

Russell Chafer
Committee Secretary
Joint Select Committee on the Parliamentary Budget Office
Parliament House
CANBERRA ACT 2600

15 February 2011

Dear Sir,

Re: Establishment of a Parliamentary Budget Office

The public administration reforms of the 1990s and 2000s mean that more information and data is available about the Australian Government than at any time in history. This is an eminently beneficial situation. The problem, however, is that the significant information and data needs to be sorted from the not so significant. A critical part of getting the 'right' information and data is that the 'right' questions are asked and the 'right' processes are established to elicit that information and data. The proposed Parliamentary Budget Office provides a good opportunity for the Parliament to ask the 'right' questions and get the kinds of information and data that is necessary to properly hold the Executive to adequate standards of accountability, transparency and responsibility.

My submission is that the proposed Parliamentary Budget Office should set the agenda, standards and quality expectations for the multitude of Executive presentations of information and data to Parliament. This seems to be a logical development in the evolution of the public administration reforms of the 1990s and 2000s and address the current weak link in the plethora of available information and data.

In summary, my submission would be for the proposed Parliamentary Budget Office to:

- (a) Establish standards and oversee the 'purpose' statements (outcomes) in *Appropriation Bills* to ensure the 'purposes' of appropriations are sufficiently descriptive to confine subsequent Executive spending;
- (b) Establish standards and oversee the benchmarks for performance measures of programs (outputs) in the *Portfolio Budget Statements*, including the descriptive performance indicators;
- (c) Establish standards and oversee the financial reporting (accounting) standards (currently prepared as, for example, the *Finance Minister's Orders*); and
- (d) Establish standards and oversee the benchmarks for reporting to Parliament in the *Annual Report* on spending and performance.

My submission is that the proposed Parliamentary Budget Office should have a role as a standard setter and regulator, setting the requirements and standards for the information and data provided to Parliament. This does not necessarily mean that the Parliament (and the proposed Parliamentary Budget Office) would take over the roles of the current Executive. Rather, it is that the proposed Parliamentary Budget Office should be the standard setter and regulator to which the Executive complies in its presentations of information and data to Parliament.

I have provided a more detailed justification in the attachment for the areas in which a proposed Parliamentary Budget Office might intervene to establish standards and oversee their implementation (as a regulator). The following parts of this submission sets out to illustrate the elegance of the current 'clear read' reporting obligations and the places where a Parliamentary Budget Office might intervene to ensure the Parliament's interest and desires are best achieved.

Please do not hesitate to contact me if you require further information or justifications.

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Attachment

The genesis of the public administration reforms over the last decades was the remarkable economic liberalization in Australia starting in the 1980s addressing financial liberalization, fiscal discipline, macroeconomic stability, microeconomic reform, trade liberalization, privatization and liberalization of the labour market.¹ The earliest incarnations of reform, however, were in the 1970s and early 1980s with the reviews of how governmental elements might be structured and function.² These early developments culminated in the 1984 Financial Management Improvement Programme (FMIP)³ and then a cascade of inquiries over the next decade leading to Parliament passing the *Financial Management and Accountability Act 1997* (Cth), *Commonwealth Authorities and Companies Act 1997* (Cth), *Auditor-General Act 1997* (Cth), *Charter of Budget Honesty Act 1998* (Cth) and the *Public Service Act 1999* (Cth).⁴

These public administration reforms of the 1980s and 1990s (and now the 2000s)⁵ have substantially reshaped the executive government shifting it from being the owner and provider of goods and services to a standard setter, regulator and purchaser of

¹ For an overview in the context of government see Jón Blöndal, Daniel Bergvall, Ian Hawkesworth and Rex Deighton-Smith, 'Budgeting in Australia' (2008) 8 *OECD Journal on Budgeting* 133 at 134-139 and the references therein.

² See Australian Public Service Board, *Financial Management Improvement Program: A Diagnostic Study* (1984); J Reid, *Review of Commonwealth Administration* (1983); H Coombs, *Report of the Royal Commission on Australian Government Administration* (1976). See also James Cutt, 'Accountability, Efficiency and the Royal Commission on Australian Government Administration' (1977) 36 *Australian Journal of Public Administration* 333.

³ See Standing Committee on Finance, Public Administration, House of Representatives, *Not Dollars Alone: A Review of the Financial Management Improvement Program* (1990).

⁴ See Joint Committee on Public Accounts, *Advisory Report on the Public Service Bill 1997 and the Public Employment (Consequential and Transitional) Amendment Bill 1997*, Report No 353 (1997); Joint Committee on Public Accounts, *Charter of Budget Honesty Bill 1996: Advisory Report*, Report No 351 (1997); Joint Committee on Public Accounts, *Guarding the Independence of the Auditor-General*, Report No 346 (1996); Joint Committee on Public Accounts, *Financial Reporting for the Commonwealth: Towards a Greater Transparency and Accountability*, Report No 341 (1995); Joint Committee on Public Accounts, *Cash Matters: Cash Management in the Commonwealth*, Report No 340 (1995); Joint Committee on Public Accounts, *Accrual Accounting: A Cultural Change*, Report No 338 (1995); Joint Committee on Public Accounts, *Public Business in the Public Interest: An Inquiry into Commercialisation in the Commonwealth Public Sector*, Report No 336 (1995); Joint Committee on Public Accounts, *An Advisory Report on the Financial Management and Accountability Bill 1994, the Commonwealth Authorities and Companies Bill 1994 and the Auditor-General Bill 1994, and on a Proposal to Establish an Audit Committee of Parliament*, Report No 331 (1994); Joint Committee on Public Accounts, *Managing People in the Australian Public Service: Dilemmas for Devolution and Diversity*, Report No 323 (1992); Joint Committee on Public Accounts, *Review of the Independent Auditor: Watching the Watchdog*, Report No 319 (1992); Auditor-General, *Accountability, Independence and Objectivity: A Response to Report 296 of the Parliamentary Joint Committee of Public Accounts* (1989); Joint Committee of Public Accounts, *The Auditor General: Ally of the People and Parliament*, Report No 296 (1989); Joint Committee of Public Accounts, *The Form and Standard of Financial Statements of Commonwealth Undertakings: A Discussion Paper*, Report No 199 (1982).

⁵ See Advisory Group on Reform of Australian Government Administration, *Ahead of the Game: Blueprint for the Reform of Australian Government Administration* (2010); Department of Finance and Administration, *Governance Arrangements for Australian Government Bodies*, Financial Management Reference Material No 2 (2005); John Uhrig, *Review of Corporate Governance of Statutory Authorities and Office Holders* (2003).

goods and services.⁶ In practice this has been achieved through a change from centralised ‘command and control’ to devolved responsibility and outsourcing, and a focus on achieving particular objectives (performance) and reporting on that performance (accountability and responsibility).⁷ In particular, the public administration reforms adopted new means of allocating resources (through accrual budgeting) and then devolving responsibility for using those resources to those making decisions about how those resources (both the financial and employed (human) resources) should be managed and used (through accrual accounting and performance benchmarking). These reforms also imposed a plethora of reporting back arrangements so that the allocation and performance could be assessed and hopefully improved.

The reporting back arrangements include:

- (a) The *Charter of Budget Honesty Act 1998* (Cth) requires that the Australian Government provide a number of annual reports:
 - (i) *Budget Economic and Fiscal Outlook Report* – This is made available at the time of the Budget,⁸ and is intended ‘to provide information to allow the assessment of the Government’s fiscal performance against the fiscal strategy set out in its current fiscal strategy statement’.⁹ The report is required to contain the following information:
‘Commonwealth budget sector and Commonwealth general government sector fiscal estimates for the budget year and the following 3 financial years’, ‘the economic and other assumptions for the budget year and the following 3 financial years that have been used in preparing those fiscal estimates’, ‘discussion of the sensitivity of those fiscal estimates to changes in those economic and other assumptions’, ‘an overview of the estimated tax expenditures for the budget year and the following 3 financial years’, ‘a statement of the risks, quantified where feasible, that may have a material effect on the fiscal outlook, including: (i) contingent liabilities; and (ii) publicly announced Government commitments that are not yet included in the

⁶ Australian Public Service Commission, *The Australian Experience of Public Sector Reform*, Occasional Paper 2 (2003) p 161. There is an extensive literature about these developments and a considerable and ongoing debate about the merits of these developments: see, for recent examples, Warwick Funnell, Robert Jupe and Jane Andrew, *In Government We Trust: Market Failure and the Delusions of Privatisation* (2009) (privatisation failures in Australia, New Zealand, United Kingdom and the United States); John Halligan and Jules Wills, *The Centrelink Experiment: Innovation in Service Delivery* (2008) (delivering social welfare); Richard Hindmarsh, *Edging Towards BioUtopia – A New Politics of Reordering Life and the Democratic Challenge* (2008) (regulation of genetically modified organisms); and so on.

⁷ Although there appears to be a shift back towards centralisation: see, for examples, Advisory Group on Reform of Australian Government Administration, *Ahead of the Game: Blueprint for the Reform of Australian Government Administration* (2010) pp x-xi and 45-66 (centralising employment arrangements); Australian Government Information Management Office, *2006 e-Government Strategy, Responsive Government: A New Service Agenda* (2006) pp 21 (project management and investment framework); and so on.

⁸ *Charter of Budget Honesty Act 1998* (Cth) s 10.

⁹ *Charter of Budget Honesty Act 1998* (Cth) s 11.

fiscal estimates ...’, and ‘Government negotiations that have yet to be finalised’.¹⁰

- (ii) *Mid-year Economic and Fiscal Outlook Report* – This is made available ‘by the end of January in each year, or within 6 months after the last budget, whichever is later’,¹¹ and is intended ‘to provide updated information to allow the assessment of the Government’s fiscal performance against the fiscal strategy set out in its current fiscal strategy statement’.¹² The report is intended to ‘update key information contained in the most recent budget economic and fiscal outlook report’ and ‘contain a detailed statement of tax expenditures, presenting disaggregated information on tax expenditures’.¹³
 - (iii) *Final Budget Outcome Report* – This is made available ‘no later than 3 months after the end of the financial year’,¹⁴ and contains ‘Commonwealth budget sector and Commonwealth general government sector fiscal outcomes for the financial year’.¹⁵ This report sets out a range of financial information about the previous budget and the high level outcomes from expenditures.¹⁶
- (b) The *Charter of Budget Honesty Act 1998* (Cth) also requires that the Government provide a number of other reports:
- (i) *Intergenerational report* – This report is issued every 5 years starting in 2002,¹⁷ and is intended ‘to assess the long term sustainability of current Government policies over the 40 years following the release of the report, including by taking account of the financial implications of demographic change’.¹⁸ This report has become a means of addressing ‘the long-term demographic, economic and spending projections and the implications for the sustainability of fiscal policy’.¹⁹
 - (ii) *Pre-election economic and fiscal outlook report* – This report is issued jointly by the Secretary to the Department of the Treasury and the Secretary to the Department of Finance as ‘a pre-election economic and fiscal outlook report within 10 days of the issue of the writ for a general election’²⁰ that is intended ‘to provide updated information on the economic and fiscal outlook’.²¹

¹⁰ *Charter of Budget Honesty Act 1998* (Cth) s 12(1).

¹¹ *Charter of Budget Honesty Act 1998* (Cth) s 14(1).

¹² *Charter of Budget Honesty Act 1998* (Cth) s 15.

¹³ *Charter of Budget Honesty Act 1998* (Cth) s 16(1).

¹⁴ *Charter of Budget Honesty Act 1998* (Cth) s 18(1).

¹⁵ *Charter of Budget Honesty Act 1998* (Cth) s 19(1).

¹⁶ See, for example, Department of Finance and Deregulation, *Final Budget Outcome 2008-09* (2009).

¹⁷ *Charter of Budget Honesty Act 1998* (Cth) s 20(1).

¹⁸ *Charter of Budget Honesty Act 1998* (Cth) s 21.

¹⁹ Treasury, *Intergenerational Report 2007* (2007) p iii. See also Treasury, *Australia to 2050: Future Challenges – Intergenerational Report 2010* (2010); Treasury, *Intergenerational Report 2002-03*, Budget Paper No 5 (2002).

²⁰ *Charter of Budget Honesty Act 1998* (Cth) s 22.

²¹ *Charter of Budget Honesty Act 1998* (Cth) s 23.

- (c) The *Public Service Act 1999* (Cth) requires that the Australian Government provide a number of reports:
- (i) *Annual Reports* – The ‘Secretary of a Department’, the ‘Head of an Executive Agency’ and the Public Service Commissioner are required to give a report to the Minister on their activities during the year.²² The report is prepared according to ‘guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit’ (JCPAA).²³ These reports include information about the outcomes, programmes, key performance information and financial statements.²⁴
 - (ii) *State of the Service report* – As a part of the *Annual Report* about the activities of the Australian Public Service Commission.²⁵ Following agreement with the JCPAA in 2003, the *State of the Service Report* is submitted as a separate report together with supporting documentation.²⁶ The report is prepared according to ‘guidelines approved on behalf of the Parliament by the [JCPAA]’.²⁷ The report addresses ‘the activities and human resource management practices of [Australian Public Service] agencies’ and ‘outlines some of the key achievements and contributions agencies have made in assisting the government during this period to meet its policy objectives and achieve its stated outcomes’.²⁸
- (d) The *Financial Management and Accountability Act 1997* (Cth) requires that the Australian Government provide a number of statements including a monthly financial statement in a form consistent with the Budget estimates that includes information about the fiscal balance, the underlying cash balance and the net operating result for the general government sector, and annually consolidated financial statements for the Commonwealth.²⁹

²² *Public Service Act 1999* (Cth) ss 44(1) (Public Service Commissioner), 63(1) (Secretary of a Department), 70(1) (Head of an Executive Agency). As a matter of policy this reporting is also applied to prescribed Agencies: *Financial Management and Accountability Act 1997* (Cth) s 5; Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* (2010) p 1.

²³ *Public Service Act 1999* (Cth) ss 44(4) (Public Service Commissioner), 63(2) (Secretary of a Department), 70(2) (Head of an Executive Agency). See also Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* (2010).

²⁴ See Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* (2010) pp 5-14.

²⁵ *Public Service Act 1999* (Cth) s 44(2); *Public Service Commissioner’s Directions 1999* (Cth) d 3.5(2).

²⁶ See Australian Public Service Commission, *State of the Service Report*, State of the Service Series 2002-03 (2003) p iii.

²⁷ *Public Service Act 1999* (Cth) s 44(4).

²⁸ Australian Public Service Commission, *State of the Service Report*, State of the Service Series 2008-09 (2009) p xiii.

²⁹ *Financial Management and Accountability Act 1997* (Cth) ss 54 (monthly financial statement) and 55 (consolidated financial statements). See also Department of Finance and Deregulation, *Consolidated Financial Statements for the Australian Government for the Financial Year Ended 30 June 2009* (2009).

- (e) The *Commonwealth Authorities and Companies Act 1997* (Cth) requires each body to present an *Annual Report*.³⁰

There are also a number of documents that provide the directions that are then reported back in the above documents. These include the key Budget documents, and the fundamental appropriation documents that form the spine of all the Australian Government's reporting back arrangements, and they include:

- (a) The *Charter of Budget Honesty Act 1998* (Cth) requires that the Australian Government provide a *Fiscal Strategy Statement* 'at or before the time of the Government's first budget'³¹ and 'at the time of each of the Government's subsequent budgets'.³² This statement is intended 'to increase public awareness of the Government's fiscal strategy and to establish a benchmark for evaluating the Government's conduct of fiscal policy'.³³ The statement is required to: 'specify the Government's long-term fiscal objectives within which shorter-term fiscal policy will be framed', 'explain the broad strategic priorities on which the budget is or will be based', 'specify the key fiscal measures that the Government considers important and against which fiscal policy will be set and assessed', 'specify, for the budget year and the following 3 financial years: (i) the Government's fiscal objectives and targets; and (ii) the expected outcomes for the specified key fiscal measures', 'explain how the fiscal objectives and strategic priorities ... relate to the principles of sound fiscal management', 'specify fiscal policy actions taken or to be taken by the Government that are temporary in nature, adopted for the purpose of moderating cyclical fluctuations in economic activity, and indicate the process for their reversal', and 'explain broadly the reporting basis on which subsequent Government fiscal reports will be prepared'.³⁴
- (b) *Appropriation Act (No 1)* – The appropriations of the Consolidated Revenue Fund (CRF) for the purposes of the 'ordinary annual services of government'. This distinction is necessary to comply with the *Constitution* ss 53 and 54 that prevents the Senate from amending proposed laws appropriating fund for the 'ordinary annual services of government'. These appropriations are according to the distinction between administered and 'departmental' expenses for the Bill provides for the appropriation of specified amounts for Australian Government agencies (being those under the *Financial Management and Accountability Act 1997* (Cth) and the High Court of Australia) and bodies under the *Commonwealth Authorities and Companies Act 1997* (Cth).
- (c) *Appropriation Act (No 2)* – The appropriations of the CRF for the purposes *other than* the 'ordinary annual services of government'. These appropriations are according to the distinction between administered and 'departmental' expenses for The Bill provides for the appropriation of specified amounts for Australian Government agencies (being those under the *Financial*

³⁰ *Commonwealth Authorities and Companies Act 1997* (Cth) ss 9 ('Commonwealth authority') and 36 ('Commonwealth company').

³¹ *Charter of Budget Honesty Act 1998* (Cth) s 6(1).

³² *Charter of Budget Honesty Act 1998* (Cth) s 6(2).

³³ *Charter of Budget Honesty Act 1998* (Cth) s 6(3).

³⁴ *Charter of Budget Honesty Act 1998* (Cth) s 9(1).

Management and Accountability Act 1997 (Cth) and the High Court of Australia) and bodies under the *Commonwealth Authorities and Companies Act 1997 (Cth)*.

- (d) *Appropriation (Parliamentary Departments) Act (No 1)* – The appropriations of the CRF for the expenditure of the Parliamentary Departments. Appropriations for the Parliamentary Departments *are not* for the ‘ordinary annual services of the government’.
- (e) *Appropriation Act (No 3), Appropriation Act (No 4) and Appropriation (Parliamentary Departments) Act (No 2)* – These are Appropriation Bills that are counterparts to those introduced as part of the Budget and deal with appropriations later in the year addressing additional funding commitments.
- (f) *Portfolio Budget Statements (PBS)* – These documents are intended to inform Senators and Members of Parliament about the proposed allocation of resources to government outcomes by Agencies within the portfolio. Significantly, the document sets out the allocation of the Agency resources from the appropriations, the outcome and planned performance including the strategy and outputs/programs. These statements include the presentation of intended expenditure on an accrual and cash basis.³⁵ The critical aspect of this document is the ‘forward estimates’. These are a projection on expenditure in following years (out years), with the first year’s forward estimate forming the basis of the following year’s budget allocation. Any changes therefore need to be explained and any new expenditure is identifiable. This is significant as these forward estimates include *all* appropriations, including the plethora of standing appropriations, and provide the primary means of accountability, responsibility and transparency for the Budget and standing appropriations.³⁶

At present the form and content of all of these documents is determined by the Executive (albeit some have some Parliament involvement). The submission is that these documents should conform to a standard set by the proposed Parliamentary Budget Office and that that office might intervene to oversee their implementation. In short, it is the Parliament that should determine the form and standard of these documents and the Executive provide the content answering the form of standards with the desired content. The proposed Parliamentary Budget Office could (and should) provide the standard and form template.

The following provides an illustration of the reporting arrangements for IP Australia, a prescribed Agency under the *Financial Management and Accountability Act 1997 (Cth)*,³⁷ to demonstrate where the proposed Parliamentary Budget Office might intervene to establish standards and forms and oversee their implementation (as a regulator).

³⁵ Notably, there is usually little material difference between the accrual and cash amounts because of the limited capital outlays by the Commonwealth, those outlays being made at the State and Local Council level: see Jón Blöndal, Daniel Bergvall, Ian Hawkesworth and Rex Deighton-Smith, ‘Budgeting in Australia’ (2008) 8 *OECD Journal on Budgeting* 133 at 166-167.

³⁶ Notably, the forward estimates are also addressed in the *Mid-Year Economic and Fiscal Outlook*: see, for example, Department of the Treasury, *Mid-Year Economic and Fiscal Outlook 2009-10* (2009) pp 59-63.

³⁷ IP Australia is a prescribed Agency under the *Financial Management and Accountability Regulations 1997 (Cth)* r 5 and sch 1 (item 151).

The key organising document is the *Annual Report* prepared under the *Public Service Act 1999* (Cth).³⁸ The intention of the *Annual Report* reporting obligations is to enhance accountability, responsibility and transparency through a ‘clear read’ between the Budget documents and the subsequent reporting obligations.³⁹ The *Annual Report* itself is a report from a *Public Service Act 1999* (Cth) ‘Agency Head’ to the portfolio Minister for tabling in the Parliament about that Agency’s performance.⁴⁰ Included in the *Annual Report* are the *Financial Management and Accountability Act 1997* (Cth) requirements that the ‘Chief Executive’ prepare annual financial statements (according to the *Finance Minister’s Orders*),⁴¹ and the associated Auditor-General’s report.⁴² A similar requirement applies to bodies under the *Commonwealth Authorities and Companies Act 1997* (Cth).⁴³ In effect, the *Annual Report* is the ‘key reference document’⁴⁴ that links the financial management and people management arrangements within an outcomes and outputs/programs framework set out in the *Portfolio Budget Statements* (and *Portfolio Additional Estimates Statements*) accompanying the Budget appropriations.⁴⁵

The *Annual Report* is tabled in Parliament⁴⁶ and referred to a Senate Standing Committee⁴⁷ and a House of Representative Standing Committee.⁴⁸ These committees have the mandate to rigorously assess the *Annual Report*.⁴⁹ Other opportunities for Parliamentary scrutiny of the Australian Government’s operations, activities and expenditure proposals occurs through the Joint Committee of Public Accounts and Audit under the *Public Accounts and Audit Committee Act 1951* (Cth) and the twice yearly Senate Estimate Committee hearings.⁵⁰

³⁸ *Public Service Act 1999* (Cth) s 63(1).

³⁹ See Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* (2010) p 3; Andrew Murray, *Review of Operation Sunlight: Overhauling Budget Transparency* (2008) pp 90-91; Australian National Audit Office, *Application of the Outcomes and Outputs Framework*, Audit Report No 23 (2007) pp 77-83; Australian National Audit Office, *Performance Information in Portfolio Budget Statements*, Better Practice Guide (2002) pp 5-6; and so on. For an illustration of the relationship see, for example, Charles Lawson, ‘Managerialist Influences on Granting Patents in Australia’ (2008) 15 *Australian Journal of Administrative Law* 70.

⁴⁰ *Public Service Act 1999* (Cth) ss 44(1) (Public Service Commissioner), 63(1) (Secretary of a Department), 70(1) (Head of an Executive Agency).

⁴¹ *Financial Management and Accountability Act 1997* (Cth) s 63; amended *Financial Management and Accountability Orders (Financial Statements for Reporting Periods Ending on or after 1 July 2009)* 2009 (Cth).

⁴² *Financial Management and Accountability Act 1997* (Cth) ss 49-51 and 54-57.

⁴³ See *Commonwealth Authorities and Companies Act 1997* (Cth) ss 9(1) and sch 1 (item 1) (*Annual Report* – Commonwealth authorities), 36 (*Annual Report* – Commonwealth companies).

⁴⁴ Australian National Audit Office, *Annual Performance Reporting*, Audit Report No 11 (2003) p 21. See also *Senate Standing Order 25(21)*; Australian National Audit Office and Department of Finance and Administration, *Guide on Annual Performance Reporting*, Better Practice Guide (2004).

⁴⁵ See Australian National Audit Office, *Performance Information in Portfolio Budget Statements*, Better Practice Guide (2002) p 5. See also Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* (2010) pp 3-4.

⁴⁶ *Public Service Act 1999* (Cth), s 63(1).

⁴⁷ *Senate Standing Order 25(21)*. See also Evans H, *Odgers’ Australian Senate Practice* (11th ed, 2004) pp 386-387.

⁴⁸ *House of Representatives Standing Order 215(c)*. See also Ian Harris (ed), *House of Representatives Practice* (5th ed, 2005) p 624.

⁴⁹ See *Senate Standing Order 25(20)(e)*; *House of Representatives Standing Order 215(c)*.

⁵⁰ See Harry Evans, *Odgers’ Australian Senate Practice* (12th ed, 2008) pp 360-362 and 366-371. See also Department of the Senate, *Consideration of Estimates by the Senate Committees*, Senate Brief No 5 (2006).

The following analysis demonstrates the accountability, responsibility and transparency through a ‘clear read’ between the Budget documents and the subsequent reporting obligations for IP Australia: (1) in the formal reporting periods from the 2006 Budget⁵¹ to the 2006-2007 *Annual Report*⁵² that covers the period of the 2006 Budget allocation (Tables 1 and 2); (2) in the formal reporting periods from the 2008 Budget⁵³ to the 2008-2009 *Annual Report*⁵⁴ that covers the period of the 2008 Budget allocation (Table 3); and (3) the projected reporting criteria for the formal reporting periods from the 2009 Budget⁵⁵ to the 2009-2010 *Annual Report*⁵⁶ that covers the period of the 2009 Budget allocation (Table 4). Within the institution of the Department of Industry, Tourism and Resources (now the Department of Innovation, Industry, Science and Research) and IP Australia a number of personalities have powers: the Secretary of the Department of Industry, Tourism and Resources/Department of Innovation, Industry, Science and Research has responsibility under the *Public Service Act 1999* (Cth) (and the *Workplace Relations Act 1996* (Cth)/*Fair Work Act 2009* (Cth)) as an ‘Agency Head’,⁵⁷ and the Director General has responsibility under the *Financial Management and Accountability Act 1998* (Cth) as a ‘Chief Executive’.⁵⁸ IP Australia has a regulatory function promoting innovation, investment and international competitiveness (or trade), in part, through allocating time-limited ‘exclusive rights’ under the *Patents Act 1990* (Cth).⁵⁹ Within IP Australia the ‘decision’⁶⁰ to grant or refuse to grant⁶¹ these ‘exclusive rights’ is made by a statutory

⁵¹ See Budget Speech 2006 and associated documents were delivered on 9 May 2006 as the Second Reading to the *Appropriation Bill (No 1) 2006* (Cth): Commonwealth, *Parliamentary Debates*, House of Representatives, 9 May 2006, pp 57-65 (Peter Costello, Treasurer). See also Commonwealth, *Parliamentary Debates*, Senate, 9 May 2006, pp 115-116 (Nick Minchin, Minister for Finance and Administration).

⁵² See Department of Industry, Tourism and Resources, *Annual Report 2006-2007* (2007).

⁵³ See Budget Speech 2008 and associated documents were delivered on 13 May 2008 as the Second Reading to the *Appropriation Bill (No 1) 2006* (Cth): Commonwealth, *Parliamentary Debates*, House of Representatives, 13 May 2008, pp 2600-2608 (Wayne Swan, Treasurer). See also Commonwealth, *Parliamentary Debates*, Senate, 13 May 2008, p 1559 (Nick Sherry, Minister for Superannuation and Corporate Law).

⁵⁴ See Department of Innovation, Industry, Science and Research, *Annual Report 2008-09* (2009).

⁵⁵ See Budget Speech 2009 and associated documents were delivered on 12 May 2009 as the Second Reading to the *Appropriation Bill (No 1) 2006* (Cth): Commonwealth, *Parliamentary Debates*, House of Representatives, 12 May 2009, pp 3531-3539 (Wayne Swan, Treasurer). See also Commonwealth, *Parliamentary Debates*, Senate, 12 May 2009, p 2468 (Nick Sherry, Minister for Superannuation and Corporate Law).

⁵⁶ Department of Innovation, Industry, Science and Research, *Annual Report 2009-10* (2010).

⁵⁷ See *Public Service Act 1999* (Cth) s 9.

⁵⁸ See *Financial Management and Accountability Act 1997* (Cth) s 5; *Financial Management and Accountability Regulations 1997* (Cth) r 5 and sch 1 (item 128A).

⁵⁹ These ‘exclusive rights’ are ‘during the term of the patent, to exploit the invention and to authorise another person to exploit the invention’ where the term ‘exploit’ means ‘in relation to an invention, includes: (a) where the invention is a product – make, hire, sell or otherwise dispose of the product, offer to make, sell, hire or otherwise dispose of it, use or import it, or keep it for the purpose of doing any of those things; or (b) where the invention is a method or process – use the method or process or do any act mentioned in paragraph (a) in respect of a product resulting from such use’: *Patents Act 1990* (Cth) ss 13 and sch 1 (‘exploit’).

⁶⁰ In the nature of an administrative determination: see *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 335-338 (Mason J), 365 (Brennan J), 369 (Deane J). Notably, this conception of a ‘decision’ contemplates the place of other considerations that ‘guides but does not control the making of decisions’: *Re Drake and Minister for Immigration and Ethnic Affairs (No 2)* (1979) 2 ALD 634 at 640-641 (Brennan J). See also *Tang v Minister for Immigration and Ethnic Affairs* (1986) 67 ALR 177 at 178 (Evatt J), 183 (Davies J), 189-190 (Pincus J).

⁶¹ See *Patents Act 1990* (Cth) ss 45 (examination), 59 (opposition) and 207 (general powers).

office holder, the Commissioner of Patents ('Commissioner').⁶² Figure 1 illustrates the web of accountability applying to decisions made by the Commissioner.

As part of the annual appropriation arrangements for 2006-2007, IP Australia recorded the following resources, in summary:

IP Australia operates on a full cost recovery basis and utilises the receipts from charges for intellectual property services to fund its operations ... The only funds received directly via the Appropriation Bills in 2006-07 relate to notional interest paid against the IP Australia Special Account (\$1.787m), last financial year's measure in relation to the China Free Trade Agreement (\$0.268m) and a small administered amount in relation to Plant Breeder's Rights (\$0.074m). The balance of IP Australia's expenditure is appropriated via the use of a Special Account established under the *Financial Management and Accountability Act 1997*.⁶³

The main annual appropriations for 2006-2007, the *Appropriation Act (No 1) 2006-2007 2006* (Cth), recorded for IP Australia amounts up to a total \$2 129 000, comprising Departmental Outputs of \$2 055 000 and Administered Expenses of \$74 000 for 'Outcome 1 – Australians benefit from the effective use of intellectual property, particularly through increased innovation, investment and trade'.⁶⁴ The '*Portfolio Budget Statements*' were declared to detail activities (the outputs/programs) relevant to the appropriated outcomes.⁶⁵ The relevant details for 2006-2007 are set out in Table 1. The contributions to achieving Outcome 1 were stated to be:

A robust intellectual property (IP) system stimulates investment and trade by providing incentives for individuals and industry to invent and create. IP Australia contributes to the achievement of its outcome through three main areas – IP Rights administration, education and advice.

Through the administration and regulation of Patent, Trade Mark, Design and Plant Breeder's Rights, IP Australia ensures a sound intellectual property protection regime, providing investors with confidence that products and brands will not be threatened with unauthorised use. IP Australia's regulatory role also includes an accreditation and registration system for IP professionals to ensure a level of quality advice is available.

To ensure business and individuals are aware of the importance of IP rights and fully understand the best type of right for their need, IP Australia undertakes an education and awareness role. Engagement in the international intellectual property system is also crucial to ensure improved access for Australia to the global market.

As IP becomes of increasing interest to business investing in research and supporting innovation, and to Government in negotiating international trade agreements, IP Australia's role in supporting quality research and providing policy advice is growing. This specialist advice enables Australia to keep on the forefront of IP issues and be influential in international activities.⁶⁶

The *Appropriation Act (No 5) 2006-2007* (Cth) and the *Portfolio Additional Estimates Statements* varied the appropriated amounts but made no change to the principal objectives

⁶² *Patents Act 1990* (Cth) s 207.

⁶³ Department of Finance and Administration, *Portfolio Budget Statements 2006-2007: Industry, Tourism and Resources Portfolio*, Budget Related Paper No 1.13 (2006) p 83. See also Department of Finance and Administration, *Portfolio Budget Statements 2007-2008: Industry, Tourism and Resources Portfolio*, Budget Related Paper No 1.14 (2007) p 89.

⁶⁴ *Appropriation Act (No 1) 2006-2007* (Cth) ss 7 (departmental items), 8 (administered items) and 15 (appropriation) and sch 1.

⁶⁵ *Appropriation Act (No 1) 2006-2007* (Cth) s 4(2).

⁶⁶ Department of Finance and Administration, *Portfolio Budget Statements 2006-2007: Industry, Tourism and Resources Portfolio*, Budget Related Paper No 1.13 (2006) p 91.

and functions of IP Australia for Outcome 1.⁶⁷ A detailed summary of the prospective performance measures in the outcomes and outputs/programs framework are set out in Tables 1 and 2.

The other appropriations for IP Australia are standing appropriations through Special Accounts. Special Accounts under the *Financial Management and Accountability Act 1997* (Cth) are established either by the Minister responsible for the *Financial Management and Accountability Act 1997* (Cth) (the ‘Finance Minister’)⁶⁸ by written determination⁶⁹ or as a provision in legislation.⁷⁰ In both instances they are a ledger⁷¹ of the CRF.⁷² The essential features of Special Accounts are that they: are a method by which money may be drawn from the ‘Treasury of the Commonwealth’⁷³ for the expenditure purposes of the Commonwealth; articulate the requirements of an appropriation from the CRF; set out an authorisation to expend; and, identify the Commonwealth purposes for which that money may be expended.⁷⁴

IP Australia administers a number of Special Accounts established by written determination.⁷⁵ Importantly, however, the full cost recovery by IP Australia from ‘customers’ of its intellectual property services that are used to fund its operations are

⁶⁷ See Department of Finance and Administration, *Portfolio Additional Estimates Statements 2006-2007: Industry, Tourism and Resources Portfolio* (2007) p 43. The revised appropriation for Output 1 was \$2 506 000 and for Output 2 was \$391 000 to reflect notional interest for Special Accounts of \$842 000.

⁶⁸ *Financial Management and Accountability Act 1997* (Cth) s 5. The ‘Finance Minister’ is currently the Minister for Finance and Administration.

⁶⁹ *Financial Management and Accountability Act 1997* (Cth) s 20. Noting that such determinations are disallowable instruments that must satisfy special procedural requirements before the Parliament before they take effect (s 22).

⁷⁰ *Financial Management and Accountability Act 1997* (Cth) s 21. A listing of these Acts is set out in Joint Committee of Public Accounts and Audit, Commonwealth Parliament, *Inquiry into the Draft Financial Framework Legislation Amendment Bill*, Report 395 (2003) app K.

⁷¹ They are an ‘account ... used to record moneys received for a designated purpose and expenditure of those moneys’: Explanatory Memorandum, *Financial Management Legislation Amendment Bill 1999* (Cth) p 3.

⁷² See *Constitution* s 81. Note also *Constitution* ss 66 and 82.

⁷³ This is ‘any fund or sum of money standing to the credit of the Crown in right of the Commonwealth’: *Northern Suburbs General Cemetery Reserve Trust v Commonwealth* (1993) 176 CLR 555 at 573 (Mason CJ, Deane, Toohey and Gaudron JJ). In other words, the moneys actually held by the Commonwealth.

⁷⁴ *Financial Management and Accountability Act 1997* (Cth) s 20. See Department of Finance and Administration, *Guidelines for the Management of Special Accounts*, Financial Management Guidance No 7 (2003) pp 3-15.

⁷⁵ These are: ‘IP Australia Special Account (Departmental) ... for expenditure in connection with the provision of services in relation to intellectual property’; ‘Other Trust Monies – World Intellectual Property Organisation ... for the receipt of moneys temporarily held in trust for the World Intellectual Property Organisation under the *Patent Cooperation Treaty* and Madrid protocol and IP legislation’; ‘Other Trust Monies - Security of Costs ... for the receipt of moneys held as a security in respect of the costs of the opposition proceedings under ... s 219 of the *Patents Act 1990* [(Cth)]’; ‘services for Other Governments and Non-Agency Bodies Account .. [for] monies advanced to IP Australia by Comcare for the purpose of distributing compensation payments made in accordance with the *Safety, Rehabilitation and Compensation Act 1998* [(Cth)]’; and, ‘services for Other Governments and Non-Agency Bodies Account – IP Australia Salary Packaging ... for payment of Salary Packaging expenses on behalf of current IP Australia employees in accordance with the IP Australia Certified Agreement’: Department of Industry, Tourism and Resources, *Annual Report 2006-2007* (2007) pp 369-371. See also Department of Finance and Administration, *Portfolio Budget Statements 2006-2007: Industry, Tourism and Resources Portfolio*, Budget Related Paper No 1.13 (2006) p 86 (listing only three of these Special Accounts).

conducted through a Special Account.⁷⁶ As a consequence, the Special Account acts as a standing appropriation of the amount credited to the account that is supplemented with any annually appropriated ‘notional interest’ and various other amounts for identified purposes (as set out above).⁷⁷ However, the costs recovered from ‘customers’ of intellectual property services⁷⁸ also include a component of the costs of IP Australia’s activity and another component related to other policy considerations.⁷⁹ These include rising annual renewal fees after the fifth year so that less innovative patents extract lower economic rents (discouraging unwanted patents),⁸⁰ a waiver of fees for public goods (such as lower costs for small to medium sized enterprises),⁸¹ and so on.

For the IP Australia Special Account used to credit receipts from charges for intellectual property services to fund its operations the appropriation is set out in the *Financial Management and Accountability Act 1997* (Cth): ‘[t]he CRF is hereby appropriated for expenditure for the purposes of a Special Account ... up to the balance for the time being of the Special Account the expenditure purpose of the Commonwealth’.⁸² The Commonwealth purpose is set out in the determination establishing the Special Account: ‘[f]or expenditure related to the development and administration of intellectual and industrial property systems, including the provision of property rights in inventions ... and matters incidental thereto’ and ‘[f]or expenditure comprising payments of moneys to the [CRF], as agreed from time to time by the Minister for Finance and the relevant Minister, in addition to payments expressly required to be paid to that fund under legislation’.⁸³ The appropriated amount credit to the Special Account available to expend is recorded in 2006-2007 (‘receipts’) as \$120 224 000 and *associated* with the ‘Outcome 1’ in the terms ‘Australians benefit from the effective use of intellectual property, particularly through increased innovation, investment and trade’.⁸⁴ Importantly, the *Portfolio Budget Statements*

⁷⁶ See Department of Industry, Tourism and Resources, *Annual Report 2006-2007* (2007) p 145 and 369; Department of Industry, Tourism and Resources, *Annual Report 2005-2006* (2006) pp 133-134 and 362.

⁷⁷ See, for example, Department of Finance and Administration, *Portfolio Budget Statements 2006-2007: Industry, Tourism and Resources Portfolio*, Budget Related Paper No 1.13 (2006) p 83. See also Department of Finance and Administration, *Portfolio Budget Statements 2007-2008: Industry, Tourism and Resources Portfolio*, Budget Related Paper No 1.14 (2007) p 89.

⁷⁸ This was a policy that already featured in patent practice at the time the *Patents Act 1990* (Cth) was implemented: see, for example, Department of Industry, Technology and Commerce, *Annual Report 1989-1990* (1990) p 98.

⁷⁹ For example, this includes agreed charges applying under international agreements, such as applications filed under the *Patent Cooperation Treaty* [1980] *Australian Treaty Series* 6 in an agreement with the World Intellectual Property Organisation.

⁸⁰ *Patents Regulations 1991* (Cth) sch 7(pt 2). See also Intellectual Property and Competition Review Committee, *Review of Intellectual Property Legislation under the Competition Principles Agreement* (2000) pp 144, 156 and 157; IP Australia, *Government Response to Intellectual Property and Competition Review Recommendations* (2001) p 7.

⁸¹ See, for example, IP Australia, *Corporate Guidelines for Refunds and Waivers* (2007) p 13.

⁸² *Financial Management and Accountability Act 1997* (Cth) s 20(4).

⁸³ *Initial Determination to Establish Components of the Reserved Money Fund* (1997) sch. Notably the *Financial Management Legislation Amendment Act 1999* (Cth) s 5 merged the Loan Fund and the ‘components’ of the Reserve Money Fund and the Commercial Activities Fund into the single CRF with the ‘new’ Special Accounts preserving the rights and obligations of the ‘components’ of the Reserve Money Fund and Commercial Activities Fund: Department of Finance and Administration, *Reserved Money Fund (RMF) and Commercial Activities Fund (CAF) – Transition to ‘Special Accounts’*, Finance Circular 1999/03 (1999); Department of Finance and Administration, *Guidelines for the Management of Special Accounts*, Financial Management Guidance No 7 (2003).

⁸⁴ Department of Finance and Administration, *Portfolio Budget Statements 2006-2007: Industry, Tourism and Resources Portfolio*, Budget Related Paper No 1.13 (2006) p 84. See also Department of

records the Special Account balance as ‘receipts’ and distinct from the amount of the annual appropriation by the *Appropriation Act (No 1) 2006-2007* (Cth).⁸⁵ Presumably the expenditure purposes of the annual appropriation and the Special Account appropriation are within the meaning of the terms of both forms of appropriation purposes and that the outcomes and outputs/programs framework also applies to the Special Account standing appropriations.⁸⁶ This appears to be the approach adopted by IP Australia.⁸⁷

By way of a contrast Table 3 sets out a similar comparison to Tables 1 and 2 but for the period of the appropriations 2008-2009 for the IP Australia in the now Department of Innovation, Industry, Science and Research.⁸⁸ The paucity of information and data compared with the period of the appropriations 2006-2007 is perhaps surprising, given the rhetoric of ‘Operation Sunlight’ and the Australian Government’s response.⁸⁹ More importantly, the variation in the information and data means that tracking performance is made difficult. This is also problematic when measures differ across agencies so comparisons of quality, quantity and price across agencies might provide useful measures of performance and value. Table 4 sets out similar comparison for the period of the appropriations 2009-2010 for the IP Australia in the Department of Innovation, Industry, Science and Research.⁹⁰ Again demonstrating the variability across years; here in 2009-2010 the articulation of deliverables was spare while the actual performance was comprehensive as compared to other years. In each table, however, comparable information and data was synthesised from various sources as no single source provided a direct comparison between the Budget documents and the final reporting in the *Annual Report* on performance.⁹¹

Finance and Administration, *Portfolio Additional Estimates Statements 2006-2007: Industry, Tourism and Resources Portfolio* (2007) p 44.

⁸⁵ Department of Finance and Administration, *Portfolio Budget Statements 2006-2007: Industry, Tourism and Resources Portfolio*, Budget Related Paper No 1.13 (2006) p 84.

⁸⁶ Similar dual appropriations have been considered by the High Court, although the issue of inconsistency or supremacy has not been resolved. See, for example, *Northern Suburbs General Cemetery Reserve Trust v Commonwealth* (1993) 176 CLR 555 (Mason CJ, Brennan, Deane, Dawson, Toohey, Gaudron and McHugh JJ). While this may be of little practical consequence there are potentially significant issues where the appropriations are double counted in the calculation of surplus revenue due to the States (*Constitution* s 94), and where an appropriation is for ‘the necessary supplies for the ordinary annual services of Government’ (*Constitution* ss 53 and 54). Notably, to expend money there must be both an appropriation law *and* a spending law as an appropriation is not sufficient by itself to authorise spending: see *Pape v Commissioner of Taxation* (2009) 238 CLR 1 at 55 (French CJ), 74 and 82-83 (Gummow, Crennan and Bell JJ), 113 (Hayne and Kiefel JJ), 210-213 (Heydon J).

⁸⁷ See, for examples, Department of Industry, Tourism and Resources, *Annual Report 2006-2007* (2007) p 25; Department of Industry, Tourism and Resources, *Annual Report 2005-2006* (2006), p 19.

⁸⁸ See Department of Innovation, Industry, Science and Research, *Annual Report 2008-09* (2009) p 114-144; Department of Finance and Deregulation, *Portfolio Budget Statements 2008-2009: Innovation, Industry, Science and Research Portfolio*, Budget Related Paper No 1.14 (2008) pp 165-185.

⁸⁹ See Andrew Murray, *Review of Operation Sunlight: Overhauling Budget Transparency* (2008) pp 24-26; Finance and Public Administration Committee, Senate, *Transparency and Accountability of Commonwealth Public Funding and Expenditure* (2007) pp 50-52; Australian National Audit Office, *Application of the Outcomes and Outputs Framework*, Audit Report No 23 2006-07 (2007) pp 90-94. See also Department of Finance and Deregulation, *Government Response to the Review of Operation Sunlight: Overhauling Budget Transparency* (2008) p 6.

⁹⁰ See Department of Finance and Deregulation, *Portfolio Budget Statements 2009-2010: Innovation, Industry, Science and Research Portfolio*, Budget Related Paper No 1.14 (2009) pp 219-244.

⁹¹ It was notable that there were minor variations in the data and information set out in the *Portfolio Budget Statements* and the *Annual Report* (such as quantities and prices) was not the same. The consequence is that the *Annual Report* statements on performance needed to be checked against the targets in the *Portfolio Budget Statements*.

Importantly, this analysis of IP Australia documentation illustrates that the proposed Parliamentary Budget Office could usefully give direction and guidance about the form of these critical documents in the form of standards and guidance materials:

- (a) Establish standards and oversee the ‘purpose’ statements (outcomes) in *Appropriation Bills* to ensure the ‘purposes’ of appropriations are sufficiently descriptive to confine subsequent Executive spending – These are the Outcome statements defining the purposes of the Parliament’s approval for spending that are set out in the *Appropriation Bills*, the *Portfolio Budget Statements* and the *Annual Reports* against which performance is measured. These statements are also link to senior executive’s performance. These purpose statements need to be carefully crafted to limit the Executive’s spending, albeit a crude measure given the preference for ‘one line appropriations’. These statements are, in effect, a Parliamentary pre-approval for spending and benchmark for performance;
- (b) Establish standards and oversee the benchmarks for performance measures of programs (outputs) in the *Portfolio Budget Statements*, including the descriptive performance indicators – These are the various program, sub-program, deliverables and key performance statements that are found in the *Portfolio Budget Statements* and the *Annual Reports* against which performance is measured. These statements are also link to senior executive’s performance. These statements need to be carefully crafted so that performance is properly directed to outcomes and outputs that the Parliament intends through its appropriations;
- (c) Establish standards and oversee the financial reporting standards (currently prepared as, for example, the *Finance Minister’s Orders*) – These are the annual financial statements (according to the *Finance Minister’s Orders*) against which the Auditor-General provides a report. The relevant documents are currently in the form of Orders (approved by Parliament as disallowable instruments (that is, legislative authority delegated to the Executive)) and policy and guidance materials are provided by the Executive. These are essentially the accounting standards against which the appropriations are expended and found the Australian Government’s financial reporting; and
- (d) Establish standards and oversee the benchmarks for reporting to Parliament in the *Annual Report* on spending and performance – The *Annual Reports* is the ‘key reference document’ linking appropriation, spending and performance. As such, it is essential that this document provide the kinds of information and data that a Parliament might need and want. The kinds of information and data that a Parliament might need and want are best determined by the Parliament.

The justification for the proposed Parliamentary Budget Office taking on setting the standards and forms and overseeing their implementation is to ensure that the Parliament independently determines what information and data it needs, recognising that a Parliament has a different function to an Executive and it is best placed to determine its own needs and wants. For example, the Executive’s documents might not provide the kind of information and data, or the synthesis of that information and data, in a form that is most useful to Parliament. At present, these key documents are prepared by the Executive, albeit with some involvement from the Parliament. Examples are the potential to amend purpose

statements in *Appropriation Bills*, the potential to disallow the Finance Minister's Orders (accounting standards); the Joint Committee of Public Accounts and Audit approving the *Executive Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, and so on. While these have worked well, they are short of the Parliament itself determining the standards and ensuring they are complied with. Most importantly, if the Parliament sets the standards and forms of data and information it desires and wants then it is at least likely that Parliament is getting the 'right' information and data.

Figure 1: The web of accountability applying to decisions made by the Commissioner of Patents under the *Patents Act 1990* (Cth).

AG Act – Auditor-General Act 1997 (Cth); *CBH Act* – Charter of Budget Honesty Act 1996 (Cth); *FW Act* – Fair Work Act 2009 (Cth); *FMA Act* – Financial Management and Accountability Act 1997 (Cth); *PS Act* – Public Service Act 1999 (Cth).

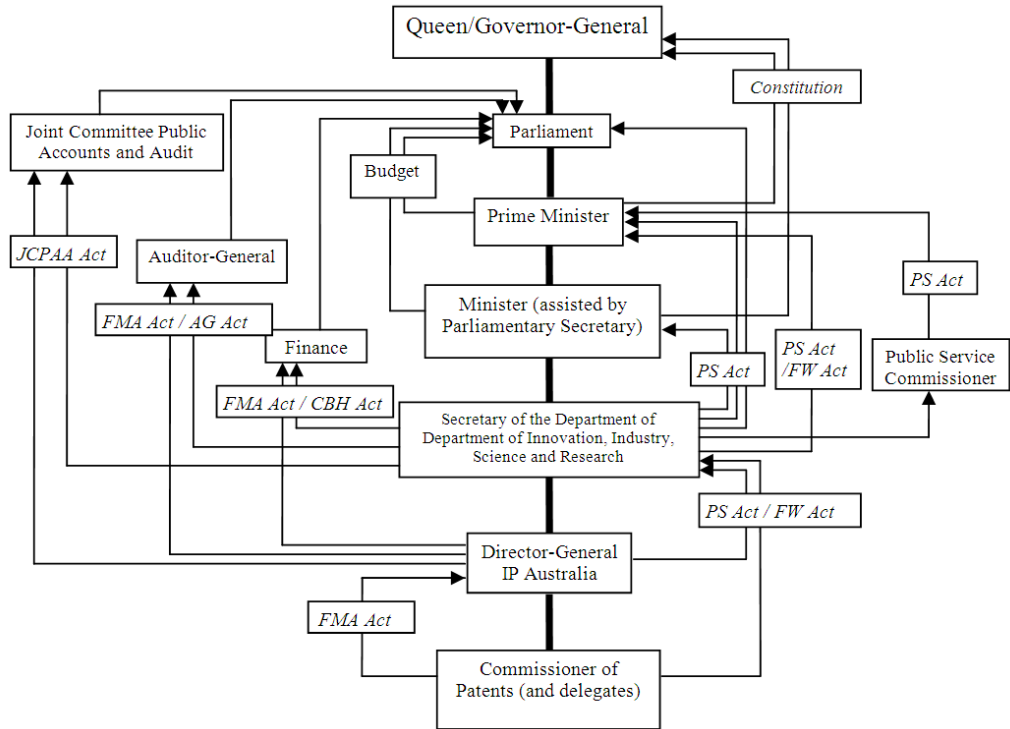


Table 1: Effectiveness measurements for Outcome 1 (2006-2007)

Derived from Department of Finance and Administration, *Portfolio Budget Statements 2006-2007: Industry, Tourism and Resources Portfolio*, Budget Related Paper No 1.13 (2006) pp 82 and 92 and Department of Industry, Tourism and Resources 2006-2007 Performance Reporting Structure from Department of Industry, Tourism and Resources, *Annual Report 2006-2007* (2007) p 128.

Outcome	Outcome particulars	Sub-outcomes	Effectiveness through measures, indicators and targets
Outcome 1: Australians benefit from the effective use of intellectual property, particularly through increased innovation, investment and trade	IP Australia seeks to achieve this outcome by administering the Patents ... acts, promoting the benefits of intellectual property and participating in the development of international IP systems	Australians benefit from IP initiatives	*Analysis of benefit through periodic research and programs studies and independent reviews *Increased application by Australian industry for international IP Rights
		Customer and stakeholder satisfaction	*Customer satisfaction with products and services measured through surveys and feedback *Ministerial and stakeholder feedback
		Recognised as best practice in administration and delivery of high quality IP system	*Compliance with quality management framework *Results of periodic benchmarking studies *Feedback from overseas offices involved in bilateral agreements with IP Australia
		Ongoing financial viability and cost effective	*IP Australia prices aligned to Outcome and in operations compliance with cost recovery policy and international competitiveness *Products and service charges remain internationally competitive

Table 2: Actual performance measures for Outcome 1 (2006-2007)

From Department of Industry, Tourism and Resources 2006-2007 Performance Reporting Structure from Department of Industry, Tourism and Resources, *Annual Report 2006-2007* (2007) pp 138-142: 'Outcome 1: Australians benefit from the effective use of intellectual property, particularly through increased innovation, investment and trade'.

Output groups	Output particulars	Sub-outputs	Customer/stakeholder	Prospective performance	Actual performance
Output 1: Intellectual property rights administration and professional registration	IP Administration and Professional Registration encompasses the administration of Patent, Trade Mark, Design and Plant Breeder's IP rights legislation. This output also includes the administration of the Professional Standards Board for Patent and Trade Marks Attorneys and the Patent Attorneys Disciplinary Tribunal	Quality	Patents indicator	*Compliance with IP Australia customer service charter and quality standards	*Greater than 96% compliance ...
			Professional Standards Board	*Stakeholder satisfaction with secretariat support	*All high levels of satisfaction ...
		Quantity	Patents	*26,231 Patent applications *17,000 Patent examinations	*26,365 applications were made *17,310 examinations were performed
			Professional Standards Board	*60 applications for registrations *1,070 current registrations	*132 applications for registration *1032 current registrations
		Price	Patents	*Cost: \$65.888m	*Cost: \$63.295m
Professional Standards Board	*Cost: \$0.451m	*Cost: \$0.519m			
Output 2: Awareness, education and international engagement	Awareness, Education and International Engagement represents IP Australia's role in raising awareness and educating customers about intellectual property, and engaging with key international stakeholders and IP bodies	Quality	International Engagement Awareness & Education	*Australian business demonstrates increased awareness of intellectual property *Business sectors consider information useful, accessible and easy to understand	*3354 people attended presentations *1383 website visitors, 94.4% found information useful
			International Engagement	*Key outcomes achieved through participation at key international and regional forums *Key agreements reached and implemented with targeted international IP offices	*Delivered symposiums, and so on *Signed MOU and so on
		Quantity	Awareness & Education	*Number of information kits distributed. *Number of brochures downloaded from IP Australia's website. *Number of subscribers to online subscriber lists	*14670 kits distributed *86,102 brochures downloaded *5380 subscribers
			International Engagement	*Number of International activities and agreements. *Number of externally funded aid projects delivered against key target segments	*110 international activities *5 major projects
		Price	Awareness & Education	*Cost: \$2.208m	*Cost: \$2.010m
			International Engagement	*Cost: \$1.036m	*Cost: \$2.001m
Output 3: Advice to government	Advice to Government relates to IP Australia's role in providing advice on intellectual property matters, and supporting research into the current and future use of IP Rights	Quality	Policy and legislation	*Satisfaction of stakeholders with quality and timeliness of advice on policy and legislation, ministerial correspondence, speeches & briefings, submissions to reviews and Government responses	**"All stakeholders reported high levels of satisfaction ..."
			IP Research	*Increased understanding of IP issues impacting on Australian industry.	*Increasing use of IP Australia-supported research ..."
			Support for Advisory Boards	*Council & Board satisfaction with quality of secretariat and research support provided	**"... all have reported high levels of satisfaction ..."
		Quantity	Policy and legislation	*Number of draft bills, regulation changes, amendments ministerial responses & briefs prepared	*1 Bills *2 Regulations
			IP Research	*Number of IP research initiatives	*17 initiatives, 15 reports/papers ...
			Support for Advisory Boards	*Number of ACIP reviews undertaken *Number of meetings, briefings and seminars held	*Progressed current reviews *15 meetings
		Price	Policy and legislation	Cost: \$1.521m	*Cost: \$2.272m
IP Research	Cost: \$0.524m		*Cost: \$0.276m		
Support for Advisory Boards	Cost: \$1.320m	*Cost: \$1.110m			

Table 3: Actual performance measures for Outcome 1 (2008-2009)

From Department of Innovation, Industry, Science and Research, *Annual Report 2008-09* (2009) p 122 and Department of Finance and Deregulation, *Portfolio Budget Statements 2008-2009: Innovation, Industry, Science and Research Portfolio*, Budget Related Paper No 1.14 (2008) pp 173-175: ‘Outcome 1: Australians benefit from the effective use of intellectual property, particularly through increased innovation, investment and trade’.

Output groups	Components (with the results to be achieved)	Key Performance Indicators	2008-09 targets	Results Achieved
Output 1.1: Intellectual property rights and professional registration	<p>*Intellectual property rights – IP rights administration, search and examination <i>IP Australia will deliver intellectual property rights that are valued in the community and are enforceable when required. IP Australia will strive to create an intellectual property system that is simple, open, fair and which offers value for money</i></p> <p>*Professional registration – Registration processing and Professional Standards Board secretariat <i>IP Australia will successfully undertake its functions associated with persons wishing to qualify for registration as patents and/or Trade Marks -Attorneys and will provide effective secretariat support for the Professional Standards Board</i></p>	Compliance with agreed Customer Charter standards	*80% or greater compliance with agreed Customer Service Standards	*88% compliance with agreed Customer Service Standards
		Receipt of patent applications and provisions of patent examination services	*Applications: 37,595 *Examinations: 17,000	*Applications: 24,985 *Examinations: 19,336
		Receipt of Professional Standards Board applications and provision of Professional Standards Board registration services	*Applications: 457 *Registrations: 1,206	*Applications: 387 *Registrations: 1,170
		Costs of delivering this output group (which includes trade marks, designs and plant breeder's rights applications and registration services)	*\$132.728 million	*\$132.235 million
Output 1.2: Awareness, education and international engagement	<p>*Awareness and education <i>IP Australia will facilitate understanding of the value of and access to the domestic and international intellectual property system among its stakeholders in line with Australia's interests</i></p> <p>* International engagement <i>IP Australia will influence the development of effective intellectual property systems internationally in line with Australia's interests</i></p>	Awareness and education – actual participation in awareness and education activities compared with plan	*90% of planned activities conducted and implemented	*94% of planned activities conducted and implemented
		International engagement – actual participation in international engagement activities compared with the plan	*90% of planned activities conducted and implemented	*More than 90% of planned activities conducted and implemented
		Cost of delivering services for this output group	*\$7.969 million	*\$7.635 million
Output 1.3: Advice to government	<p>*Policy and legislation <i>IP Australia's program of policy and legislative change will assist in the development of a strong, more harmonised international intellectual property system that is in line with Australia's interests</i></p> <p>*IP research <i>IP Australia will contribute to research in intellectual property issues to support its legislative and policy effort and its Advisory Boards</i></p> <p>* Support for Advisory Boards <i>IP Australia will provide effective support to the Advisory Council on Intellectual Property</i></p>	Quality of advice to government	*Less than 10% of ministerial responses are returned for rework or are overdue	*Less than 5% of ministerial responses were returned for rework or were overdue
		Policy and legislative program – actual participation in policy and legislative activities compared with plan	*90% of planned activities conducted and implemented	*More than 90% of planned activities conducted and implemented
		IP Research – actual participation in research activities compared with plan	*90% of planned activities conducted and implemented	*More than 90% of planned activities conducted and implemented
		Cost of delivering services for this output group	*\$4.202 million	*\$4.103 million

Table 4: Actual performance measures for Outcome 1 (2009-2010)

From Department of Finance and Deregulation, *Portfolio Budget Statements 2009-2010: Innovation, Industry, Science and Research Portfolio*, Budget Related Paper No 1.14 (2009) pp 221-244 ('Outcome 1: Increased innovation, investment and trade in Australia and by Australians overseas, through the administration of the registrable intellectual property rights system, promoting public awareness and industry engagement, and advising government') and Department of Innovation, Industry, Science and Research, *Annual Report 2009-10* (2010) pp 97-101.

Sub-program 1.1: IP Rights Administration and Professional Registration

Sub-program	Sub-program objectives	Key Performance Indicators	Deliverables (PBS)	Results Achieved (Annual Report)	
Sub-program 1.1: IP rights administration and professional registration	<p>Intellectual property rights: IP Australia will deliver robust IP rights and satisfy our customers in terms of timeliness and value for money. IP Australia will be recognised as one of the leading IP offices in the world for the quality (including accuracy and consistency) of the IP rights we grant</p> <p>Professional registration: IP Australia will successfully undertake its functions associated with persons wishing to qualify for registration as Patents and/or Trade Mark Attorneys and will provide effective secretariat support to the Professional Standards Board</p> <p>Sub-program expenses (which includes trade marks, designs and plant breeder's rights applications and registration services)</p>	<p>Intellectual property rights</p> <ul style="list-style-type: none"> *The level of customer satisfaction with the consistency of our work *IP Australia's performance in benchmarking against quality standards (both domestic and international) *The level of maturity of quality assurance systems *Timeliness of services against service charter standards *The level of work on hand for each IP right reduced, avoidance of backlog <p>Professional Standards Board</p> <ul style="list-style-type: none"> *Stakeholder satisfaction with secretariat support 	*Receipt of patent applications	24,100	25,344
			*Provision of patent examination services	20,400	27,700
			*Receipt of Professional Standards Boards applications	150	110
			*Provision of Professional Standards Board registration services	1,198	1,122
			*\$134,791,000	\$129,125,000	

Sub-program 1.3: Advice to Government

Sub-program	Sub-program objectives	Key Performance Indicators	Deliverables (PBS)	Results Achieved (Annual Report)
Sub-program 1.3: Advice to government	<p>Policy and legislation: IP Australia's program of policy and legislative change will foster Australian innovation by shaping the development of the IP system both at home and abroad</p> <p>IP research: IP Australia will contribute to research in intellectual property issues to support its legislative and policy effort and its advisory boards</p> <p>Support for advisory boards: IP Australia will provide effective support to the Advisory Council on Intellectual Property.</p>	<p>Policy & Legislation</p> <p>Quality</p> <ul style="list-style-type: none"> *Satisfaction of stakeholders with quality and timeliness of advice on policy and legislation, and ministerial correspondence, speeches & briefings, submissions to reviews and Government responses 	<p>*Advice to Government relates to IP Australia's role in providing advice on intellectual property matters, and supporting the research into the current and future use of IP Rights</p> <p>*Under the policy and legislative objective of this sub-program IP Australia will provide IP policy advice across government and internationally</p>	*IP Australia's policy and advice is consistently delivered on time. Less than 5 per cent of IP Australia's ministerial contributions are returned for re-work.
		<p>Quantity</p> <ul style="list-style-type: none"> *The number of ministerial briefs and responses 		*In 2009-10, IP Australia provided 54 pieces of ministerial correspondence, 19 information briefs, 20 action briefs, 14 engagement briefs, 15 question time briefs and 2 meeting records to the Minister.
		<p>IP Research</p> <p>Quality</p> <ul style="list-style-type: none"> *Increased understanding of IP issues impacting on Australian business. 		*Through IP Australia's biannual Business and Industry Forum, business issues related to IP and intangible assets have been identified, discussed and acted upon. The forum includes representatives from the Australian Industry Group, the Australian Chamber of Commerce and Industry, the Institute of Chartered Accountants and the Certified Practising Accountants of Australia.
		<p>Quantity</p> <ul style="list-style-type: none"> *The number of IP research initiatives 		*IP Australia conducted four strategic research projects during 2009-10. Of these strategic research initiatives, 100 per cent were completed on time, within budget and to the anticipated standard.
		<p>Support for Advisory Boards</p> <p>Quality</p> <ul style="list-style-type: none"> *Council & Board satisfaction with quality of secretariat and research support provided 		*IP Australia's Advisory Boards indicated that they were very satisfied with secretariat and research support during 2009-10.
		<p>Quantity</p> <ul style="list-style-type: none"> *The number of ACIP reviews completed 		*During 2009-10, the Advisory Council on Intellectual Property completed two reviews - the review of Post Grant Patent Enforcement strategies and a review of the Enforcement of Plant Breeder's Rights.
	Sub-program expenses		*\$4,267,000	\$4,970,000

Sub-program 1.2: Awareness, Education and International Engagement

Sub-program	Sub-program objectives	Key Performance Indicators	Deliverables (PBS)	Results Achieved (Annual Report)
Sub-program 1.2: Awareness, education and international engagement	<p>Awareness and education IP Australia will facilitate understanding of the value of and access to the domestic and international intellectual property system among its stakeholders in line with Australia's interests</p> <p>International engagement IP Australia will influence the development of effective intellectual property systems in line with Australia's interests</p>	<p>Awareness and education <i>Quantity</i></p> <ul style="list-style-type: none"> The proportion of customers that deal with us electronically. The level of use of public information services. The level of use of fast-track applications and registration options. <p><i>Quality</i></p> <ul style="list-style-type: none"> Increased public awareness of intellectual property rights. The level of customer satisfaction with information services. <p>International engagement <i>Quantity</i></p> <ul style="list-style-type: none"> The amount of international work sharing. Number of international activities and agreements. Number of externally funded aid projects delivered against key target segments. <p><i>Quality</i></p> <ul style="list-style-type: none"> The level of customer satisfaction with access to international IP system. The achievement of key outcomes through participation at key international and regional forums. Key agreements reached and implemented with targeted international IP offices. 	<p>Awareness, Education and International Engagement represents IP Australia's role in raising awareness and educating customers about intellectual property, and engaging with key international stakeholders and IP bodies</p> <p>Under the awareness and education objective of this sub-program IP Australia will deliver Public Education and Awareness programs, which promote the importance of IP and provide Australians with the tools they require to make informed decisions regarding IP</p> <p>Under the international engagement objective of this sub-program IP Australia will proactively manage customer and international engagement activities, including development and cooperation activities.</p>	<p>There has been little upward movement in the proportion of customers who deal with us electronically (although significantly more online transactions occur in the trade marks business line than in patents).</p> <p>IP Australia's major program of ICT modernisation, especially the Integrated Customer Service Delivery (ICSD) Program, should lift the proportion significantly in coming years.</p> <p>The number of total visitors to IP Australia's website increased by 20 per cent in 2009-10 compared to the previous financial year. Subscribers to IP Australia's small and medium business e-newsletter increased by more than 45 per cent in the same period.</p> <p>IP Australia's customers lodged fewer fast tracked patent applications in 2009-10 than in 2008-09 — 456 compared with 454. Ten of these lodgements cited green technology as the reason.</p> <p>Research indicates that 67 per cent of SMEs are either somewhat or very aware of IP protection. This is the same percentage as in the 2008-09 research.</p> <p>The 2009 Service Evaluation found that the trend in satisfaction with online services is upwards with accuracy, ease of use, and look and feel leading the upwards trend.</p> <p>Attorneys reported higher levels of satisfaction compared to self-filers whose experience was moderated by the individual's prior knowledge or exposure to intellectual property.</p> <p>Forty-one cases were considered under the Vancouver Group Mutual Exploitation (VGMIE) Initiative during 2009-10. This will increase significantly in 2010-11.</p> <p>In 2009-10, 26 requests to fast-track AU applications were received via the Patent Prosecution Highway (PPH) with the United States Patent and Trademark Office.</p> <p>40 overseas trips were undertaken in 2009-10, primarily to participate in multilateral and bilateral meetings. See below for the outcomes of this participation.</p> <p>In 2009-10, IP Australia participated in the development of three agreements with international IP offices. See below for more information on key agreements achieved.</p> <p>The following development cooperation projects activities in 2009-10 were partially funded by external organisations (identified in brackets):</p> <ul style="list-style-type: none"> Intellectual Property Explorer - IPR web resource for SMEs (APEC, the Hong Kong Intellectual Property Department, and the Intellectual Property Office of Singapore). <p>The 2009 Service Evaluation found that 79 per cent of customers found the ease of access to the international IP system to be good, very good or excellent, with 92 per cent describing the ease of access as either the same or better when compared with earlier experiences.</p> <p>Key outcomes achieved in 2009-10 included:</p> <ul style="list-style-type: none"> renewal of the mandate of the WIPO Intergovernmental Committee on IP and Genetic Resources, Traditional Knowledge and Folklore. The mandate renewal has started to provide momentum to WIPO normative activities; agreement to several measures to enhance the Patent Cooperation Treaty system. These will make the patent system more efficient and increase the quality of examination; agreement to a coordination mechanism for the WIPO Committee on Development and IP. This agreement contributes to maintaining balance in WIPO as an international IP system delivery agency and an agency responsible for economic development, technical assistance and capacity building. <p>Key agreements reached in 2009-10 included:</p> <ul style="list-style-type: none"> the VGMIE initiative agreed in July 2009 between the Australian, Canadian and UK IP offices, enabling exploitation of existing search and examination reports on equivalent applications; the 2010 European Patent Office - IP Australia Memorandum of Understanding agreed in November 2009, setting out key cooperation activities with one of the world's largest patent offices; and the 2010-11 WIPO - Australia Work Plan agreed in November 2009, which articulates development cooperation projects for the Asia and Pacific Region.
	Sub-program expenses		\$8,093,000	\$9,403,000