchases;

- the "Partnership" scheme encourages transnational corporations to contribute to the implementation of the Government's industry strategies by expanding their activities in Australia. The transnational corporations will provide direct links to international markets for Australian developed products and services and undertake product development work to achieve agreed levels of exports and research and development which was based upon a corporation's gross imports. Overseas suppliers which enter into Partnership for Development agreements are exempt from the requirements of the Offsets Program. To date a number of companies (12 as at 31 August 1988) in the information technology area have entered into "Partnership" agreements. (Details of Partnership for Development proposals are at Attachment 4.)

58. Previously, measures taken by overseas companies to comply with Telecom's local content policy were deemed to satisfy offsets requirements. This is no longer the case and the Civil Offsets Program has a greater impact on the telecommunications area as a result. The new guidelines, the development of the Communications Equipment Industry Development Strategy and improved relations with Telecom have resulted in an improved flow of information from Telecom to the Offsets Authority.

59. The Bureau of Industry Economics (BIE) recently completed an assessment of the data collection procedures as part of its Monitoring of the Offsets Program. The Bureau's Report (June 1987) noted significant improvements in notification of purchases since the policy was revised in March 1986 (see also responses to recommendations 21 and 22 at paragraphs 120 to 123 and 124 to 125 respectively).

60. See also the response provided in paragraphs 44 to 54 (in particular, for the views of the Department of Administrative Services, see paragraphs 47 to 54)

Recommendation 7 (paragraph 3.16 of Report 270)

The Committee recommends that:

The Department of Industry, Technology and Commerce report in the Finance Minute on both the cost-effectiveness and legality of applying offsets to accumulated orders.

61. The principle of seeking offsets on the basis of all overseas orders for similar products placed by Commonwealth Government Departments and Authorities with one supplier in a single financial year was developed by the Interdepartmental Committee on Offsets in the early 1980's and was progressively implemented from that time using a base date of 1 July 1981. This initiative was supported by a recommendation of the Committee of Review of Offsets (Inglis) and accepted by the Government in their decision of January 1986. This approach was also adopted by the States and is now included in the Australian Civil Offsets Agreement.

62. There is no legislative basis for the Offsets Program either in the context of accumulated orders or in general. DITAC believes that the matter of legality does not arise; DITAC suggests that the Government's acceptance of the Inglis Committee recommendation constitutes adequate authority.

63. The cost-effectiveness of applying offsets to accumulated small orders has not been subject to a recent analysis. At the time that the concept of accumulating small orders was considered by the Interdepartmental Committee in 1980 it was estimated that an additional \$30m to \$50m per year in offsets obligations would be captured. This amount could be expected to have increased since then and to increase further with the Australian Civil Offsets Agreement under which both Commonwealth and State purchases are aggregated.

64. The advantages of accumulating orders are an improved negotiating position with regard to major suppliers and a larger pool of offsets against which to seek worthwhile offsets activities. It also serves to minimise the splitting of orders as a way of evading the offsets requirement.

Response by the Department of Defence

65. The view of the Department of Defence is that the cost-effectiveness and practicality of applying offsets to accumulated orders needs addressing. Defence is prepared to assist DITAC in this regard.

Recommendation 8 (paragraph 3.24 of Report 270)

The Committee recommends that:

The Standing Interdepartmental Committee on Offsets take responsibility for clarifying the relationship between the Offsets and Purchasing Preference Policies and eliminate any confusion amongst affected suppliers to the Commonwealth.

Response by the Department of Industry, Technology
and Commerce

66. DITAC and DAS are reviewing the effectiveness of current purchasing preference policy as an industry policy mechanism and GOPAC will be consulted in the course of the review. One issue which the review will address is the link between the application of the preference margin and the offsets policy; the review is expected to be completed by the end of 1988. This examination of the current policy will take place in the context of the implementation of the Government's decisions in respect of the recommendations of the Inglis Committee of Review of Government High Technology Purchasing Arrangements and the 1988 May Economic Statement.

67. Given the significance of the preference arrangements and the offsets policy and the importance of State Government involvement in these matters, it is considered that GOPAC should have a major role in consideration and simplification of the interaction of offsets and preference policies and ultimately, if appropriate, make a recommendation to the Australian Industry and Technology Council. The Interdepartmental Committee (IDC) on Offsets will be consulted if any changes to offsets policy are contemplated as a consequence of any recommendation by GOPAC.

Response by the Department of Administrative Services

68. DAS agrees that the interaction of the purchasing preference and offsets policies requires careful consideration.

69. Although both policies are ostensibly directed towards industrial development objectives, the preference policy is a broadly-based policy which acts very simply to reward Australian content in government purchasing, while the offsets policy is focused on the enhancement of Australia's industrial and technological development by the establishment within Australia of internationally competitive activities. While the two policies are complementary, their objectives may not always be compatible.

70. On 8 September 1987, the Minister for Industry, Technology and Commerce announced the Government's Information Industries Strategy. The Strategy included provision for negotiation of Partnership for Development Agreements with transnational corporations. There have been claims that the direction of the purchasing preference policy is in conflict with the direction of other industry development policies such as the offsets policy and the 'Partnership for Development' Agreements. DAS and DITAC are currently jointly reviewing the effectiveness of the purchasing preference policy from an industry development viewpoint. The review will be looking at the consistency between the aims of the preference policy and the broad industry development strategies of the Government achieved through policies such as offsets. Any change in these policies would of course be a matter for Government decision.

Response by the Department of Defence

71. The Department of Defence view is that action should be taken to clarify the relationship between Offsets and Purchasing Preference Policies but Defence recognises that it is not an easy task.

Recommendation 9 (paragraph 3.29 of Report 270)

The Committee recommends that:

The outcome of efforts directed to resolving the confusion and conflict between the various State and Commonwealth offsets programs be reported in Finance Minute.

Response by the Department of Industry, Technology and Commerce

72. The Australian Civil Offsets Agreement which established a single national offsets program, with effect from 1 March 1988, has been signed by the Commonwealth and all States except Western Australia. Western Australia's involvement in the Program is still subject to negotiation.

73. The Agreement acknowledges the costs and disruption to business arising from the operation of a number of separate offsets programs and its signatories have agreed that where offsets are required they will be sought only in accordance with the principles of the Australian Civil Offsets Program. Guidelines for participants similar to those previously used by the Commonwealth were developed in consultation with State Governments and were released in March 1988. (A copy of the Australian Civil Offsets Agreement and the Administrative Arrangements are at Attachment 5.)

Recommendation 10 (paragraph 3.37(a) of Report 270)

The Committee recommends that:

The terms of reference for the Standing Interdepartmental Committee on Offsets be revised in accordance with the Government's decision following the Inglis Report.

Response

74. The terms of reference for the IDC on Offsets have been revised to take into account the Government's decision following its consideration of the Inglis Report. The Minister for Defence and the Minister for Industry Technology and Commerce have approved the following terms of reference:

- (a) monitor and advise on the broad policy direction of the Offsets Program with a view to bringing to Australian industry advanced technologies, skills and capabilities to meet the goals of:
 - (i) establishing internationally competitive activities with Australia; and
 - (ii) supporting defence industry capability objectives;

- (b) having regard to the above civil and defence goals, advise on the development and maintenance of comprehensive offset policy guidelines for endorsement by the Minister for Industry, Technology and Commerce and the Minister for Defence;
- (c) advise on procedures and other measures to ensure that the offsets policy is properly and universally applied by all Departments and Statutory Authorities; and
- (d) assist in integrating offsets with the Government's broader policy objectives and programs in respect of industry development, technology, trade and defence.

Recommendation 11 (paragraph 3.37(b) of Report 270)

The Committee recommends that:

The Standing Interdepartmental Committee on Offsets reconvene as a matter of urgency and meet frequently, regularly and at a senior level to ensure adequate interdepartmental liaison on the offsets program.

Response by the Department of Industry, Technology and Commerce

75. The IDC on Offsets has been reconvened and met on 29 April and 4 August 1987. Representation is at First Assistant Secretary/Assistant Secretary level; the Committee is chaired jointly by the Department of Defence and DITAC; and the Committee will meet as required.

76. Membership is currently drawn from DITAC, the Department of Defence, the Treasury and the Departments of Finance, Transport and Communications, Administrative Services and Prime Minister and Cabinet.

77. The IDC has been consulted on the revisions to the Offsets Program guidelines, the development of Partnerships for Development Agreements, the Australian Civil Offsets Program and DITAC's response to the recommendation of the JCPA.

78. With regard to the frequency of meetings, since the role of the IDC on Offsets is to consider changes in offsets policy it is convened only when changes are contemplated. For example, wide consultation between Departments will need to take place in the context of the Government's decision to review the application of the Offsets Policy to Government Business Enterprises in the Department of Transport and Communications portfolio. DAS has recently established a Working Group of officers from DITAC and DAS to look at Chapter 9 on offsets of the Commonwealth Purchasing Manual and to provide appropriate advice on revisions to the Chapter to the IDC on Offsets for consideration.

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Response by the Australian Trade Commission

79. Austrade supports the reconvening of the Standing Interdepartmental Committee on Offsets, and notes that the IDC has, in fact, met on two occasions during 1987. Austrade has made the necessary administrative arrangements with DITAC to become a member of the Committee.

Recommendation 12 (paragraph 4.16 of Report 270)

The Committee recommends that:

The civil and defence offsets authorities increase their efforts to present the offsets program as a single program and, to this end:

- co-operate closely in the joint publication of the proposed directory of relevant local firms;
- agree on specific plans for both the joint publication of a directory of overseas firms and an annual report; and
- revise the guidelines, on a joint basis, as required.

Response by the Department of Industry, Technology and Commerce

80. The recommendations concerning the publication of a directory of relevant local firms and a directory of overseas firms are addressed in paragraphs 11 to 17; and paragraphs 18 to 28 respectively.

81. There have been a number of recent initiatives under the Civil Offsets Program including the announcement of the Partnerships for Development option on 8 September 1987, the signing of the Australian Civil Offsets Agreement on 3 December 1987 and the incorporation of the investment guidelines within the Program. The Defence Offsets Authority has indicated that it does not wish to incorporate these new initiatives in the Defence Offsets Program on the basis that these developments are not compatible with its specific strategic objectives.

82. The Civil and Defence Offsets Authorities are jointly preparing a booklet which will outline both the civil and defence components of the Australian Government's Offsets Policy. The Department of Defence then intends to incorporate the specific requirements of the Defence Offsets Program into its publication "Doing Defence Business".

83. A revised version of the guidelines booklet issued in March 1988 applies only to the operation of the Australian Civil Offsets Program. The Department of Defence was consulted in the preparation of this booklet.

Response by the Department of Defence

84. While co-operation exists between the offsets authorities, because Defence Offsets and Civil Offsets have different objectives and are administered completely differently (see Defence response to Recommendation 13 at paragraphs 87 to 89 below), the offsets programs cannot be presented as a single program. Efforts are continuing in regard to the publication of joint directories of local and overseas firms. Defence intends to publish a "Defence Offsets Report" within the "Defence Report" which is a publication produced annually. The offsets guidelines are currently being revised by a Department of Defence/DITAC working group.

Recommendation 13 (paragraph 4.27 of Report 270)

The Committee recommends that:

The Departments of Defence, and Industry, Technology and Commerce examine the need or otherwise for the current dual administration of offsets, and in particular, investigate means whereby the administrative role can reside solely within the Department of Industry, Technology and Commerce whilst maintaining suitable links with defence industry policy.

Response by the Department of Industry, Technology and Commerce

85. The Civil Offsets Program is non-directive in nature and is primarily concerned with developing competitive advantage in Australian industry. Its objective is to build dynamic outward looking industries which are effectively integrated with world production, marketing and investment networks. The Civil Offsets Program is an important tool in the creation of an environment in which local industry can compete in the international arena and in this respect differs significantly from the strategic objectives of the Defence Offsets Program.

86. The recent achievements in the civil area stem largely from the Government's decision to separate the administration of the civil and defence components of the Program. The civil program is now closely integrated with the Government's other industry policies and strategies. Nonetheless close working relationships have been established and will continue with the Defence Offsets Authority and exchange of data and information occurs at all levels. It is DITAC's view that the differing objectives of the Civil and Defence Offsets Programs would make administration by a single Authority extremely difficult.

Response by the Department of Defence

87. Defence does not accept this recommendation. The primary objective of Defence Offsets is to foster in industry the specific capacity needed to supply, repair and maintain defence equipment. Defence offsets are therefore usually project related, always form part of competitive bids by overseas firms for Defence contracts, and thus become obligations under those contracts for which Defence is responsible.

88. By contrast, and as a non-purchasing department which does not itself generate offset obligations, the Department of Industry, Technology and Commerce must use civil offset obligations generated by other non-Defence purchases to further its general industry development objectives. As presently administered, civil offsets are not competitively assessed, are not taken into account in awarding contracts for civil government purchases, and therefore do not form part of an overseas supplier's contractual obligations. Defence offsets and civil offsets thus have different objectives and are administered completely differently.

89. As recommended in the Inglis Report and agreed by the Government, Defence must maintain autonomy in the administration of the Defence Offsets program within the current administrative arrangements agreed by the Ministers for Defence and for Industry, Technology and Commerce. The total Australian Industry involvement in Defence procurement includes Defence Designated and Assisted Work and its relationship with Offsets requires special attention. Defence is also concerned that any change could reduce offsets of importance to Defence, particularly those improving self-reliance. It should also be noted that overseas defence contractors and Defence Departments may be less prepared to release classified defence technology to Australia for a civil-administered assets program; foreign Governments, particularly the US Government, are also more sympathetic to defence offsets than civil offsets.

Recommendation 14 (paragraph 5.14 of Report 270)

The Committee recommends that:

The 'new work' criterion in the guidelines be redefined as a new activity for the company in Australia which is unrelated to customer support, distribution or marketing of existing products.

Response

90. DITAC accepts this recommendation in principle. Unfortunately it was not possible to reach agreement with the States on a revised wording for this criterion prior to the publication of the revised civil guidelines in March 1988. The wording from the previous Commonwealth guidelines was acceptable however, and this clause was carried through unaltered into the 1988 edition. The Guidelines will need to be further developed over the next year or two to incorporate new initiatives and developments in the Program and the Committee's recommendation will be taken into account at that time.

Recommendation 15 (paragraph 5.50(a) of Report 270)

The Committee recommends that:

The guidelines booklet be revised and updated as a matter of priority. In addition to the matters covered in this report, the thrust of the revision should be to clarify areas of uncertainty and anomaly, and to reduce areas of unnecessary administrative discretion.

Response

91. DITAC accepts this recommendation. The revised civil guidelines booklet was issued in March 1988.

92. In the development of the revised guidelines a number of discussion papers were prepared on specific aspects of the 1986 guidelines which required clarification. These papers were widely circulated to industry, trade unions, State Government Departments, the IDC on Offsets, GOPAC and other interested parties for comment. The comments received were considered in the preparation of the current booklet. The revisions related to difficulties experienced in the administration of the Program both by the Department and participants. The major difficulties related to a lack of clarity in definitions, methods of valuation and the types of activities which might be eligible for offsets support.

93. DITAC is also of the view that there is a need to achieve a greater focus on export orientation and the development of new industries through improved product development capacity, the acquisition of leading edge technology and the upgrading of training and education programs.

94. The revision of the guidelines booklet was finalised in consultation with GOPAC, the IDC on Offsets and the Department of Defence and released in March 1988. It is DITAC's belief that the revised guidelines are a considerable improvement over the 1986 edition and take into account matters raised by the Committee.

95. Further development of the guidelines will be necessary as both industry policy and Australian industry capability evolves. For example, matters already under consideration include a possible revision of the offsets threshold, improved guidelines covering the transfer of offsets credits and obligations and the application of offsets to services industries.

Recommendation 16 (paragraph 5.50(b) of Report 270)

The Committee recommends that:

The results of decisions by the offsets authorities be well documented and published in order to establish a comprehensive register of precedents to ensure consistency and equity in subsequent decisions. Furthermore, significant precedents should be reported to the Minister and described in the annual report of the program.

Response by the Department of Industry, Technology and Commerce

96. DITAC accepts this recommendation and advises that a number of steps have been taken to document precedents to ensure consistency in decision making. These include a requirement for the registration of precedents in the Administrative Arrangements of the Australian Civil Offsets Agreement; the reporting of significant precedents to the Minister in the annual report of the Program; and the incorporation of precedents in the Offsets Procedures Manual. (Since the program was only recently established on 1 March 1988 a significant volume of precedents has not yet developed, however, the value of documenting such precedents is accepted.)

Response by the Department of Defence

97. Defence accepts this recommendation. Defence has commenced the establishment of such a register but in its present form would not be suitable for public issue. Before any such publication, further consultation with DITAC on the format and content will be necessary. Any subsequent release should be done on a trial basis to monitor the effectiveness against the cost of development and maintenance (the usefulness of such documentation once any commercially sensitive data has been removed needs to be tested). Offsets decisions are usually noted in the Ministerial press releases which accompany the signing of Defence contracts and inclusion of significant precedents in the annual report of the program would simply be an extension of existing Defence practice and is agreed.

Recommendation 17 (paragraph 5.53 of Report 270)

The Committee recommends that:

In any entirely new circumstances (especially those that may be open to challenge), the offsets authorities arrange or undertake an independent assessment of the situation prior to entering any negotiations with the overseas supplier.

Response by the Department of Industry, Technology and Commerce

98. DITAC accepts this recommendation. Elaborate consultative and assessment procedures already exist within the civil offsets administration. Internal facilities such as the BIE and Industry Policy Divisions regularly provide advice on offsets matters.

99. The Department of Defence either through the DITAC/Defence offsets working group or more formally, the IDC on Offsets and GOPAC may also become involved in the consideration of an entirely new type of proposal. With the commencement of the Australian Civil Offsets Program on 1 March 1988, State Offsets Authorities will be consulted on "any entirely new circumstances" as they arise. Any of those parties may seek expert advice from external sources if they so wish. Relevant industry associations and firms would be consulted as a matter of course.

100. The consultative and assessment procedures to be followed when any entirely new circumstance arises are to be included in the Civil Offsets Procedures Manual.

Response by the Department of Defence

101. Defence accepts this recommendation in principle. In Defence purchases, the involvement of Australian industry is a factor right from the start of the development of the purchase, it is a significant factor in the decision to choose a particular supplier, and remains that way through the negotiating phase into contract placement and consequently into management of the contract. Defence procedures are thus seen to be close to meeting this requirement already.

Recommendation 18 (paragraph 5.63 of Report 270)

The Committee recommends that:

When valuing technology transferred, the offsets authorities should use:

- (i) paragraph 6.3 (a) (iii) of the Guidelines for Participants ie 'the selling price of all incremental sales of locally produced items derived from the technology over an agreed period.'; or, if this is not possible,
- (ii) a discounted valuation if a notional valuation of technology is given at the time of technology transfer and it is transferred to a subsidiary or otherwise associated company of the overseas company.

Response by the Department of Industry, Technology and Commerce

102. In negotiating the Australian Civil Offsets Agreement the Committee's recommendation (i) with regard to valuing technology transfer was considered. The revised guidelines state (see Attachment 3, para 4.2) that the cost of the technology transfer is the initial basis for offsets valuation. In line with a consistent emphasis on the provision of offsets for export activity resulting from any approved offsets activity, additional offsets value is allowed where local commercial activities result. New incremental rules adopted to limit offsets support for mature products now provide for offsets credits for exports for a maximum of two years. Exports may attract credits for an additional three years for sales over and above the average level of exports in the first two years.

103. DITAC does not consider that recommendation 18(ii), which involves discrimination against subsidiaries or local companies associated with overseas suppliers is an acceptable approach. Whilst the Department sympathises with the aspirations of locally owned companies and accepts that an additional degree of rigor is necessary when assessing the offsets activities of transnational corporations undertaken by their local subsidiaries, nonetheless it is DITAC's view that the objectives of the Offsets Policy will be fulfilled more effectively by treating all companies equally, regardless of their corporate links.

Response by the Department of Defence

104. The Department of Defence does not accept this recommendation. Implementation of this recommendation would lead to an administratively unworkable situation. It is agreed that the valuing of technology transfer needs to be carefully addressed and Defence intends to maintain the approach as outlined in the 'Technology Transfer' document presented to the Committee. However, motivation for the recommendation is recognised and will be addressed during the revision of the Offsets Guidelines.

Recommendation 19 (paragraph 5.75 of Report 270)

The Committee recommends that:

The proposed manual for staff of the civil offsets authority be completed as soon as possible. The manuals for both authorities should:

- specify a time limit for response to offsets proposals;
- detail the areas and limits of staff discretion including the levels of delegated authority;
- dictate a methodical and reliable procedures for recording all offsets data;
- be regularly revised; and
- prescribe information that is to be made available to the public.

Response by the Department of Industry, Technology and Commerce

105. A draft "Offsets Procedures Manual" was issued in June 1987. A revised manual is being developed in consultation with State Offsets Authorities and GOPAC to include procedures necessary for the administration of the Australian Civil Offsets Program and changes arising from the 1988 guidelines. This will be done after a period of experience in the administration of the national program.

Response of the Department of Defence

106. Defence accepts this recommendation. Defence instructions, on offsets are in place and will be regularly revised to cover all parts of the recommendation.

Recommendation 20 (paragraph 6.28 of Report 270)

The Committee recommends that:

Penalty clauses be included in all contracts/deeds of agreement entered into.

107. The existing forms of agreement used by the civil offsets administration have been developed in conjunction with the Attorney-General's Department. Extensive consultation has taken place and while not suggesting that present agreements are inadequate, the Attorney-General indicated in his submission to the Inglis Committee (a copy of which has been provided to the Committee on a previous occasion), that a number of legal obstacles exist to effective enforcement of offsets agreements and include the following:

- no contract exists with a specific member of Australian industry;
- the Commonwealth may not be able to show a loss as a result of non-compliance with the offsets requirement; and
- the Commonwealth would need to wait until the expiry of the period within which a particular offset obligation is to be achieved.

108. The Attorney-General concluded in part that:

- "Self help methods are more likely to secure compensation than an action for damages."

109. Whilst the advice on the legal enforceability of offsets agreements has not been that encouraging, DITAC considers that this matter should be seen in the overall context of the Civil Offsets Program. There is no substantial body of unfulfilled offsets obligations existing at present nor are there agreements with which the overseas supplier involved refuses to comply.

110. There have from time to time been a few cases where the offsets performances of overseas suppliers has been unsatisfactory. However, these are addressed in negotiations and if the difficulties cannot be resolved consideration is given to withholding offsets clearance for future orders. At this time no overseas supplier has an offsets performance so poor that it has been considered necessary to ask Ministers to name the supplier in Parliament. Certainly no legal action is contemplated by DITAC at present.

111. The Australian Civil Offsets Agreement, which was signed at the Australian Industry and Technology Council meeting held in December 1987, includes a clause which requires the States to support the Commonwealth in cases where it may be necessary to withhold offsets clearance. This clause will increase the leverage available to the offsets administration in some areas of the program.

112. Introduction of the Pre-Qualified Offsets Supplier Scheme has reduced the necessity for legal enforceability. The scheme involves overseas suppliers in viable long term offsets activities whose value is linked to the suppliers projected Government sales. Once corporate commitment to a project arising from these schemes is obtained and the necessary local investment made, the overseas suppliers involved will have a vested interest in its growth and development. These schemes are closely monitored with participating companies being required to report to the Civil Offsets Authority on a regular basis.

113. The "Partnership for Development" option allows transnational companies wishing to invest in Australia to enter into an agreement with the Commonwealth to develop product development and export activities in Australia which go beyond satisfying their offsets obligations. As it is essential to obtain corporate commitment to the establishment of these activities in Australia, this new development will also assist in minimising any non-compliance under the Offsets Program.

114. Nonetheless, the Civil Offsets Authority is continuing to give attention to ways in which offsets obligations can be more effectively secured. More detailed offsets proposals are now required before agreement is reached with an overseas supplier. This approach allows the offsets obligations of the supplier to be better defined and ensures that more detail in regard to Australian beneficiaries, activities to be undertaken and achievement milestones are able to be included in the agreement.

115. The development of agreements will continue with the State offsets administrations in the context of the Australian Civil Offsets Program and priority will continue to be given to the development of more effective forms of offsets agreements. GOPAC has also expressed the view that it is reasonable to include penalty clauses or performance bonds in offsets related contracts provided that these are in accordance with legal and commercial practice and do not lead to artificial elevation of prices. DITAC accepts this view while at the same time recognising the legal and technical obstacles involved in its implementation.

Response by the Department of Administrative Services

116. In discussions with DITAC and the Attorney-General's Department, doubts have been raised about the legal enforceability of penalty clauses.

117. Arrangements for securing offsets obligations are being addressed in the revision of standard offsets contract clauses. The revision of standard offsets tender and contract clauses is included in a work program agreed between DAS and the Attorney-General's Department for the revision of standard tender and contract documents used in Commonwealth purchasing. This project is being conducted under the supervision of a high level steering committee. Input will be obtained from DITAC and the Department of Defence in relation to that part of the project on standard offsets clauses.

118. The new Australian Civil Offsets Program Guidelines for participants issued by DITAC in March 1988 indicates that:

- (a) Where an overseas supplier does not discharge its offsets obligations in the agreed time or at the agreed rate, action may be taken to:
 - (i) withhold an offsets clearance for future purchases unless a satisfactory alternative offsets proposal is received to acquit the outstanding obligations; and
 - (ii) have Commonwealth and State Ministers publicise the delinquency of the overseas supplier.
- (b) The Offsets Authority may initiate action to cancel offsets work programs which, in its opinion, deviate so far from those approved that they circumvent the intention of the Policy. Such action will not cancel the offsets obligation and the overseas supplier will be required to undertake a revised work program.

Response by the Department of Defence

119. Defence includes clauses into its contracts obligating the supplier to specific arrangements under which there is a monitoring of achievement at a particular milestone. If it results in an underachievement by a company at that stage there is an agreement on the part of the company to a contract adjustment (eg to increase the total obligation at the end of the contract). Work is continuing with Attorney General's Dept on these clauses to further strengthen their legal basis.

Recommendation 21 (paragraph 6.35 of Report 270)

The Committee recommends that:

The work being undertaken to correct and update the records of both offsets authorities, together with any other work yet to be commenced and the timetable for its implementation, be reported in the Finance Minute.

Response by the Department of Industry, Technology and Commerce

120. The present information system (COMARS) is unnecessarily complex and is in need of simplifying, particularly as under the terms of the Australian Civil Offsets Agreement the system will eventually be directly accessed and updated by State Offsets Authorities. The Department has engaged Computer Power Pty Ltd to develop a National Offsets Management Information System (NOMIS). At present the design phase of the new system is complete; phase 2 will involve the reconciliation and transfer of data from COMARS to the new system and will be followed by phase 3 in which Commonwealth and State officials will be trained to operate the system. NOMIS is expected to be operational at the end of September 1988.

121. In its recent report "Monitoring of the Offsets Program", the BIE noted that the specific requirements in the Auditor-General's Report on the Offsets Program have been implemented. However, it has made a number of additional recommendations relating to changes to offsets data collection and to the data base including:

- . DITAC and DAS examine and implement further methods to improve the reporting of purchases.
- . Data collection of final prices and payment (or delivery) dates be performed routinely on a timely basis.
- . Database be expanded to list major subcontractors to Australian beneficiaries and more detail of the Australian beneficiaries' operations.
- . Annual contact be established with Australian beneficiaries under the new Program to determine the extent of their post-offsets activity.

122. These recommendations will be considered in conjunction with other improvements to be made in the development of NOMIS.

Response by the Department of Defence

123. Defence only regained the responsibility for administering its offsets program early in 1985 and since that time, it has been able to establish records for the period 1980-88. Records before that time have been recognised as unreliable having been maintained by several different agencies and the recording of Defence purchases was complicated by mixing Defence Designated and Assisted Work (DDAW) with Offsets and this no longer occurs. Nevertheless, figures that are available for that period, were provided to the Committee and where appropriate are referred to in current negotiations with suppliers who gained contracts in that earlier period. Since this information was provided to the Committee, Defence has done further work on establishing information for the period 1970-80. This research has led Defence to believe that there are no significant outstanding obligations for that period. Because of the difficulties with the format of historical data, Defence intends not to include it in the operational Australian Industry Involvement (AII) Data Base. Only data from 1 July 1980 onwards will be included, except where pre 1980 programs remain current, eg Lockheed. The AII data base, which comprises information on local content and DDAW in addition to offsets, was recently reconfigured to provide significant improvements in data assimilation and reporting flexibility. Facilities for remote terminals will improve greatly information flow to inquirers. System enhancement was completed in November 1987.

Recommendation 22 (paragraph 7.16 of Report 270)

The Committee recommends that:

The planned study by the Bureau of Industry Economics on civil offsets be upgraded to a full cost-benefit evaluation and completed as soon as possible.

124. The planned study by the BIE has commenced and will be undertaken in three stages:

Stage 1

An assessment of the data collection procedures and data base established by the offsets administration has been completed. An executive summary of the report is provided below - see paragraphs 126 to 133.

Stage 2

Will deal with practical and theoretical aspects of the Program, in particular, the economic rationale underlying the Program, including an analysis of the level of compliance with offsets guidelines and contracts.

Stage 3

A rigorous cost-benefit analysis will then be conducted.

125. The BIE is of the view that it would be premature to initiate Stage 2 before the new Offsets Program has been in operation for a longer period and most ongoing offsets activity has been negotiated within the new guidelines. Stage 2 is unlikely to be commenced prior to late 1988-89.

SUMMARY OF STAGE 1 OF THE BUREAU OF INDUSTRY ECONOMICS
REVIEW OF THE OFFSETS PROGRAM

126. A number of studies have analysed the Offsets Program or parts thereof. Invariably, they have found it difficult to make any quantitative assessments of the costs and benefits of the Offsets Program. The Inglis Review found that a major problem was the absence of reliable reporting and recording systems of offsets commitments and achievements. The end result has been that past studies have had to make qualitative assessments of the net benefit or cost of the Offsets Program.

127. The key costs relating to the Offsets Program include administration and compliance costs, price premiums, related government costs and resource costs from allocation distortions. One of the more difficult issues in the cost area is the question of price premiums. Ideally offsets work undertaken by Australian firms should be competitive so that the costs of the foreign prime contractors (primes) are not increased. However, the evidence indicates that the Offsets Program does involve cost penalties for the primes though it is difficult to quantify the extent of the premiums.

128. The benefits of the Offsets Program include increased Australian production and employment, improved access to overseas markets and technology transfer. The evaluation of many of these benefits is also very difficult. The extent to which an offsets policy has overcome purchasing biases and monopoly power exercised by foreign companies and governments cannot be readily quantified. One indicator would be the extent of follow-up orders not subject to offsets provisions but the cause and effect needs to be clear. For instance, follow-up export orders may be due to increased competitiveness resulting from depreciation of the exchange rate rather than the influence of the Offsets Program.

129. Many of the benefits associated with the Offsets Program will not occur for a number of years. For the purpose of this study, the emphasis will be on diffusion of technological benefits to other firms and related industries. Data of use to the BIE and the Offsets Branch of DITAC can be divided into four classes which coincide with the offsets cycle:

- (i) notification;
- (ii) offsets agreement;
- (iii) monitoring achievements; and
- (iv) post-offsets.

130. In the past, there has been little confidence in the magnitude and coverage of the Offsets Program because of poor notification procedures. The Offsets Program is not embodied in legislation or regulations and therefore the reporting of offsets obligations depends on the co-operation of the purchasing authorities. Since the introduction of the new policy, the Offsets Branch has established closer relations with purchasing authorities to improve the flow of information. Moreover, overseas companies have an incentive to notify the Offsets Branch of relevant developments with the institution of Pre-qualified Offsets Supplier Status (PQOS). Under PQOS agreements, the Commonwealth provides offsets clearances for PQOS companies which are not in default. In return, the companies report quarterly on their sales and achievements under the program.

131. Current notifications of offsets-relevant purchases represent an improvement over the situation under the previous policy. The Offsets Branch of the Department of Industry, Technology and Commerce has established a database which provides a useful tool for monitoring the progress of offsets agreements and highlighting outstanding obligations. There are, however, some shortcomings with regard to identifying the term and value of an offset. The database needs improved information of final prices and payment or delivery dates.

132. The Bureau has also recommended that the database be expanded to list major subcontractors to Australian beneficiaries and more detail of the Australian beneficiaries' operation.

133. Finally, the report has identified the extent of post offsets work as extremely important in assessing the success of the Program. Neither the Inglis Review nor the Auditor-General's Report mentioned the need to record Australian beneficiaries' post-offsets work. The Bureau has recommended that the Offsets Branch establish annual contact with firms to determine the extent of their post-offset work.

Michael Keating

M S KEATING
SECRETARY
Department of Finance

OVERSEAS COMPANIES PARTICIPATING IN
THE AUSTRALIAN CIVIL OFFSETS PROGRAM

1. This schedule provides a list of overseas companies participating in the Australian Civil Offsets Program and their contact points. The companies are listed under industry sectors as shown in the index on page (iii) and, where possible, contact points are listed for Australia (on the left hand side of the page), and overseas (on the right hand side of the page).
2. This information is made available for those Australian companies who wish to seek offsets work. It is strongly recommended that inquiries be made first to your State offsets manager and to the Australian contact of the overseas supplier.
3. Listing in this report does not imply anything about the performance of overseas companies in meeting their offsets obligations. Rather, that the companies have supplied and expect to continue to supply goods and services to the Commonwealth and State Governments and will thereby incur offsets obligations.
4. Companies listed should be approached with specific proposals wherever possible. Proposals for offsets activities must, in all cases, be notified to the relevant department (as shown in Paragraph 6) by the overseas supplier directly or through its local representative. Circular letters and general solicitations are unlikely to be satisfactory for either party. Australian companies should be aware that a great deal of time and effort is often required to secure ongoing contracts with overseas suppliers particularly when the overseas supplier already has established sub-contractors and suppliers.
5. It is important to note that to meet the offsets policy requirements, proposals must:
 - (i) represent new business which would not have otherwise occurred except for the Offsets Program or business which would not have occurred as part of the Australian company's normal commercial activity;
 - (ii) be of a technology equivalent to that inherent in the Australian Government purchases that gave rise to the offsets obligation of the overseas company; and
 - (iii) be competitive in price, quality and delivery.
6. Enquiries concerning the Australian Civil Offsets Program should be directed to:

Commonwealth Government:

Director
Offsets and Procurement Policy Section
Department of Industry, Technology and Commerce
51 Allara Street
CANBERRA CITY ACT 2600
Tel: (062) 76 1077

State Governments:

Manager
Business Development Branch
Dept of Industrial Development & Decentralisation
7th Floor, 151 Macquarie Street
SYDNEY NSW 2000
Tel: (02) 250 6829

General Manager
Government Supply Support Agency
Dept of Industry, Technology & Resources
228 Victoria Parade
EAST MELBOURNE VIC 3002
Tel: (03) 412 8349

Manager
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Dept of Industry Development
46 Charlotte Street
BRISBANE QLD 4000
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Deputy Director
Procurement and Defence Industry
Dept of State Development & Technology
8th Floor, 63 Pirie Street
ADELAIDE SA 5000
Tel: (08) 210 8300

Senior Development Executive - Offsets
Tasmanian Development Authority
134 Macquarie Street
HOBART TAS 7000
Tel: (002) 20 6708

Companies seeking details of Defence aspects of the Offsets Program should contact:

Director
Industry Involvement and Offsets
Industry Operations Branch
Department of Defence
Anzac Park West Building
CANBERRA ACT 2600
Tel: (062) 48 2965

7. Australian companies could also benefit by checking with their respective State Innovation Centres. In addition, companies should consider contacting Austrade offices and the National Industry Extension Service (NIES).
8. The Australian Offsets Manufacturers Group (AMOG) produces a catalogue of Australian projects that could be supported for offsets activities. A catalogue may be obtained by contacting the Chamber of Manufactures of NSW.

Source: Department of Industry,
Technology and Commerce
Canberra ACT 2600

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OVERSEAS COMPANY OFFSETS CONTACTS

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AUSTRALIAN

CIVIL

OFFSETS

PROGRAM

A U S T R A L I A N
C I V I L
O F F S E T S
P R O G R A M

A U S T R A L I A N
C I V I L
O F F S E T S
P R O G R A M

Commonwealth and State Governments of Australia

Guidelines for Participants

March 1988

Prepared by:

Department of Industry, Technology and Commerce
CANBERRA ACT

in consultation with State Government Offsets Authorities.

Australian Government Publishing Service

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FOREWORD

When the Commonwealth Government announced its revised Offsets Policy in January 1986 a commitment was made to work towards maximum commonality between the offsets policies of the States and the Commonwealth Government.

Following extensive discussion between Commonwealth and State officials, the Australian Civil Offsets Agreement was signed by the Commonwealth and participating State Industry Ministers. As a result the Australian Civil Offsets Program will come into effect on 1 March 1988.

In its initial stages the Program will apply to all civil procurement by the Commonwealth and procurement of information technology goods and services by the States. The signatories to the Agreement have acknowledged the desirability of extending the arrangements at an early date to cover purchases by the States of all goods and services.

The Agreement acknowledges that the application of uniform offsets arrangements will make a greater contribution to the efficiency and competitiveness of Australian industry. In this respect the States will have a major role to play including the promotion of the capabilities of firms and acting as the first point of contact for firms and research organisations seeking access to offsets opportunities.

The Program will have a single set of objectives, rules and operating practices. These guidelines replace the civil component of the Australian Government Offsets Program - Guidelines for Participants published in March 1986. A number of changes have been made to accommodate the introduction of a 'national' policy and improve the administration of the Program. The new guidelines also seek to ensure there is a greater focus on product development and export activity than in the past, particularly as a result of the Partnership for Development scheme announced in September 1987.

Along with my counterparts in the States, I expect that these new arrangements will further enhance the ability of the Civil Offsets Program to make a significant contribution to Australia's technological and industrial development.



(John N Buttor)
Minister for Industry,
Technology and Commerce

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INTRODUCTION

1.1 "Offsets" are activities of commercial and technological significance which are directed to Australian industry by an overseas supplier as a result of, or in anticipation of, receiving an order for goods and/or services, from Commonwealth and/or State Government organisations.

1.2 The objective of the Australian Civil Offsets Program is to contribute to the enhancement of Australia's industrial and technological development by establishing internationally competitive activities within Australia. The Program complements other Commonwealth and State Government industry and technology policy measures and contributes to the development of the environment and infrastructure needed to assist Australian firms establish export oriented activities within Australia.

1.3 The Commonwealth Government has operated an Offsets Program encompassing both civil and defence purchases since 1970. The nature of the Commonwealth Government Offsets Program was substantially revised in January 1986 to ensure a greater focus on product development and the encouragement of internationally competitive activities within Australia. A number of State Governments also introduced offsets programs in the early 1980's.

1.4 The Commonwealth and State Industry Ministers recently signed the Australian Civil Offsets Agreement. Ministers agreed that an Australian Civil Offsets Program would come into effect from 1 March 1988. The Agreement reflects the desire by Commonwealth and State Governments to maximise the opportunities available to local industry under the Civil Offsets Program.

1.5 The Australian Civil Offsets Program applies to all civil procurement by the Commonwealth and initially to procurement of information technology goods and services by State Governments. The signatories to the Agreement acknowledge the desirability of extending the arrangements at an early date to cover purchases of all goods and services by the States.

1.6 In September 1987 the Government announced the new status of Partnerships for Development under the Offsets Program, initially to apply to the information industry only. The partnership scheme encourages transnational corporations to contribute to the implementation of the Government's industry strategies by expanding their activities in Australia. The transnational corporations will provide direct links to international markets for Australian developed products and services and undertake product development work to achieve agreed levels of exports and research and development. Overseas suppliers which enter into Partnerships for Development agreements are exempt from the requirements of the Offsets Program.

1.7 The Commonwealth Department of Industry, Technology and Commerce as the Commonwealth Civil Offsets Authority coordinates the management of the Civil Offsets Program in conjunction with the State Offsets Authorities. The Commonwealth is primarily responsible for the management of negotiations with overseas suppliers, in consultation with the States, while the States are largely concerned with the delivery of the Program, that is, ensuring Australian industry has access to the opportunities available under the Program. As such the State Government Offsets Authorities should be the first point of contact for local industry or research organisations making enquiries concerning the Program (see Appendix 2).

1.8 The Department of Defence manages offsets in regard to its own procurement activities with the exception of general purpose computer purchases which are managed by the Civil Offsets Authority.

1.9 A data bank is maintained by Commonwealth and State Civil Offsets Authorities to record information related to relevant purchases, offsets obligations and achievements. Data is exchanged with the Defence Offsets Authority where appropriate to ensure the effective administration of the Policy. It is the practice of the relevant

authorities to treat details of offsets activities as commercial-in-confidence and not divulge the status of any particular offsets account unless for the express purpose of advertising delinquent performance as directed by Ministers.

1.10 These guidelines are used by Civil Offsets Authorities in the management of the Program and are complementary to other information

relating to Commonwealth and State Government purchasing. They may be varied in the terms of individual Requests for Tender. These guidelines apply to offsets against civil purchases administered by the Commonwealth Civil and State Offsets Authorities including purchases by State Governments which fall outside the scope of the Australian Civil Offsets Agreement. The definitions of key terms used are set out in Appendix 1.

PROGRAM REQUIREMENTS

2.1 Purchases Subject to Offsets

Offsets are required as a result of all purchases, leases or hire arrangements in respect of overseas-sourced goods or services within the scope of the Program by all Commonwealth and State organisations subject to the Policy and a number of companies in which the Commonwealth or State Governments have a direct interest or which benefit from a government bestowed protective advantage for:

- (a) single orders placed overseas, as either prime or sub-contracts; or
- (b) cumulative orders placed on an overseas supplier by all organisations subject to the Policy, in a single financial year;

where:

- (c) the duty free price of the purchase, or accumulated purchases, exceeds \$A2.5m and the imported content exceeds 30 per cent of this price:
 - (i) a Minister responsible for administration of the Offsets Program may, in consultation with the Minister from the purchasing department, vary the threshold level over which offsets are required. The revised level will be notified in Request for Tender documents.

2.2 Level of Offsets Obligation

- (a) The general requirement is that offsets be provided at a level of 30 per cent of the imported content of single or accumulated contracts.
- (b) A Minister responsible for the administration of the Offsets Program may vary the level of the offsets obligation. The revised level will be notified in Request for Tender documents.

2.3 Purchases not Subject to Offsets

Offsets are not required where:

- (a) the purchase does not fall within the provisions detailed in paragraph 2.1;
- (b) the purchases are made by exempt organisations (a list of exempt organisations is at Appendix 3);
- (c) the overseas supplier has entered into a "Partnership for Development" Agreement with

the Commonwealth in which it agrees to undertake certain export and research and development activities in Australia;

- (d) goods are sold or leased to Commonwealth or State Governments in second-hand or used condition, even though restored to as-new condition;
- (e) the goods are purchased for resale to non-Government agencies and there is no net cost to the purchasing authority; or
- (f) the relevant Commonwealth or State Minister determines that an exemption from the Policy will be made. Any such exemption will be notified in Request for Tender documents.

2.4 Calculation of the Offsets Obligation

- (a) The value of the offsets obligation is calculated by multiplying the value of the imported content of the contract price by the percentage level of offsets required. The value obtained shall be expressed in Australian dollars.
- (b) The obligation is not invalidated or reduced by subsequent sale or trade-in of the equipment.
- (c) Unless otherwise mutually agreed, the offsets obligation against orders accumulated over a single financial year is calculated at the end of the financial year in which the orders are accumulated and includes all procurement from the overseas supplier by all non-exempt purchasing authorities. The obligation is calculated as 30 per cent of the value of the imported content of accumulated orders.
- (d) The offsets obligation for overseas suppliers with Pre-Qualified Offsets Supplier status is established on a quarterly basis at the end of the quarter in which the orders are accumulated and includes all procurement from the overseas supplier by non-exempt purchasing authorities.

2.5 Responsibility to Provide Offsets

(a) *Contracts Placed with an Overseas Prime Contractor*

Where a contract is placed by a purchasing authority directly on an overseas prime contractor

the responsibility to meet the total offsets requirement falls on the prime contractor. In some large contracts where there are consortium partners or a number of significant sub-contractors, the Offsets Authority may agree with the prime contractor to make separate arrangements with each overseas sub-contractor involved. In these circumstances, the prime contractor has responsibility to ensure that sub-contractors enter into approved arrangements with the Offsets Authority.

(b) *Contracts Placed with an Australian Prime Contractor*

Where a contract is placed with an Australian prime contractor the responsibility to meet the offsets requirement falls individually on overseas sub-contractors. The Australian prime contractor is responsible for ensuring that overseas sub-contractors enter into approved arrangements with the Offsets Authority.

2.6 Discharge of Offsets Obligation

- (a) The overseas supplier is required to enter into an agreement with the Offsets Authority in respect of its offsets obligations.
- (b) Where offsets are arranged in relation to an individual purchase or on the basis of accumulated purchases the offsets obligation is to be discharged over a period agreed between the overseas supplier and the Offsets Authority – unless otherwise agreed by the Offsets Authority work programs are to be commenced within one year from the effective date of the contract or Deed and are to be completed within three years of that date.
- (c) For Pre-Qualified Offsets Suppliers, offsets obligations are to be discharged at a rate that ensures that the ratio of achieved offsets to the accumulated offsets obligation, does not fall below an agreed level.
- (d) An overseas supplier may agree with the Offsets Authority to substitute alternative offsets for those initially agreed. In such cases the initially agreed period to discharge the obligation will not normally be extended.
- (e) The Offsets Authority may agree to another

company, usually a local subsidiary or agent, managing offsets work programs on behalf of overseas suppliers.

2.7 Enforcement of Offsets Obligations

- (a) Where an overseas supplier does not discharge its offsets obligations in the agreed time or at the agreed rate, action may be taken to:
- withhold an offsets clearance for future purchases unless a satisfactory alternative offsets proposal is received to acquit the outstanding obligations;
 - have Commonwealth and State Ministers publicise the delinquency of the overseas supplier.
- (b) The Offsets Authority may initiate action to cancel offsets work programs which, in its opinion, deviate so far from those approved that they circumvent the intention of the Policy. Such action will not cancel the offsets obligation and the overseas supplier will be required to undertake a revised work program.

2.8 Variation of the Offsets Obligation

- (a) Where there are variations to the price of the imported content after the effective date of the contract, the offsets obligation will be adjusted accordingly.
- (b) If an overseas supplier has not commenced or has failed to complete an approved offsets activity within the time agreed the unfulfilled obligation will be adjusted annually, using an appropriate price index, to maintain its real value.

2.9 Transfer of Offsets Obligation

- (a) The Offsets Authority may agree to offsets obligations incurred by one overseas supplier being transferred to another overseas firm, provided that the transfer is arranged on terms which are consistent with the objective of the Policy and are in accordance with these guidelines. For such transfers to be approved it must be adequately demonstrated that the recipient firm is suitably placed to fulfil the obligation in a manner satisfactory to the Offsets Authority.

OFFSETS CRITERIA

3.1 General Requirement

To be accepted as civil offsets, proposals put forward by overseas suppliers must meet *all* of the criteria relating to commercial viability, price, level of technology and new work. Approval of the Offsets Authority must be obtained before an overseas supplier commences an offsets work program; work programs will not be approved in retrospect.

3.2 The Commercial Viability Criterion

To meet this criterion, offsets must be likely to lead to commercially viable local activities which are:

- (a) internationally competitive in terms of price, quality and delivery; and
- (b) capable of being sustained without recourse to special Government support including long term support through the Offsets Program.

3.3 The Price Criterion

To meet this criterion offsets must not:

- (a) result in any price increase of the goods or services procured by the Commonwealth or State Governments above that which would have resulted had an offsets requirement not been imposed;

- (b) require separate direct or indirect investment by the Commonwealth or State Governments.

3.4 The Technology Criterion

To meet this criterion offsets must be of a level of technological sophistication at least equivalent to that of the goods and/or services purchased, but not necessarily directly related to such goods and/or services.

3.5 The New Work Criterion

To meet this criterion offsets must be in addition to, or an extension of, the activities presently undertaken by an overseas supplier in Australia. They must be activities which meet any of the following:

- (a) are new to individual Australian firms or which enhance existing activities and which would not otherwise be undertaken in Australia;
- (b) result in local research, design, development, production or support activities which would not otherwise have been undertaken in Australia;
- (c) open up markets new to Australian products and/or services.

OFFSETS AND THEIR VALUATION

4.1 Types of Offsets Arrangements

- (a) The Offsets Authority has a preference for establishing long term offsets arrangements with major overseas suppliers. These arrangements should consolidate the total offsets obligation arising from all contracts and sub-contracts held by the supplier and facilitate the development of internationally competitive activities in Australia.
- (b) The Offsets Authority may enter into the following types of offsets arrangements with overseas suppliers:
- (i) **Pre-Qualified Offsets Supplier Arrangements.** Where the overseas supplier has obtained Pre-Qualified Offsets Supplier status and, as a consequence, obligations are accumulated and offsets activities undertaken progressively against an agreed program;
 - (ii) **Cumulative Order Arrangements.** Where the offsets obligations and their planned discharge are associated with a number of purchases made by Commonwealth and/or State purchasing authorities;
 - (iii) **Individual Contract by Contract Arrangements.** Where the offsets obligation and its planned discharge is associated with a single purchase and may also include provision for subsequent purchases of the equipment and/or support activities;
 - (iv) **Offsets Credit Arrangements.** Where the overseas supplier performs approved offsets in anticipation of future obligations;
- (c) It is a requirement that overseas suppliers enter into Deeds for the discharge of offsets obligations unless the Offsets Authority agrees that the obligations may be discharged by the application of existing offsets credits.

4.2 Types and Valuation of Offsets Activities

This section lists the types of activities which may be undertaken as offsets and sets out the conditions applying to their valuation and acceptance.

**(a) Transfer of Technology
ELIGIBLE ACTIVITIES**

"Technology transfer" is defined as "the transfer to an Australian firm, agency or institution of specialised technical knowledge relating to processes or products which is not available to the firm, agency or institution on normal commercial terms."

The forms of technology transfer of proprietary, non-proprietary and intellectual property or information which are acceptable as offsets, include but are not limited to:

- (i) patents, licences, software, technical data packs, process instructions and the continuing access to current overseas expertise and data;
- (ii) equipment and resources which are not available in Australia on normal commercial terms.

The transfer of technology should have the potential to increase productivity and/or provide a new product or service and be associated with export oriented activity. It should also be consistent with the Technology Criterion (see paragraph 3.4).

The transfer of technology is not acceptable as offsets where it is a requirement of the contract for the goods and/or services against which the obligation arises unless the purchasing authority has the right to further transfer that technology to Australian industry.

VALUATION

The offsets value of the technology transfer is calculated as follows:

- (i) the actual cost to the overseas supplier in transferring the technology; and
- (ii) the actual or notional value of licence fees or royalties foregone.

Where local commercial activities result from the technology transfer, additional offsets value will be allowed based on the value of purchases of Australian products and services (see paragraph 4.2 (d)).

- additional offsets value will only be allowed for activity in excess of (i) and (ii) above.

(b) *Training*

ELIGIBLE ACTIVITIES

Training or the transfer of skills should be associated with activities which contribute directly to the objective of the Program. The training should relate to the transfer of skills or training programs which are not currently available in Australia.

Training involving basic vocational education and training in normal commercial activities such as staff rotation, product familiarisation and support is specifically excluded.

To be approved, activities should fulfil all of the following:

- (i) be initiated or substantially supported by an overseas supplier;
- (ii) assist in the dissemination of scarce skills related to advanced technology;
- (iii) be associated with export oriented activity; and
- (iv) be of a sufficiently advanced standing necessary to embrace contemporary technology and sound business practices.

VALUATION

The offsets value of the training will be three times the actual cost to the overseas supplier in providing the training for example, air fares, accommodation, equipment etc.

Where local commercial activities result from the training, additional offsets value will be allowed based on the value of purchases of Australian products and services (see paragraph 4.2 (d))

- additional offsets value will only be allowed for activity in excess of the initial offsets valuation.

Training or education services which are an export in their own right, part of an exported product or service or one used in producing such a product or service are treated as "exports" for offsets valuation purposes.

(c) *Research and Development*
ELIGIBLE ACTIVITIES

Research and development programs which have the potential to contribute to Australian industry by generating new activities or enhancing existing activities are acceptable as offsets.

To be approved the activity must fulfil all of the following:

- (i) be initiated or substantially supported by an overseas supplier;
- (ii) be associated with export oriented activity;
- (iii) ensure that any commercially viable results of the research and development are exploited on normal commercial terms and for the benefit of Australia;
- (iv) be undertaken by Australian firms or institutions or organisations approved by the Offsets Authority and consistent with the definition of "research and development activities" in sub-section 73 B(i) of the Income Tax Assessment Act. This requires that the work be:
 - (a) systematic, investigative or experimental;
 - (b) carried out in Australia or an external Australian Territory;
 - (c) involve innovation or technical risk; and
 - (d) carried on for the purpose of either acquiring new knowledge (with or without a specific practical application) or creating new or improved materials, products, devices, processes or services.

Types of acceptable activities include:

- (i) placing of research and development activities with local firms and institutions including Government-owned manufacturing establishments and laboratories;
- (ii) a collaborative arrangement with an Australian company or institution.

VALUATION

The offsets value of research and development will be three times that portion of the cost of the contract or equivalent payment covering the value added by the Australian contractor.

Where local commercial activities result from the research and development, additional offsets value will be allowed based on the value of purchases of Australian products and services (see paragraph 4.2 (d)).

– additional offsets will only be allowed for activity in excess of the initial offsets valuation.

Offsets may also be allowed for royalties paid to the local company, subsidiary or institution undertaking the research and development

– additional offsets will only be allowed for royalties in excess of the initial offsets valuation.

Provision of goods and valuable intellectual property may have offsets value where these aspects are transferred to the contractor.

(d) *Purchases of Australian Products and Services for Export*

ELIGIBLE ACTIVITIES

Purchases by the overseas supplier of Australian products and services with an acceptable level of technology are allowed as offsets where the products and/or services are for export.

VALUATION

The offsets value of Australian products and services purchased by overseas suppliers for export, is either:

- (i) the price paid to the Australian manufacturer where the level of Australian value-added is 70 per cent or more; or
- (ii) the actual Australian value-added where this is less than 70 per cent.

The total offsets value will be determined in accordance with the guidelines on incremental activities (see paragraph 4.3).

(e) *Overseas Marketing*

ELIGIBLE ACTIVITIES

Overseas marketing of Australian products and/or services by the overseas supplier, or by a third party at the overseas supplier's instigation, is acceptable as offsets. Such activity must afford new opportunities for local products or services of an acceptable level of technology.

VALUATION

The offsets value of the overseas marketing of Australian-sourced products or services by overseas suppliers or agents is the actual cost to the overseas supplier of providing marketing assistance.

Where export activity results, its value will be based on the value of sales of Australian products and services (see paragraph 4.2 (d)).

(f) *Joint or Collaborative Ventures*

ELIGIBLE ACTIVITIES

Joint or collaborative ventures between an overseas supplier and local companies, research institutions and organisations (including Government-owned manufacturing establishments and laboratories) may be acceptable as offsets where there is local involvement in the conceptual, design, development and production stages in a local or overseas project.

Participation by an overseas supplier in a joint or collaborative venture in Australia may include, but is not limited to, marketing, technical and management assistance, funding of research and development and the transfer of technology.

VALUATION

The offsets value to an overseas supplier participating in a joint or collaborative venture will be calculated on the basis of the types of activities undertaken as part of the venture by applying the guidelines outlined in this Chapter.

(g) *Venture Capital Investment*

Investments in Australian ventures are allowed as offsets. The Program provides for:

1. seed and start-up investments; and
2. later stage investments.

Investment in Australian industry may be made either directly by an overseas supplier or through a venture capital fund approved by the Offsets Authority in which the overseas supplier has an interest.

ELIGIBLE INVESTMENTS

"Eligible investments" should be in companies incorporated in Australia, or new business entities which are to be incorporated in Australia, that:

- (i) carry on, or propose to carry on, their principal business activities and/or research and development in Australia; and
- (ii) are, or propose to become, substantially businesses that:
 - (a) are export oriented; and
 - (b) place emphasis on the use of innovative product or process technologies to create sustained comparative advantage in identified markets; and
 - (c) have the potential for rapid growth; and
 - (d) have the potential to create skilled employment in Australia; and
 - (e) are consistent with the Commercial Viability and Technology Criteria in the Offsets Program Guidelines; and
- (iii) are, or propose to become, primarily engaged in activities approved by the Offsets Authority including:
 - (a) manufacturing;
 - (b) mining, agricultural, forestry or fishing activities;
 - (c) postal, telegraphic, telephonic or teleprinter communication services or such other communication services;
 - (d) architectural services;
 - (e) surveying services;
 - (f) production or supply of software for computers or for similar equipment;
 - (g) consultant engineering services;
 - (h) scientific and technical services;
 - (i) data processing services; and
 - (j) services relating to education or training as approved by the Offsets Authority.

Funds seeking approval under the Offsets Program must be capable of contributing towards the objectives of the Program. The Offsets Authority will take the following factors into account when assessing proposals:

- (i) ability to access overseas capital, technology and management expertise;
- (ii) experience of the parties involved in identification, assessment and development of new or later stage business ventures;
- (iii) linkages with new product sources, for example, research institutions, innovation centres, inventors groups;
- (iv) access to specialist resources such as business planning, market research, intellectual property advice, financial packaging;
- (v) size of the capital raising.

As a minimum, applicants should supply the Offsets Authority with:

- (i) a statement of the fund's objectives and the proposed area(s) of focus;
- (ii) a prospectus or investment proposal;
- (iii) information concerning the above mentioned factors.

ANNUAL REVIEW

Managers of approved venture capital funds will be required to submit a report certified by independent auditors to the Offsets Authority at twelve monthly intervals. The report will be required to contain information relating to:

- (i) investment activity over the previous twelve months, including:
 - (a) new investments and exits from existing investments;
 - (b) funds subscription and withdrawal by overseas suppliers; and
 - (c) management assistance provided by overseas suppliers or by the fund to "eligible investments".

- (ii) the proportion of investments under management which are being applied to "eligible investments" as seed and start-up finance or as later stage finance;
- (iii) export performance of investee businesses;
- (iv) confirmation that the terms of the agreement and guidelines have been met.

Managers are also required to provide a copy of their annual return to the Corporate Affairs Commission and supply information on any changes to the senior management team of the fund to the Offsets Authority.

Investment under the Offsets Program may take the form of seed, start-up or later stage investments.

1. Seed and Start-up Investments

ELIGIBLE ACTIVITIES

These are investments by an overseas supplier, or by an approved venture capital fund, which apply or propose to apply the funds as seed and start-up finance for the development of "eligible investment" businesses based upon innovative products and technologies. "Innovative" implies an appreciable element of novelty which may occur through new discoveries, structures or relationships, or applications of current knowledge or techniques in a new way. Subject to this, activities interpreted as falling within the scope of 'seed and start-up finance' include:

- (i) market research designed to assess the commercial prospects of such products and technologies;
- (ii) construction of a business plan for such products and technologies;
- (iii) research and development;
- (iv) modification of prototypes to take into account commercial considerations such as the results of market research;
- (v) building a management team for a new business based on such products and technologies;
- (vi) initial establishment of distribution channels, prior to the achievement of commercial sales;

- (vii) test marketing of such products;
- (viii) promotional campaigns for the launch of such products and technologies;
- (ix) initial establishment of production facilities for such products;
- (x) protection of associated intellectual property, including technology acquisition, patent and copyright costs;
- (xi) other costs or expenditure which in the view of the Offsets Authority are reasonably associated with the establishment of a new business which does not yet have a commercial sales record. An example is working capital for the development and marketing of such products or technologies.

VALUATION

The valuation of offsets for seed and start-up investments comprises two elements:

- (i) An offsets valuation at the time of direct investment, or investment in an approved venture capital fund, will have a multiplier of three times the amount invested times the proportion of the total investment committed to eligible investments. Thus, if half of the total funds invested are to be applied to eligible investments, the multiplier will be $3 \times 1/2 = 1 \frac{1}{2}$.

In the case of investments in an approved venture capital fund, the proportion of those funds to be placed in "eligible investments" will be set out in an agreement with the Offsets Authority.

A threshold period of five years applies to seed and start-up investments. If an overseas supplier reduces its equity within five years of its initial investment, this element of the offsets valuation is reduced. The reduction is that proportion of the equity sold corresponding to the number of uncompleted months short of the five year threshold. Thus, if the overseas supplier sells half of its equity after three years, it will lose $1/2 \times 24/60 = 1/5$ of this element of the valuation.

- (ii) Additional offsets value will be allowed for exports of Australian products and services (see paragraph 4.2 (d)) where it can be demonstrated that the overseas supplier or the fund played a significant role in the achievement of such exports:

(a) the offsets value granted to overseas suppliers in an approved fund would be based on the contribution of the overseas supplier to the total fund;

(b) additional offsets will only be allowed for activity in excess of the initial offsets valuation of the investment.

The placement requirements on approved venture capital funds operating in the seed and start-up investments area are:

- (i) to invest 80 per cent of funds received during year 1 within 30 months;
- (ii) thereafter, invest 80 per cent of funds received within 24 months of receipt.

If conditions in the guidelines or in the agreements with approved venture capital funds are not met, the Offsets Authority has the right to:

- (i) cancel or reduce credits attributed to overseas suppliers; and/or
- (ii) revoke the agreements.
2. *Later Stage Investments*

ELIGIBLE ACTIVITIES

Investments by an overseas supplier, or by an approved venture capital fund, which apply, or propose to apply, the funds to improve the access to advanced technologies, skills and overseas markets in order to raise productive capacity and improve the international competitiveness of "eligible investment" businesses, may be acceptable offsets activities.

To be approved as offsets, investment proposals put forward by overseas suppliers or by approved venture capital funds must meet all of the offsets criteria outlined in Chapter 3.

VALUATION

The valuation of offsets for later stage investments

will be on the following basis:

- (i) exports will be valued in accordance with the guidelines on purchases of Australian products and services (see paragraph 4.2 (d)).
- (ii) additional offsets may also be approved on the basis of the activities undertaken as part of the venture by applying the guidelines outlined in this Chapter;
- (iii) the offsets value will be calculated on a proportional basis related to the level of investment by the overseas supplier in the Australian recipient, either directly or through a fund.

(h) *Administrative Expenses*

ELIGIBLE ACTIVITIES

Administrative expenses incurred by overseas suppliers or local companies directly associated with facilitating the discharge of offsets obligations may be acceptable as offsets.

VALUATION

The offsets value of administrative expenses is based on the actual costs of the following items to an agreed percentage of the total obligation, generally 5 per cent. The costs which may be acceptable, where they are not otherwise paid for by the purchasing authority, are:

- (i) travel and subsistence of local and overseas representatives of the overseas supplier investigating and arranging offsets; and
- (ii) professional fees, travel and subsistence costs of personnel engaged by the overseas supplier to assist with or to supervise the establishment of an offsets work program; and
- (iii) the salaries, expenses and operating costs of a local offsets office.

4.3 *Incremental Activities*

Where local commercial activities result from an approved offsets activity, the offsets value will be dollar for dollar on the following basis:

- (i) offsets credits for exports will be given for a maximum of two years;

- (ii) exports may attract credits for an additional three years, for sales over and above the average level of exports in the first two years;
- (iii) offsets credits will be given for consequential activity related to the domestic market, only where the approved offsets activity has export potential, and then only for a maximum of one year.

Exports may attract credits beyond two years at a level and for a period agreed by the Offsets Authority, where the offsets activities undertaken by the overseas supplier:

- (i) encourage local involvement in the conceptual, design and development stages of a project; or
- (ii) ensure the development of local design skills; or
- (iii) assist product development work in Australia.

Contract

- (a) The Offsets Authority will, where appropriate, require suppliers and their sub-contractors to enter into a Deed to cover the provision of offsets.
- (b) Where practicable the Offsets Authority may secure offsets obligations in contracts for the purchase of goods and/or services.

Deed

- (a) A Deed will normally cover:
- all individual and accumulated purchases involving a pre-qualified offsets supplier; or
 - those accumulated orders from a single supplier placed by all non-exempt government purchasing authorities in a single financial year which in total exceed the offsets threshold; or
 - a single purchase which exceeds the offsets threshold, or where offsets are otherwise required.
- (b) Where possible the terms of a Deed should be agreed to prior to the award of any contract. A standard Deed is available from the Offsets Authority.
- (c) The Deed would generally include the following information:
- the nature and level of the offsets obligation incurred by the overseas supplier;
 - a clear description of the offsets activities proposed by the overseas supplier to discharge the obligation;
 - the valuation of the offsets activities agreed between the Offsets Authority and the overseas supplier;
 - the date by which offsets activities will be completed, including annual milestones.

5.3 Pre-Qualified Offsets Supplier Status

Pre-Qualified Offsets Supplier status may be granted to an overseas supplier entering into a special Deed. The status allows the overseas supplier to adopt a

long term approach in discharging its offsets obligations without the need to enter into individual offsets arrangements against each sale to Commonwealth or State purchasing authorities. The conditions applying to the attainment of Pre-Qualified Offsets Supplier status include:

- the offsets status of the overseas supplier must be agreed and nominated in the Deed as a starting point for the discharge of future obligations;
- a program of offsets activities will be negotiated and agreed for inclusion in the Deed which will cover an initial period of three to five years. The Deed remains in force until either party gives notice of termination;
- the overseas supplier agrees under the terms of the Deed to:
 - provide the Offsets Authority with details of all purchases of its products by Commonwealth and State organisations subject to the Offsets Policy;
 - provide further offsets proposals to cover any additional offsets obligations as they arise;
 - be in default of its obligations if over any 12 month period the average percentage of completed offsets compared to that of the average accumulated offsets obligation falls below a level stated in the Deed;
- the Offsets Authority agrees to provide offsets clearances to Commonwealth or State purchasing authorities when a company has the status of a Pre-Qualified Offsets Supplier and is not in default.

5.4 Offsets Credits

The Offsets Program allows overseas suppliers to undertake activities to generate offsets credits to be applied to future obligations. Offsets credits may be used by the overseas supplier to discharge new offsets obligations if all criteria are fulfilled. Offsets credits developed by one overseas supplier may, with the agreement of the Offsets Authority and subject to the conditions imposed by the offsets criteria, be transferred to another overseas supplier. Offsets credits may also be

transferred between Commonwealth and State Offsets Authorities.

If mutually agreed the value of offsets credits may be adjusted annually against an appropriate price index.

5.5 *Tender Assessment*

Civil offsets are neither competitively assessed by the Offsets Authority nor taken into account in source selection decisions made by purchasing authorities.

1.1 General

The Offsets Policy interacts with a range of other industry policies including the 150 per cent tax concessions for expenditure on research and development.

The Offsets Policy is designed to be complementary to and not a substitute for other policies. Consequently receipt of Government assistance provided through other programs does not, of itself, disqualify an activity for offsets.

Relationship between Offsets and Preference Policies

- (a) The prime aim of the Offsets Policy is to establish activities in Australia which are internationally competitive. Purchasing policy is aimed at obtaining the most suitable items at the right price and time, whilst preference for locally manufactured content seeks to maximise the incorporation of Australian and in some cases New Zealand products and/or services.
- (b) As a result of the interaction between offsets and purchasing policy:
 - (i) offsets are not sought against goods and services of New Zealand origin;
 - (ii) Australian content included in government purchases is not accepted as offsets;

- (iii) offsets are not allowed for activities conducted in New Zealand;
 - (iv) exports from Australia to New Zealand may be claimed as exports for the purposes of the Offsets Program.
- (c) Purchasing authorities are required to specify the requirements of the Offsets Program separately from those of the preference policy in Requests for Tender and other relevant documents.

1.3 Relationship between the Australian Civil Offsets Program and the Export Facilitation Scheme

Subject to satisfaction of the relevant criteria, automotive exports may be approved under the Australian Civil Offsets Program or the Export Facilitation Scheme. However, such exports will not be eligible to benefit from both programs.

Exports which are used to acquit offsets obligations will not be counted under the Export Facilitation Scheme for the purpose of the base year calculation and will not be eligible to earn export facilitation credits in subsequent years. Details are provided in Australian Customs Notice 87/235 of 15 December 1987.

PROCESSING AND PROGRAM MANAGEMENT

7.1 *Proposal Processing*

- (a) Purchasing authorities will include in all Requests for Tender a statement of the requirement for offsets against which tenderers are required to respond. Failure to meet the offsets requirement may cause the tenderer's bid to be deemed non-compliant.
- (b) Where a Deed has been or is to be negotiated in securing the obligation, requirements for the offsets work program will be covered therein.
- (c) Proposals to embark on an offsets work program either in relation to a current procurement or in anticipation of a contract (for offsets credit purposes) should, unless otherwise specified in the Request for Tender or contract, be submitted to the appropriate Offsets Authority (see Appendix 2).
- (d) Offsets proposals to be submitted to the Offsets Authority should include:
- either
- (i) identification of the proposal to a specific procurement program; or
 - (ii) identification of the proposal as one seeking credits-in-advance;
- and
- (iii) identification of the overseas supplier; and
 - (iv) details of activities, timing and arrangements made with Australian companies for implementation including:
 - Australian recipient;
 - expected delivery schedule; and

- (v) value of work to be placed including value of imported materials/components and/or relevant services.

7.2 *Offsets Clearances*

- (a) Purchasing authorities will not finalise purchasing contracts until offsets clearance is given by the relevant Commonwealth or State Offsets Authority.
- (b) Departments and authorities engaged in civil purchasing are required at an early stage, to advise the relevant Offsets Authority of procurements being negotiated and provide details of the contractual requirements for offsets.
- (c) The Offsets Authority will advise clearance of the relevant contract when acceptable offsets arrangements have been made.
- (d) Where it is inappropriate for the offsets obligation to be secured by contract, the Offsets Authority will negotiate a new or call upon an existing Deed. In these circumstances offsets clearance is still required prior to contract agreement.

Reporting and Monitoring

Reports on obligations and achievements are to be submitted at the frequency and in the format required to the Offsets Authority nominated in the relevant contract or Deed.

7.4 *Enquiries*

Enquiries concerning the Offsets Program should be directed in the first instance to the Offsets Authority in your State (see Appendix 2).

DEFINITIONS OF KEY TERMS

1. **Australian Firm**

An Australian firm is a company, partnership or individual enterprise involved predominantly in design, manufacture, research, development or marketing in Australia.

2. **Australian Value-added**

Australian Value-added means turnover plus increase, or less decrease in the value of stocks, less purchases, transfers-in and expenses.

3. **Deed**

A Deed is a document recording an agreement entered into between the Commonwealth and/or State Offsets Authorities and an overseas supplier which defines the nature, value and timing of offsets obligations and programs.

4. **Imported Content**

The imported content is the duty-free, free-on-board value of goods and services of overseas origin (other than New Zealand) incorporated into the goods and/or services.

5. **Minister**

The Minister means the Commonwealth or State Minister responsible for the administration of the Offsets Program.

6. **Offsets Authority**

The Offsets Authority is the Commonwealth or State Government body responsible for administering the Offsets Program.

7. **Offsets Credit**

Offsets credit is the value of offsets achieved in excess of or in advance of any existing offsets obligations.

8. **Offsets Obligation**

The offsets obligation is the commitment required of an overseas supplier to place offsets in Australian industry through a program approved by the Offsets Authority.

9. **Offsets Program**

The Offsets Program means the Australian Civil Offsets Program.

10. **Offsets Value**

The offsets value is the agreed value of an offsets activity.

11. **Overseas Supplier**

An overseas supplier is:

- a company, division or group of a corporation which produces all or part of the imported content of a purchase attracting an offsets obligation, irrespective of whether such goods or services are provided directly or indirectly through a local representative, agent or company; or
- a prime contractor to an agency of a foreign government which supplies the imported goods or services to the Commonwealth or a State Government.

12. **Purchasing Authority**

A purchasing authority is a department or authority, statutory or otherwise, which must comply with the requirements of the Australian Civil Offsets Program when it purchases goods or services from an overseas supplier.

13. **Research and Development**

Research and development means "systematic investigation or experimentation involving innovation or technical risk, the outcome of which is new knowledge, with or without a specific practical application or new or improved materials, products, devices, processes or services".

In these terms, the elements of research and development are:

- basic research, namely, experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any particular application or use in view;
- applied research, namely, work undertaken for the advancement of knowledge with a specific practical application in view;
- experimental development, namely, systematic work using the results of basic or applied research and/or practical experience for the purpose of creating new, or improving existing materials, devices, products, processes or services.

The following may be included where such activities are undertaken directly in support of activities described in paragraphs (a), (b)

or (c) above:

- Industrial design
- Mathematical design
- Production engineering
- Operations research
- Mathematical modelling and analysis
- Psychological research
- Computer software development.

Within the broader definition it is intended to include for offsets purposes but not be limited by the following:

- (a) the design, construction and operation of prototypes where the primary objective is technical testing or to make technical improvements;
- (b) construction and operation of pilot plants not operated or intended to be operated as commercial production units;
- (c) feedback R&D directed at problem solving beyond the R&D phase, eg technical problems arising during initial production runs;
- (d) development of computer software, which is in the nature of products intended for multiple sale to multiple clients.

Activities specifically excluded for offsets purposes are:

- (a) market research, testing, development or sales promotion, including consumer surveys and advertising;
- (b) routine quality control: routine testing of materials, devices or products except where such activities are part of the R&D process;
- (c) pre-production activities such as planning or demonstration of commercial viability, tooling up, trial and production runs;
- (d) prospecting, exploring or drilling for or producing minerals, petroleum or natural gas, or extent and quality determinations of deposits;

(e) the commercial production of a new or improved material, device or product or the commercial use of a new or improved process;

(f) cosmetic modifications or style changes to existing commercial products, processes, commercial production lines, or other ongoing operations;

(g) routine data collection except where such activities are part of the R&D process;

(h) routine computer programming or in-house computer software development not otherwise associated with an R&D activity in paragraph 2(a), (b) or (c);

(i) preparation for teaching;

(j) the commercial, legal and administrative aspects of patenting, copyrighting or licensing activities;

(k) standardisation and standards compliance;

(l) specialised routine medical care, eg. routine pathology services;

(m) research in the social sciences, arts or humanities;

(n) R&D activities funded by government grant or government R&D contract;

(o) management studies and efficiency surveys;

(p) any duplication of existing commercial products or processes.

Computer Software Development

The eligibility of software research and development which forms part of another research and development project will generally be dependent on the eligibility of the project of which it forms a part.

Provided the general definition of research and development activities is satisfied, computer software developed for the purpose of sale, rent, licence, hire or lease to multiple clients may qualify in its own right. Routine computer programming or in-house software development would generally not satisfy the requirement.

Similarly, the adaptation of an existing software product to meet the needs of a particular client would generally be excluded.

DEFINITIONS OF KEY TERMS

14. **Technical Risk**

Refers to the principle of uncertainty, that is, it requires that the probability of obtaining a given technical outcome cannot be predicted at the outset with certainty on the basis of current knowledge or experience.

15. **Technology Transfer**

The transfer of specialised technical knowledge relating to proprietary processes or products either embodied or disembodied, to an Australian firm, agency or institution which is not available in Australia on normal commercial terms;

where,

"embodied" refers to the physical relocation of

goods and covers physical items such as tooling, materials, components, equipment, blue-prints and detailed design specifications; and

"disembodied" refers to information that must be absorbed by the firm if the physical objects are to be utilised effectively, that is, it relates to methods of organisation and operation, quality control and other manufacturing procedures. Acquisition of the technology would involve consultation with the technology supplier, supervision of the plant installation and design and the demonstration of operating procedures and on-the-job training of a firm's workforce.

OFFSETS AUTHORITIES

Commonwealth

First Assistant Secretary
Light Industries Division
Department of Industry, Technology and Commerce
51 Allara Street
CANBERRA CITY ACT 2601
Ph: (062) 76 1000
Fax: (062) 76 1111

New South Wales

Manager
Business Development Branch
Department of Industrial Development and
Decentralisation
7th Floor
151 Macquarie Street
SYDNEY NSW 2000
Ph: (02) 250 6829
Fax: (02) 250 6630

Victoria

General Manager
Government Supply Support Agency
Department of Industry, Technology and Resources
228 Victoria Parade
EAST MELBOURNE VIC 3002
Ph: (03) 418 8349
Fax: (03) 419 0770

Queensland

Manager
Defence, Procurement and Offsets Branch
Department of Industry Development
46 Charlotte Street
BRISBANE QLD 4000
Ph: (07) 224 2098
Fax: (07) 229 5289

South Australia

Deputy Director
Procurement and Defence Industry Branch
Department of State Development and Technology
63 Pirie Street
ADELAIDE SA 5000
Ph: (08) 210 8300
Fax: (08) 231 0440

Tasmania

Senior Development Executive - Offsets
Tasmanian Development Authority
134 Macquarie Street
HOBART TAS 7000
Ph: (002) 206 708
Fax: (002) 233 3535

EXEMPT ORGANISATIONS

Commonwealth

Australian National Line
Commonwealth Banking Corporation
Snowy Mountains Engineering Corporation
Medibank Private
Housing Loan Insurance Corporation
Commonwealth Serum Laboratories
Australian Industry Development Corporation
Export Finance and Insurance Corporation
Australian National Railways

New South Wales

The State Bank
Government Printing Office
Government Insurance Office

Victoria

Victorian Printing Office
Victorian Railway Workshops

Queensland

To be advised

South Australia

Government agencies which supply commercial goods and services in competition with the private sector and have permanent exemption status under the National Preference Agreement may receive offsets exemption on specific overseas purchases with approval of the Minister in South Australia.

Tasmania

Transport Tasmania (Shipping operations)

Under the new offsets policy, significant success has been achieved in shifting the orientation of the information industries.

Partnerships for Development: Offsets in the Information Industries

For many years the Commonwealth and some State Governments have had an offsets program. Generally, these have required that transnational corporations trading with Australian Governments to buy back Australian goods and services to around 30 per cent of the value of the imported content of goods sold to Australia. This program is similar to that which has prevailed in many other countries, except that Australia has tended to require a much lower level of offset.

Following a review of the offsets program, Government announced, in March 1986, a new offsets policy which for the first time emphasised that the offsets program was directed primarily at supporting the development of internationally competitive technology based export oriented activities.

The new policy recognises that offsets is not a counter-trade activity, but rather a strategic tool for encouraging the development of internationally competitive activities in technology intensive industries. It saw the need to encourage product development in Australia rather than the export of, say, commodities. The role of the offsets program therefore has become one of supplying marketing leverage for people seeking to build product development work in Australia, or export from Australia in these areas.

Under the new offsets policy, significant success has been achieved in shifting the orientation of the information industries. In particular, companies such as Prime and Ericsson have now signed longer term offsets agreements in which they agree to engage in some form of product development or R&D work here, and to export the results of this work from Australia.

Earlier this year however, it became clear that there was a need to further clarify the guidelines for companies engaged in offsets, and to create a new category for those companies wishing to move into a broader arrangement.

The most important problem to be

overcome was that, while the offsets program was consistent with the general thrust of the Information Industries policy, and industry policy in general, it:

- did not enable Australia to establish a broader relationship with relevant transnational corporations in the information industries regarding their overall investment plans
- continued to force the relationship into one of "bean counting" regarding sales to government and discharge of offset obligations.

As the Information Industries Statement was being formulated it became clear that the development of Australian information industries was dependent on both building up healthy indigenous firms and on working with transnationals to form product development and marketing links into world niche markets. It was also made clear that there was a wave of investment in the Asia/Pacific region by transnationals and that Australia needed to think how it might best attract such investment.

A third category of offsets agreement has now been created to answer these needs. It is a "Partnership Agreement" which is based on the following principles:

- it will be voluntarily entered into between the Commonwealth and State civil offsets authorities and those transnational companies wishing to invest in Australia, to develop activities which go beyond satisfying their offsets obligations
- the objective of the investment will be to achieve mutually agreed product development and export/import ratios, a realistic set of targets is 5 per cent of R&D as a percentage of turnover and a 50 per cent export/import ratio, within seven years
- the Government has no bias in favour of any particular type of activity in achieving these targets; it can include service, software, hardware and education and training products and services
- product development and competitive export activity can be undertaken with the participating corporation, or Australian-owned firms, as long as the overseas owned corporation has clearly facilitated the activity
- Government will not discriminate between indigenously owned and internationally owned firms in its procurement policies
- Government is committed to mobilising its existing generally available assistance to help firms engaged in

product development and export activities

- participating firms will be exempted from the application of the assisting offsets program.

Negotiations on Partnership Agreements are already underway with some 15 companies. It is expected that these will lead to significant product development and export spin offs for local industries

THE

AUSTRALIAN CIVIL OFFSETS

AGREEMENT

AUSTRALIAN CIVIL OFFSETS AGREEMENT

1. PREAMBLE

The Commonwealth of Australia and the States of New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania as signatories to the Agreement:

- . recognise that the Commonwealth and a number of States have adopted different policies requiring suppliers of imported goods and services to offset a proportion of the value of contracts with new additional activities in Australia;
- . acknowledge that the application of uniform offsets arrangements to procurement of the Commonwealth and States will contribute to the efficiency and competitiveness of Australian industry and minimise the avoidance of offsets obligations;
- . recognise that costs and disruption to business will be minimised and total industrial benefits obtainable through government purchasing maximised by a harmonisation of all offsets policies and programs to the greatest practical extent;
- . agree that, except as stated elsewhere in this Agreement, where offsets are required they will be sought in pursuit of the objectives and using the principles set out here below;
- . confirm their agreement to the uniform purchasing policy objectives set out in the National Preference Agreement Memorandum of Understanding;
- . agree to establish a policy, to be known as the Australian Civil Offsets Policy, having a single set of objectives, rules and operating practices to be administered through the Australian Civil Offsets Program; and
- . agree on the terms of this document to be known as the Australian Civil Offsets Agreement.

2. OBJECTIVE

It is agreed by the signatories that the objective of the Australian Civil Offsets Program will be:

- . to contribute to the enhancement of Australia's industrial and technological development by establishing internationally competitive activities within Australia.

3. PRINCIPLES

The operating provisions for the Australian Civil Offsets Program will be consistent with the following principles:

- (a) where indirect benefits are sought through Government procurement other than deliverable items under a contract these will be sought only in the form of offsets directed towards the objective of the Agreement
 - (i) all current implicit and explicit civil offsets programs will be incorporated in, or undertaken in accordance with the principles of, the Australian Civil Offsets Program
 - (ii) the operating guidelines of the Australian Civil Offsets Program will be determined by the signatories to the Agreement and will be publicly available.
- (b) Maximum benefits to local industry will be achieved by the development of long term offsets programs which are not linked directly to any single Government purchase. These long term activities may include such arrangements as "Pre-Qualified Offsets Supplier" and "Partnerships for Development" agreements. Programs are to include active participation by the overseas suppliers of imported goods and services and be closely linked with their business strategies.
- (c) Employment creation, the development of internationally competitive activities and the adoption of new technologies are desirable consequences of the pursuit of these principles.
- (d) Notwithstanding (b), at the discretion of the responsible Commonwealth or State Minister, project related offsets may be sought under contract for the purchase of items outside the scope of this Agreement. Offsets sought against such purchases should comply with the Program provisions. Details of all such cases should be provided to GOPAC.
- (e) Proposed offsets activities will not be approved if they do not fall within the spirit of the objective contained in clause 2 of this Agreement.
- (f) Offsets activities will be valued whenever possible on the basis of actual contribution to economic activity. The offsets valuation of approved research and development, training and investment activities may be multiplied to provide additional incentive for these activities to be undertaken. The value of the multiplier will be as specified in the Program "Guidelines".

- (g) All signatories to the Agreement will have free and equal access to all future offsets opportunities arising from purchases by all other signatories within the scope of this Agreement except where clause 9 (b) of this Agreement applies.
- (h) The benefits to a State arising from involvement in the Australian Civil Offsets Program shall be at least equal to those benefits which would have occurred without such involvement in the Program.
- (i) Overseas suppliers will be allowed maximum flexibility to undertake offsets programs. No interstate constraints will be imposed on the location of approved offsets activities.
- (j) It is desirable that the extent of administrative discretion be kept to a minimum to ensure efficient administration of the Program.

4. PROGRAM PROVISIONS

Program provisions are as follows:

- (a) **Basis of Obligation** - offsets obligations will be established at thirty per cent (30%) of the imported content of the procurement. Authority to vary this level will be retained by the relevant Commonwealth or State Minister. Details of all such cases will be provided to GOPAC.
- (b) **Thresholds** - offsets will be required in respect of any contract or aggregated contracts within the scope of this Agreement with a value of more than \$2.5m in any one financial year and with an imported component of more than thirty per cent (30%). This threshold may be varied by any Commonwealth or State Minister in regard to purchases made by their respective purchasing authorities however, any such variation must be notified to GOPAC.
- (c) **Obligation to Provide Offsets** - the obligation to provide offsets will generally fall on the overseas supplier.
- (d) **Administrative arrangements** are as set out in the Australian Civil Offsets Program - Administrative Arrangements. The Administrative Arrangements are attached (Annex 1).
- (e) **Offsets proposals** will be approved and valued as specified in the "Australian Civil Offsets Program - Guidelines for Participants".

5. SCOPE

The Australian Civil Offsets Agreement will apply to all civil procurement by the Commonwealth and initially to procurement of information technology goods and services by the States

- in conjunction with the Commonwealth, the States will, where practicable, use their purchasing leverage in respect of other items to assist the delivery of offsets against all procurement by the Commonwealth.

The signatories to the Agreement acknowledge the desirability of extending the arrangements at an early date to cover purchases by the States of all goods and services. In the interim any offsets or similar arrangements related to the procurement of goods and services outside the scope of the Agreement will be undertaken in a manner consistent with the provisions of 3(a) of the Agreement.

6. ORGANISATIONS SUBJECT TO THE POLICY

Organisations which are subject to the Policy are Commonwealth and State Departments and Authorities and a number of organisations in which the Commonwealth or State Governments have a direct interest, are in receipt of Government funding or which benefit from a Government bestowed protective advantage.

7. EXCLUSIONS

Offsets arising from procurement by the Department of Defence, other than those the Minister for Defence has agreed be managed by the civil Offsets Authority, are not covered by this Agreement.

8. MONITORING

Monitoring of compliance with the Agreement will be undertaken by GOPAC which will report annually to the AITC on the implementation of the Agreement. Signatories of the Agreement will co-operate in the monitoring process.

9. GRIEVANCE PROCEDURES

- (a) In the event of a grievance arising, either as a result of an alleged breach of the Agreement or on the basis of some other issue related to the Australian Civil Offsets Program, any signatory may include an item on the agenda of the next GOPAC meeting or, if there is no meeting planned to be held within a reasonable time, may convene a meeting.
- (b) Following consideration of the grievance or the alleged breach of the Agreement, GOPAC may report to appropriate Ministers. If the issue is not resolved by these Ministers GOPAC may report to the AITC recommending whether action should be taken in respect of the alleged breach. A decision may be taken by the AITC on whether a breach of the Agreement has occurred and on the appropriate action to be taken.
 - (i) Where the AITC has determined that a particular State has breached the Agreement, the AITC will consider whether a sanction should be imposed on that State. This sanction may include exclusion from the benefits of the Agreement for a specified period.
 - (ii) Exclusion from the benefits of the Agreement in respect of a breach will not remove the obligation of the excluded State to comply with the requirements of the Agreement during the period of exclusion.

10. REVIEW OF AGREEMENT

The Agreement will be of indefinite duration and will be reviewed by the AITC at two-yearly intervals unless otherwise decided by the AITC.

11. COMMENCEMENT DATE

- (a) The provisions of the Australian Civil Offsets Agreement will apply to tenders or bids which are advertised or called for after the first day of March 1988.
- (b) States which have not signed the Agreement prior to this date may do so later but their involvement in the Program will commence from the date of their signing.

12. AMENDING THE AGREEMENT

This Agreement may be amended at any time by a unanimous decision of the signatories of the Agreement either at a meeting of the AITC or through correspondence between the relevant Ministers.

13. WITHDRAWING FROM THE AGREEMENT

Any signatory may withdraw from this Agreement by giving each of the other signatories not less than six (6) months written notice of its intention to do so. All offsets placed prior to any signatory withdrawing from the Agreement shall remain in place and unaffected.

14. DEFINITIONS

- (a) "AITC" is the Australian Industry and Technology Council.
- (b) "Contract-by-Contract" agreements are those agreements where the offsets obligations and their planned discharge are associated with a single purchase.
- (c) "Deliverable Items" are the goods or services whose acquisition is the primary objective of a procurement activity.
- (d) "Goods and Services" includes goods or services alone or goods and services conjointly. ADP software is defined as "goods" for the purpose of this Agreement.
- (e) "GOPAC" is the Government Offsets and Procurement Advisory Committee.
- (f) "Guidelines" are the "Australian Civil Offsets Program - Guidelines for Participants".
- (g) "Imported Content" is the duty free, free on board value of goods and services of overseas origin (other than New Zealand) incorporated into the goods and services.
- (h) "Indirect Benefits" are those which are sought by the purchaser which are in addition to the goods or services whose acquisition is the primary objective of a procurement activity.

- (i) "Information Technology" represents an aggregate of technologies that may be applied to the acquisition, processing, storage, display, transmission and dissemination of data by opto/electronic means. Any data that can be converted to digital form may be included - speech, pictures, text, and measured quantities as well as normal numerical data.
- (j) "Offsets Authorities" are officials designated by the signatories to manage the Commonwealth or State responsibilities arising from this Agreement.
- (k) "Partnerships for Development" means that part of the civil Offsets Program relating to an agreement by an overseas supplier to undertake certain export and research and development activities in Australia in return for which the signatories undertake to grant that overseas supplier exemption from the other requirements of the civil Offsets Program;
- (l) "Pre-Qualified Offsets Supplier (PQOS) Agreements" are arrangements entered into between Offsets Authorities and an overseas supplier in which offsets obligations are accumulated and offsets activities undertaken progressively against an agreed program without the requirement for the overseas supplier to enter into individual offsets arrangements in regard to each sale.
- (m) "Procurement" includes purchase, hire, lease, rental and exchange.
- (n) The term "State" to include the Northern Territory and the Australian Capital Territory.

**AUSTRALIAN CIVIL OFFSETS PROGRAM
ADMINISTRATIVE ARRANGEMENTS**

1. OBJECTIVE

The objective of these arrangements is to establish an administrative framework which will maximise the benefits of the Australian Civil Offsets Program whilst minimising the administrative costs and resources involved.

2. PRINCIPLES

- (a) Signatories to the Agreement will have full access to information related to existing and future offsets commitments arising from procurement by all other signatories to the Agreement.
- (b) All signatories will agree to maintain the confidentiality requirements associated with access to such information.
- (c) Representatives of signatories will upon request be included in the negotiating teams and overseas visits associated with the offsets activities of all other signatories to Agreement.
- (d) There will be a full exchange of information between signatories on matters such as:
 - procurement involving offsets
 - offsets opportunities
 - visits by overseas suppliers.
- (e) Costs associated with involvement in the Program will be borne by the signatory involved.

3. ROLE OF THE COMMONWEALTH

- (a) Co-ordinate Commonwealth/State negotiations associated with the Pre-Qualified Offsets Supplier scheme and Partnerships for Development agreements.

- (b) Co-ordinate Commonwealth/State offsets negotiations associated with purchases by Commonwealth purchasing agencies where arrangements described under Paragraph 3(a) do not apply.
- (c) Decide, in consultation with the relevant State or States, the acceptability and valuation of offsets proposals associated with procurement by Commonwealth purchasing agencies and with procurement of items by the States as defined under Paragraph 5 of the Agreement
- if the Commonwealth does not respond to a State proposal within 30 days its approval will be assumed.
 - if agreement cannot be reached the proposal will be referred to GOPAC for consideration.
- (d) Through the Australian Trade Commission
- initiate and facilitate offsets related trade development activities
 - provide overseas follow up support in regard to offsets negotiations and activities
 - provide overseas marketing support to local participants in the Program.
- (e) Monitor offsets achievements against commitments in regard to overseas suppliers which are its responsibility and provide a report to GOPAC annually. Initiate and co-ordinate appropriate action with the other signatories in cases of non-compliance by offsets obligors.
- (f) Establish and maintain an appropriate Management Information System (MIS) and Electronic Mail System (EMS).
- (g) Communicate all relevant information in regard to its offsets activities and those of its overseas suppliers to the States through the EMS or by other means. All such information is to be made available to all signatories.
- (h) Provide technical support for the EMS and MIS.
- (i) Initially enter all data associated with the Australian Civil Offsets Program into the MIS.

- (j) Support and co-ordinate activities associated with the promotion of the Australian Civil Offsets Program.
- (k) Co-ordinate and participate in the development of harmonised offsets agreements, request for tender and contract clauses.
- (l) Co-ordinate the development of the "Australian Civil Offsets Program - Guidelines for Participants" with State Offsets Authorities.
- (m) Service the offsets aspects of the work of GOPAC and associated working parties.

4. ROLE OF THE STATES

- (a) Take a leading role, in consultation with the Commonwealth, in activities associated with the involvement of Australian industry in the Australian Civil Offsets Program.
- (b) Take the leading role in offsets negotiations associated with purchases by their State agencies of goods and services other than those defined in Paragraphs 3(a) and (b).
- (c) Undertake, in consultation with the Commonwealth, the assessment of offsets proposals and opportunities arising from Paragraphs 4(a) and (b).
- (d) Monitor offsets achievements against commitments in regard to activities which are its responsibility and provide an annual consolidated status report to GOPAC.
- (e) Initiate and co-ordinate appropriate action with the other signatories in cases of non-compliance by overseas suppliers.
- (f) Support and participate in promotional activities associated with the national and State aspects of the Program as appropriate.
- (g) Participate in the development of harmonised agreements, requests for tender and contract clauses.
- (h) Participate in the development of the Australian Civil Offsets Program - Guidelines for Participants.
- (i) Provide all data associated with their offsets activities as specified in Paragraph 7 to the system manager for entry into the MIS.

- (j) Communicate all relevant information in regard to its offsets activities and those of its overseas suppliers to the Commonwealth and other States as soon as it becomes available through the EMS or by other means. All such information is to be made available to all signatories.
- (k) Establish a consultative mechanism in each State to ensure that the work of the State offsets administration and the offsets related activities of the State representatives of such bodies as the National Industry Extension Service (NIES), Department of Industry, Technology and Commerce and Austrade are conducted in a co-ordinated way.

5. DELEGATIONS AND RESPONSIBILITIES

5.1 Role of Minister for Industry, Technology and Commerce

The Minister for Industry, Technology and Commerce, in consultation with State Ministers, is responsible for:

- (a) Commonwealth aspects of civil offsets policy and administration, and
- (b) deciding, in consultation with the relevant Commonwealth and State Ministers as appropriate, whether the level of Commonwealth offsets obligation is to be varied for particular purchases.

The Minister for Industry, Technology and Commerce shares responsibility with his State colleagues for:

- approving civil offsets policy guidelines
- deciding an action to be taken in regard to overseas suppliers defaulting in their offsets commitments.

5.2 Role of the Commonwealth Civil Offsets Authority

The Commonwealth will nominate an appropriate Authority which will be responsible for the administration of Commonwealth aspects of the civil Offset Program. The Authority is authorised to enter into offsets agreements on behalf of the Commonwealth in respect of civil purchases and those delegated to the civil authority by the Minister for Defence.

5.3 Role of State Industry Ministers

The State Industry Minister, in consultation as necessary with the Minister for Industry, Technology and Commerce and his State colleagues, is responsible for:

- (a) State aspects of civil offsets policy and administration; and
- (b) deciding, in consultation with the relevant Commonwealth and State Ministers as appropriate, whether the level of Commonwealth offsets obligation is to be varied for particular purchases.

The State Industry Minister shares responsibility with the Minister for Industry, Technology and Commerce and his State colleagues for:

- approving civil offsets policy guidelines
- deciding on action to be taken in regard to overseas suppliers defaulting in their offsets commitments.

5.4 Role of State Offsets Authorities

Each State will nominate an appropriate Authority which will be responsible for the administration of State aspects of the civil Offsets Program.

6. APPLICATION

The Commonwealth or State Offsets Authorities will not conclude any contract or instrument of agreement within the scope of the Australian Civil Offsets Agreement until the processes described herein have been carried out.

7. PRECEDENTS

As a measure designed to ensure consistency of interpretation, continuity of management and to establish a body of precedent each Offsets Authority is required to enter into the MIS, in a standard format, details of all procurement and associated offsets activities where appropriate.

(a) **Tendering Information**

- RFT and draft contract including special provisions
- Value of contract including indexation requirements.

(b) **Contract Information**

- Supplier(s) including details of overseas primes or sub-contractors
- Imported content
- Offsets status of the supplier(s).

(c) **Approved Offsets Activities**

- Detailed outline of activities and value including, R&D, training, technology transfer, exports, investment, joint venture arrangements
- basis of valuation
- assessment procedures/consultation, including reporting and monitoring arrangements
- Australian recipients
- plan for acquittal including offsets achievement milestones.

8. GUIDELINES

- 8.1 **The administration of the Program will be based upon the Principles, Program Provisions and Definitions laid down in the Australian Civil Offsets Agreement. Guidance will be provided by public guidelines approved by the Government Offsets and Procurement Advisory Committee (GOPAC) and by Commonwealth and State Industry Ministers.**

- 8.2 The Australian Civil Offsets Program Information Package will include:
- (a) Notes on Commonwealth and State industry strategies,
 - (b) An executive summary designed to inform the top management of overseas suppliers on the broad principles of the Australian Civil Offsets Program,
 - (c) Information designed to inform local industry,
 - (d) Detailed Guidelines.
- 8.3 The cost of production of the Guidelines and associated publications will be borne by the Commonwealth.

9. COMMUNICATIONS

- 9.1 The Commonwealth will make available access to the existing Offsets Management Information System (MIS) and will establish an Electronic Mail System (EMS) dedicated to the management of the Australian Civil Offsets Program.
- 9.2 The Commonwealth will nominate appropriate officials who will be responsible for:
- managing the MIS
 - maintaining a hotline service
 - training associated with use of the MIS
 - updating the EMS
 - servicing offsets aspects of the work of GOPAC and its associated working parties
 - provide a central contact point on all matters associated with the Australian Civil Offsets Program

- co-ordinating activities associated with the evolution of the Program and guidelines
 - co-ordinating promotional activities.
- 9.3 The States will keep the Commonwealth Civil Offsets Authority informed of all significant events related to the management of the Program and/or enter the information directly into the EMS.

CONDUCT OF THE INQUIRY**List of Hearings and Witnesses****3 April 1989, Canberra**Department of Industry, Technology
and CommerceDr D Charles
Dr M Fitzpatrick
Mr G Taylor
Mr P Manning

Observers

Mr B Boland
Mr W Nelson
Mr R Henderson
Mr B Janissen**17 April 1989, Canberra**

The Institution of Engineers

Mr W Rourke

Australian Information Industry
AssociationMr R Mounic
Ms L JohnsonDepartment of Administrative
ServicesMr A Butler
Mr S Skrzypek
Ms G Roper
Mr V Shevchenko

Australian Trade Commission

Dr R Webb
Mr G Kelly
Mr R Wilson

Observers

Mr B Boland
Mr W Nelson
Mr B Janissen**11 May 1989, Canberra**

Department of Defence

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Dr M McIntosh
Mr F Harvey
Mr M Welch

Observers

Mr W Nelson
Mr G McDonald
Mr G Dodgson

12 May 1989, Canberra

IBM Australia Ltd

Mr D Barnes
Mr B Livermore

Observers

Mr W Nelson
Mr G Dodgson

8 June 1989, Canberra

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13 June 1989, Canberra

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23 June 1989, Canberra

Department of Defence

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Dr M McIntosh
Mr F Harvey
Mr M Welch
Mr T Carthagasor

Observers

Mr W Nelson
Mr G McDonald

List of Submissions

Australian Information Industry Association Limited
Australian Trade Commission
Denis M. Gilmour and Associates
Department of Administrative Services
Department of Defence
Department of Finance
Department of Industry, Technology and Commerce
EPIC Pty Limited
IBM Australia Limited
Metal Trades Industry Association of Australia
Port Kembla Marine Pty Ltd
Professor W.A. Sinclair
The Institution of Engineers, Australia

Some of the above departments, organisations and individuals have forwarded more than one submission to the Committee during the Inquiry. Parts of some of the submissions listed above have been supplied on a confidential basis.