

DEPARTMENT OF THE SENATE

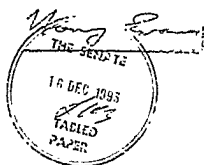
PAPER No. 3294

PRESENTED

16 DEC 1993

The Parliament of the Commonwealth of Australia

Joint Committee of Public Accounts



Report No. 329

Finance Minutes

December 1993

# JOINT COMMITTEE OF PUBLIC ACCOUNTS

## Eighteenth Committee

Mr Les Scott, MP (Chairman)

Senator Warwick Parer (Vice-Chairman)<sup>1</sup>

Senator John Watson (Vice-Chairman)<sup>2</sup>

Senator Terry Aulich <sup>3</sup>	Mr Ken Aldred, MP
Senator Bronwyn Bishop	Hon Bob Brown, MP
Senator Barney Cooney <sup>4</sup>	Mr Eric Fitzgibbon, MP
Senator Kay Denman <sup>5</sup>	Mr Alan Griffin, MP
Senator Patricia Giles <sup>6</sup>	Mr Chris Haviland, MP
Senator the Hon Margaret Reynolds	Hon Leo McLeay, MP
Senator the Hon Michael Tate <sup>7</sup>	Mr Alex Somlyay, MP
	Mr Bill Taylor, MP
	Mr Mark Vaile, MP

Secretary: Mr Trevor Rowe (until 26 November 1993)  
Mr Grant Harrison (from 29 November 1993)

Secretariat Staff: Miss Yolanda Campagna

- 
1. Appointed 19 August 1993
  2. Discharged 19 August 1993
  3. Discharge 17 August 1993
  4. Appointed 19 August 1993
  5. Appointed 30 September 1993
  6. Discharged 17 August 1993
  7. Appointed 5 July 1993, Discharged 19 August 1993

## DUTIES OF THE COMMITTEE

The Joint Committee of Public Accounts is a statutory committee of the Parliament. Its powers, functions and method of operation are described in the *Public Accounts Committee Act 1951*. Section 8(1) of the Act sets out the duties of the Committee. They are:

- . 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*;
- . 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;
- . 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;
- . 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;
- . 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
- . 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.

# TABLE OF CONTENTS

	Page
Membership of the Committee .....	iii
Duties of the Committee .....	iv
Introduction .....	1
 Finance Minutes on:	
Report 315 Social Responsibilities of Commonwealth Statutory Authorities and Government Business Enterprises .....	
Report 315 Supplement to Finance Minute on Report 315 - Social Responsibilities of Commonwealth Statutory Authorities and Government Business Enterprises .....	
Report 317 A champagne appetite but only a beer income: Defence's Supply Systems Redevelopment Project .....	
Report 318 Public Sector Research and Development: Volume 1 of a Report on Research and Development .....	
Report 319 Review of the Independent Auditor: Watching the Watchdog .....	
Report 320 Review of Six Performance Audits .....	
Report 325 The Midford Paramount Case and Related Matters: Customs and Midford Shirts - A Paramount Case of a Failure of Customs .....	

# INTRODUCTION

## The Finance Minute Process

1. Arrangements to ensure that appropriate action is taken in response to reports of the Joint Committee of Public Accounts have been in place since 1952. The process is based on the preparation, by the Department of Finance, of a Minute to the Committee (known as a Finance Minute) describing the Government's response to the Committee's findings, and informing the Committee of actions taken to implement its recommendations. The steps in the process are as follows:

- the Committee's report is tabled in the Senate and House of Representatives;
- the Chairman of the Committee then forwards a copy of the report to the responsible Minister, or Ministers, and to the Minister for Finance with a request that the report be considered and the Chairman subsequently informed of actions taken to address the Committee's recommendations;
- the reply takes the form of a Finance Minute which, since the Committee reviewed its procedures in 1988 (*Report 291 - Revised Procedures for Reports of the Joint Committee of Public Accounts*, June 1988) and refined them in 1989 (*Report 301 - Finance Minutes*, 1989) is tabled in the Parliament as soon as is practicable after its receipt, with comment if necessary;
- the Committee then publishes an annual volume of all the Finance Minutes received in the calendar year, with additional comment if necessary; and
- in some cases, the Committee undertakes a further formal inquiry into the matters dealt with in the initial report and the corresponding Finance Minute.

2. Finance Minutes do not contain responses to those recommendations of the Committee which canvass policy issues. The Government responds to recommendations of this type separately, either by tabling a response in Parliament or by writing directly to the Committee.

3. This Report contains the seven Finance Minutes received by the Committee during 1992-93:

- . the Finance Minute on *Report 315 - Social Responsibilities of Commonwealth Statutory Authorities and Government Business Enterprises*,
- . the Supplementary Finance Minute on *Report 315 - Social Responsibilities of Commonwealth Statutory Authorities and Government Business Enterprises*,
- . the Finance Minute on *Report 317 - A champagne appetite but only a beer income: Defence's Supply Systems Redevelopment Project*,
- . the Finance Minute on *Report 318 - Public Sector Research and Development: Volume 1 of a Report on Research and Development*,
- . the Finance Minute on *Report 319 - Review of the Independent Auditor: Watching the Watchdog*,
- . the Finance Minute on *Report 320 - Review of Six performance Audits*, and
- . the Finance Minute on *Report 325 - The Midford Paramount Case and Related Matters: Customs and Midford Shirts - The Paramount Case of a Failure of Customs*.

4. The two Finance Minutes on *Report 315*, and the Finance Minutes on *Reports 317, Report 318, Report 319 and Report 320* were tabled on 27 May 1993. All of these Finance Minutes were tabled without comment by the Committee.

5. The Finance Minute on *Report 325* was tabled on 28 November 1993, together with comments by the Committee, as *Report 327 - Finance Minute on Report 325*. The Committee's comments addressed, in particular, the views expressed by the Commonwealth Director of Public Prosecutions in an appendix to the Finance Minute.

6. The tabling and publication of these Finance Minutes without comment does not necessary mean that the Committee is satisfied with the contents of each Minute. The Committee reserves the prerogative of considering in detail any of the Finance Minutes at a later time.

For and on behalf of the Committee

A handwritten signature in black ink, appearing to read 'Les Scott', written in a cursive style.

Les Scott, MP  
Chairman  
15 December 1993

FINANCE MINUTE ON REPORT 315  
SOCIAL RESPONSIBILITIES OF COMMONWEALTH STATUTORY  
AUTHORITIES AND GOVERNMENT BUSINESS ENTERPRISES





## Minister For Finance

Hon Ralph Willis MP

The Hon Gary Punch, MP  
Chairman  
Joint Committee of Public Accounts  
Parliament House  
CANBERRA ACT 2600



Dear Mr Punch

In accordance with the agreed arrangements I enclose the Department of Finance Minute on your Committee's 315th Report entitled 'Social Responsibilities of Commonwealth Statutory Authorities and Government Business Enterprises'

Yours sincerely

Ralph Willis

10 NOV 1992

DEPARTMENT OF FINANCE MINUTE ON REPORT 315

This Minute has been prepared on the basis of responses received from the Departments of Arts, Sport, the Environment and Territories, Industrial Relations, Finance, Prime Minister and Cabinet, Transport and Communications and Primary Industries and Energy.

General comment

2. Most departments indicated that the recommendations in the Report clarify the issues surrounding social responsibilities and objectives in the operations of Statutory Authorities (SAs) and Government Business Enterprises (GBEs). The recommendations are also concerned with proposals to make SAs and GBEs more accountable and as such would bring their activities more into line with existing monitoring and reporting mechanisms for Commonwealth departments.

3. Some concerns were raised by departments about generalising the issues by grouping all SAs and GBEs together without making adequate allowance for the different nature and size of operations of particular entities. Statutory authorities such as marketing authorities operate quite differently, in terms of their social and other responsibilities, to less commercially oriented authorities. A GBE such as ANL, which operates in competition with other shipping companies, may be regarded as somewhat different to the monopoly GBEs such as the Civil Aviation Authority. In those cases where accountability arrangements have been settled, they generally reflect those differences.

4. Furthermore, while there is general agreement with the JCPA that there are benefits in these entities accepting certain social responsibilities and being accountable for them, it will be necessary for the resource implications to be fully addressed and for sufficient time to be allowed for the implementation of the relevant recommendations. The smaller portfolio entities may find difficulty in implementing some of the recommendations in view of their limited resources and lean administrative structures.

5. There is also the possibility that some of the recommendations could conflict with the central objectives of the more commercial SAs and GBEs. While expecting these bodies to accept the highest standards of corporate citizenship, some departments expressed concern about requiring them to accept responsibilities that are not faced by private competitors or which may blur the commercial focus of these enterprises.

6. A further concern expressed by some departments was that the recommendations did not appear to take into full account existing accountability requirements, both statutory and other, that apply to SAs and GBEs.

## Response to Recommendations

7. This Minute does not address Recommendation 1 in the Report as it involves matters of policy. A separate Government response has been provided directly to the Chairman of the Committee. In the following paragraphs each of the Committee's recommendations 2 to 32 is reproduced in turn and followed by the relevant responses.

### Recommendation 2 (paragraph 3.47 of the Report)

The information provided by statutory authorities and government business enterprises to the Parliament and the public about the performance of their social responsibilities:

- . emphasise outcomes against set targets, with several indicators for each program;
- . include quantitative or qualitative data that is:
  - expressed statistically or in narrative form; and
  - collected in the same form by the same methods as long as the program continues so that long term trends can be followed; and
- . consist of material suited to the needs of the users and chosen in consultation with those involved with the operation of the organisation.

Response by the Department of the Prime Minister and Cabinet (PM&C)

8. The Committee's recommendation will be taken into account when revising the annual reporting requirements for SAs. At present, in addition to requiring SAs to comply with the 1982 "Guidelines for the Content, Preparation and Presentation of Annual Reports by Statutory Authorities", the Government encourages SAs to comply with the Departmental Annual Reporting Requirements, which include requirements dealing with the measurement of performance against Government-defined social objectives.

9. Recent Government decisions require the Boards of GBEs to keep responsible Ministers fully informed of their organisations' ongoing performance against Government requirements. In particular, GBE boards are required to report regularly to Ministers about ongoing performance against Government-defined social and economic objectives, including Community Service Obligations.

10. GBE boards are also required to produce an annual report that is tabled in Parliament.

Response by the Department of Finance

11. The new GBE accountability guidelines require GBEs to have targets (financial and non-financial) and to use performance indicators to measure outcomes against targets for all objectives in their charters. GBEs will be required to report on their performance in annual reports, which are tabled in the Parliament, and in their corporate plans, which are provided to the responsible Minister.

12. In relation to SAs, this recommendation would best be considered in the context of the current review of annual report guidelines.

Response by the Department of Transport and Communications (DTC)

13. DTC notes that a crucial element of the GBE reforms has been the refinement of performance information and the requirement for GBEs to report against targets.

14. Among GBEs, AOTC has been involved in substantial discussions with AUSTEL and has jointly developed a draft document setting out an approach to implementing strategies and policies which reflect the intent of the Telecommunications Act 1991, by specifying the manner in which AOTC should pursue its obligations. AUSTEL fulfils a monitoring function regarding AOTC's Community Service Obligations (CSOs).

15. Among statutory authorities social responsibilities are implicit in the charters of both the ABC and the SBS. Annual reporting obligations in the SBS Act for SBS, and those proposed for the ABC, provide for Parliament to be advised how programming activities during the year have related to charter obligations.

16. The ABC, SBS and Australian Broadcasting Tribunal (ABT) also provide extensive information for Senate Estimates Committees and explicitly address social justice measures in their Program Performance Statements. The Australian Broadcasting Authority (ABA) is expected to do the same following its establishment on 1 October 1992.

Response by the Department of the Arts, Sport, the Environment and Territories (DASET)

17. DASET supports any proposal designed to strengthen and extend the Government's social justice strategy. In terms of its practices, these recommendations are already part of the Portfolio's modus vivendi. All of the Portfolio statutory authorities are included in the Portfolio access and equity plan. Social justice is included in the program objectives and some reporting is

provided in annual reports as well as in the performance information for the Portfolio Program Performance Statements.

Response by the Department of Primary Industries and Energy (DPIE)

18. The requirement to produce annual plans outlining social objectives and targets and how they are to be met, and then to report achievements against those targets, would be a difficult undertaking. It must be recognised that some SAs have numerous and diverse clients. Producing plans and targets for social objectives to satisfy often competing interests of these clients could be quite impossible. This recommendation should be considered on a case by case basis.

Recommendation 3 (paragraph 3.47 of the Report)

Statutory authorities and government business enterprises examine new developments in performance measurement and reporting and adopt any that they consider appropriate.

Response by PM&C and Finance

19. The Government recognises the importance of a variety of social objectives in the operations of SAs and GBEs as discussed above. While supporting the presentation to Parliament of relevant and useful information, it should be noted that more onerous reporting requirements will represent a greater cost burden on GBEs. These added costs are inevitably passed on to the consumers of the services, or reflected in lower dividends to the Government.

Recommendation 4 (paragraph 3.53 of the Report)

Statutory authorities and government business enterprises develop in their staff expertise in the development and use of performance information relating to those bodies' social responsibilities.

and

Recommendation 5 (paragraph 3.53 of the Report)

The Department of Finance assist statutory authorities and government business enterprises to develop expertise in the use of performance information.

Response by the Department of Finance

20. The GBE reforms since 1987 have put pressure on GBEs to improve the standard of their performance measurement and reporting. The Department of Finance has assisted agencies to develop expertise as these reforms have been implemented. The expertise developed in using

performance information should be readily transferable to any social objectives on which the GBE might be required to report.

21. The Department of Finance is responsible for the broader GBE financial policy framework and is prepared to continue to assist agencies as appropriate. Nevertheless it should be recognised that GBEs and SAs generally have the freedom to select their preferred sources of expertise.

Response by DTC

22. DTC's view is that in regard to the use of performance indicators, GBEs and Commercial Statutory Authorities (CSAs) should be free to seek any assistance the Department of Finance can offer.

Response by DPIE

23. DPIE believes that the development of staff expertise in the development and use of performance information in general is useful.

Recommendation 6 (paragraph 4.24 of the Report)

All statutory authorities and government business enterprises, including statutory marketing authorities, report in their annual reports on their equal employment opportunity programs, following the guidelines for annual reporting set out by the Public Service Commission.

and

Recommendation 7 (paragraph 4.26 of the Report)

The Ministers responsible for statutory marketing authorities and government business enterprises covered by the Equal Employment Opportunity (Commonwealth Authorities) Act 1987, ensure that the equal employment opportunity programs of these bodies are scrutinised to the highest standard.

Responses by Finance, PM&C, DASET, DPIE and the Department of Industrial Relations (DIR)

24. Section 22B(1) of the Public Service Act 1922 (the Act) requires all SAs employing staff under the Act to ensure that appropriate action is taken to eliminate unjustified discrimination against women and persons in designated groups in relation to employment matters. Section 22B(3) requires the heads of agencies exercising the powers of a Secretary to develop an EEO program for the agency, and to give a copy of the statement to the Public Service Board (now the Public Service Commission).

25. Section 22B(13) of the Act provides for the making of regulations to extend the requirements of section 22B to Commonwealth authorities not covered by section 22B(1).

26. Section 3(1) of the Equal Employment Opportunity (Commonwealth Authorities) Act 1987 extends EEO requirements to Commonwealth authorities not covered by section 22B of the Public Service Act 1922, but excluding a number of statutory marketing authorities which are covered by similar provisions contained in their enabling legislation. Section 5(1) requires relevant authorities to develop and implement appropriate EEO programs, and section 8(1) requires authorities to lodge reports on EEO programs with either the responsible Minister or the Public Service Board (now the Public Service Commission).

27. The Affirmative Action (Equal Employment Opportunity for Women) Act 1986 does not cover statutory authorities or business enterprises other than the Australian National University and the University of Canberra.

28. The Committee's recommendations will be taken into account when revising the annual reporting requirements for SAs. At present, the Government encourages SAs to comply with the Departmental Annual Reporting Requirements, which include requirements to report on social objectives such as EEO.

Further response by the Department of Industrial Relations (DIR)

29. DIR supports the objective of further standardising the measuring and reporting of the performance of EEO programs and, consistent with its role in administering the Government's industrial relations co-ordination arrangements, proposes to undertake, in consultations with reponsible Ministers, an examination of methods to achieve this outcome.

30. In this regard, the Department notes that this report reiterates the recommendations in Report 309 (recommendation 15).

31. It is also noted that in response to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into Equal Opportunity and Equal Status for Australian Women (the Halfway to Equal Report), the Department has undertaken to arrange for an evaluative analysis to be conducted to assess the extent to which SAs are adopting effective Affirmative Action programs.

Recommendation 8 (paragraph 4.34 of the Report)

Statutory authorities and government business enterprises document in their annual reports:

- whether they have provided the minimum amount of training required under the Training Guarantee (Administration) Act 1990; and
- the nature of the training provided - where appropriate this should be reported as specified in the Guidelines for the Preparation of Departmental Annual Reports.

Response by PM&C

32. The Committee's recommendations will be taken into account when revising the annual reporting requirements for SAs. At present, the Government encourages SAs to comply with the comprehensive Departmental Annual Reporting Requirements, which include requirements to report on staff development, training, work experience and the Training Guarantee (Administration) Act 1990.

Recommendation 9 (paragraph 4.44 of the Report)

Budget-dependent statutory authorities that have not yet incorporated social justice concerns within their program management and budgeting frameworks expedite its introduction.

and

Recommendation 10 (paragraph 4.44 of the Report)

The Department of the Prime Minister and Cabinet consider extending the requirement for access and equity plans and their associated reporting regimes to statutory authorities and the community service obligations of government business enterprises.

Response by PM&C

33. An evaluation of the Government's Access and Equity (A&E) Strategy has just been completed by a taskforce within PM&C working to an interdepartmental Steering Committee. Some issues raised by the Joint Committee in its report were also raised by the A&E Strategy Evaluation. Although the A&E Evaluation Report does not address the issue in detail, it brings to the Government's attention the need for the Commonwealth to consider the possibility of formally extending its A&E Strategy to SAs and GBEs. The Government, however, has yet to consider the A&E Evaluation Report's Recommendations and decide upon its position.



Response by Finance

34. Finance agrees that this issue requires close consideration, especially in respect of the services of budget funded SAs and the budget funded CSOs of GBEs which are not subject to competition or regulatory safeguards.

Response by DASET

35. The Department supports these recommendations and notes that recommendation 10 is presently being implemented by most departments as part of the revised requirements of the Access and Equity Strategy.

Response by the Department of Primary Industries and Energy (DPIE)

36. The nature of the activities of some statutory authorities, eg Research and Development Corporations, render the requirements of these recommendations inappropriate. Such social justice concerns should be incorporated into the broader objectives of the Corporations. If these objectives are being contributed to by the projects invested in that it is as much as can be expected from the nature of the corporations' activities.

Recommendation 11 (paragraph 4.49 of the Report)

Statutory authorities and government business enterprises establish consultative councils where none at present exist.

Response by PM&C

37. PM&C supports, in principle, the extension of consultative councils to those organisations which do not already have them but does not believe this should be mandatory. The consultative process is a generally useful development and one which would provide benefits to the organisation as well as the client. However, PM&C notes that the consultative arrangements may differ between GBEs because of the varied nature of the businesses they operate. For example, a consultative council will have many benefits to an organisation like AOTC, but could be very different in structure and purpose for businesses such as Qantas or Australian National Line (ANL).

Response by Finance and DPIE

38. Finance and DPIE consider that consultative councils might be appropriate in the case of monopoly services and notes that a number of Transport and Communications GBEs already have consultative councils. However, it believes the application of this recommendation should be considered on a case by case basis.

#### Response by DTC

39. DTC notes that the ABC and SBS currently use consultative councils as required by their enabling legislation. Under the Broadcasting Services Act, passed by the Parliament on 26 June 1992, the Australian Broadcasting Authority (ABA) may form consultative councils at its discretion. The ABA will be established on 1 October 1992.

40. GBEs also consult extensively with industry users and the community. For example, both the FAC and CAA consult extensively with their client organisations and relevant community bodies. This is carried out in recognition of their social responsibilities. Additional consultation beyond normal business practice would not be appropriate for organisations which provide commercial services.

#### Response by DASET

41. While in some cases it would be valuable to establish such consultative councils there are many instances where this would not be appropriate (eg the Australian Film Finance Corporation). A number of agencies such as Film Australia Pty Ltd already provide for public consultation in relation to projects undertaken under the National Interest Program.

42. DASET proposes that the establishment of Consultative Councils be considered on a case by case basis taking account of the functions, responsibilities and existing consultative mechanisms of statutory authorities. DASET believes that the current arrangements of boards or committees overseeing the authorities' operations is the most effective mechanism for obtaining the appropriate mix of representation. Consultative Councils would place an unnecessary layer on the operation of many authorities.

#### Recommendation 12 (paragraph 4.51 of the Report)

##### The Department of the Prime Minister and Cabinet:

- . oversee the establishment of mechanisms by which statutory authorities and government business enterprises can consult with their clients; and
- . monitor the effectiveness with which these consultative groups function.

#### Response by PM&C

43. As the consultative process is largely an issue about the day-to-day operations of the business concerned, PM&C believes it is something that should be left to the judgement of the management and board of the organisation.

44. It would not be appropriate for PM&C (through the Social Justice Secretariat) to oversee and monitor this process. To have PM&C involved would impose "split reporting" responsibilities on the organisations.

45. An alternative approach would be for the relevant portfolio Minister to address this issue through the Corporate Plan and the Annual Reports. It would be more appropriate for the line Minister to act as conduit between the Parliament and the organisation in reporting on the GBEs performance and responsibilities.

Response by Finance

46. The overseeing and monitoring of public consultation arrangements might be appropriate for the budget funded SAs in some circumstances (eg as a component of the broad regulation of a monopoly), but this should be a matter for the responsible portfolio rather than the Department of the Prime Minister and Cabinet.

Response by DTC

47. It is DTC's view that to attempt to formalise, codify and extend the reporting of client consultation arrangements in Annual Reports, with monitoring by an outside body (PM&C), would diminish the independence of the GBEs, create additional impediments to efficient operation and be likely to result in little community benefit.

Response by DASET

48. DASET is opposed to a wider role for the Department of Prime Minister and Cabinet in respect of these matters.

Recommendation 13 (paragraph 4.53 of the Report)

The annual reports of statutory authorities and government business enterprises include information about the matters raised during the year by their consultative or advisory councils and any actions taken as a result.

Response by PM&C

49. The Committee's recommendations will be taken into account when revising the annual reporting requirements for SAs. At present, the Government encourages SAs to comply with the comprehensive Departmental Annual Reporting Requirements, which include requirements to report on social objectives such as:

- . the consultative processes undertaken by statutory and non-statutory bodies serviced by Departments; and
- . measures for monitoring and handling client comments.

Response by Finance

50. The Department of Finance's comments on SAs under Recommendation 2 apply.

51. Finance agrees that it could be appropriate for monopoly GBEs to include reference to their consultative mechanisms in their annual reports.

Response by DTC

52. Matters raised by the consultative councils of the ABC and SBS and any resulting action taken during the year are included in Annual Reports. There are no objections to similar mechanisms being set up for the proposed ABA.

Response by DPIE

53. Activities involving consultative bodies are reported as a matter of course. In some SAs there is a statutory requirement to make such report.

Recommendation 14 (paragraph 4.59 of the Report)

Statutory marketing authorities include information in their annual reports about:

- . meetings held with their levy payers and their levy payers' representatives; and
- . the more significant issues raised at these meetings.

Response by DPIE

54. Statutory Marketing Authorities are required to operate in a commercial environment and with due regard to efficient and effective expenditure of resources available to the authorities and accountability to both levy payers, clients, Ministers and the Parliament. It would be inappropriate to impose on those authorities reporting requirements which carry a significant resource burden which is not in proportion to the benefit gained from the increased reporting requirements. This recommendation should be taken into account when the annual reporting requirements for statutory authorities are revised to ensure that the benefits of this additional requirement can be properly evaluated in the context of the imposition of other reporting requirements recommended in this report. These will also need to be considered in the light of the commercial operations of statutory authorities and the need to protect the commercial position of those bodies.

Recommendation 15 (paragraph 4.73 of the Report)

Statutory authorities and government business enterprises include in their annual reports a statement about the measures taken to comply with their environment responsibilities.

Recommendation 16 (paragraph 4.73 of the Report)

This environment statement include indications of whether best practice has been used.

Recommendation 17 (paragraph 4.73 of the Report)

Where activities with a major environmental impact have been monitored, the nature of the monitoring and the results achieved be reported.

Recommendation 18 (paragraph 4.73 of the Report)

Any violations of accepted standards and steps taken to rectify the problem be reported.

and

Recommendation 20 (paragraph 4.77 of the Report)

Statutory authorities and government business enterprises:

- . incorporate environmental concerns into the planning processes of statutory authorities; and
- . within this framework, establish suitable systems for monitoring, auditing and reporting on major environmental impacts.

Response by PM&C

55. The Committee's recommendations will be taken into account when revising the annual reporting requirements for SAs. At present, the Government encourages SAs to comply with the comprehensive Departmental Annual Reporting Requirements, which include requirements to report on environmental matters.

56. These are matters that are being considered in the context of developing a National Strategy for Ecologically Sustainable Development in consultation with the States and Territories. A response will be provided to the Committee shortly.

Recommendation 19 (paragraph 4.75 of the Report)

The Department of the Arts, Sport, the Environment and Territories develop measures of environmental health that might be used by statutory authorities and government business enterprises, the activities of which have a continuing, significant impact on the environment.

Response by DASET

57. The Recommendation is being met. The Commonwealth Environment Protection Agency (CEPA) of the DASET is developing a set of environmental indicators for state of the environment reporting (see response on recommendation 21) which would among other things, measure environmental health. The development of environmental indicators by CEPA will also assist with the assessment of individual proposals under the Environment Protection (Impact of Proposals) Act 1974.

58. In addition, other government initiatives will assist in implementing this recommendation. Schedule 4 of the 1992 InterGovernmental Agreement on the Environment outlines the nature in which national environment protection standards, guidelines and goals will be developed by the National Environmental Protection Authority (NEPA) (Legislation is currently being developed in connection with NEPA's establishment). National measures in relation to air, water, noise and site contamination will be developed. The Ecologically Sustainable Development (ESD) consultative process will lead to a national strategy to guide future conservation and help develop decision-making mechanisms by governments and the community, thereby ensuring that Commonwealth agencies have a responsibility to meet the national environment protection measures and the national ESD objectives.

Response by DTC

59. If additional standards are to be imposed, then they should also apply to private entities.

Recommendation 21 (paragraph 4.79 of the Report)

The Department of the Arts, Sport, the Environment and Territories produce state of the Australian environment reports on a biennial basis.

Response by DASET

60. The recommendation is being met. A high priority task of the CEPA, an organisation within DASET, is the preparation of regular state of the environment reports.

The reports will cover terrestrial, atmospheric, marine and urban environments and encompass issues such as pollution, conservation, natural resources management and the socioeconomic aspects of the natural and built environment. The first background report by CEPA is scheduled for release in late 1992. The CEPA is currently establishing a reporting system based on monitoring a number of environment indicators, which will form the basis of future environmental reports.

Recommendation 22 (paragraph 4.85 of the Report)

Statutory authorities and government business enterprises include in their annual reports information about the nature of complaints received, and indicate any changes over time and the actions taken to remedy the problems identified.

Response by PM&C

61. The Committee's recommendations will be taken into account when revising the annual reporting requirements for SAs. At present, the Government encourages SAs to comply with the comprehensive Departmental Annual Reporting Requirements, which include requirements to report on measures introduced for the monitoring and handling of client comments.

Response by Finance

62. The recent GBE policy initiatives require GBEs to report in their corporate plans on service quality controls for monopoly services. Beyond that the Government has given GBEs flexibility to develop their own management strategies and that principle applies to managing the quality of their service delivery. Any reporting of complaints in annual reports and its format would normally be a matter for the discretion of the GBE, as is the case with private businesses. However, in respect of monopoly services of GBEs there may be a case for including information on complaints in annual reports.

Response by DTC

63. Transport and Communications GBEs are expected to provide data on complaints under the heading of 'Quality of Service' in their three yearly Corporate Plans. The final form of reporting complaints and follow-up action in GBEs is best left to the individual GBE in view of commercial obligations.

64. As an example, AOTC is required to provide indicative performance indicators of service quality to AUSTEL under s.38(2) of the Telecommunications Act 1991. In addition AOTC's general carrier licence includes conditions which require it to develop, publish and enforce guidelines for use by its personnel when handling inquiries and complaints from customers. Any failure to comply with AUSTEL directions concerning a breach of

licence conditions could result in the Federal Court ordering the carrier to pay the Commonwealth a penalty of up to ten million dollars per contravention.

65. The ABC and SBS voluntarily provide information reporting on the nature of complaints and the action taken in response, though this is not required by their Acts. However, the ABC is required by Section 82 of the ABC Act 1983 to report in its annual report on the activities of its Community Affairs Officers in reviewing complaints regarding errors of fact and invasions of privacy.

66. Complaints received by the ABA in relation to the ABC, SBS and other parties over which it has jurisdiction are subject to specific reporting provisions contained in the Broadcasting Services Act 1992.

67. The compulsory reporting of all complaints in annual reports in addition to current legislative requirements and voluntary measures is not supported, because of the volatile market circumstances in which some GBES operate. For example, airports and aviation do not operate in a neutral environment but are subject, from time to time, to campaigns of complaints organised by local groups or industry associations. If the recommendation was to be adopted, it would be likely that such campaigns would proliferate because of the added publicity and possible attention.

68. The inclusion of all complaints in annual reports would tend to give them credibility, whether or not this was justified. Additional problems could arise in the area of commercial confidentiality, for instance when complaints were related to disputed tenders.

#### Response by DPIE

69. The nature of complaints received by R&D corporations almost exclusively arises from dissatisfied applicants for investment, or vested interest groups dissatisfied with perceived research investment levels in their industry or sector. It would be inappropriate to include these as social or environmental objective reporting requirements. The scope and type of complaints which could or should be reported needs to be closely defined.

#### Response by DASET

70. The recommendation is supported.

#### Recommendation 23 (paragraph 4.88 of the Report)

The Department of the Prime Minister and Cabinet and the Department of Finance develop a format for a social responsibility summary for the use of government bodies.



#### Response by PM&C and Finance

71. The program management and budgeting arrangements introduced by the Government provide a general format for reporting on social responsibility, particularly through Program Performance Statements. However, PM&C and Finance recognise that a general format may not be relevant for all GBEs because of the varied nature of the businesses they operate. PM&C and Finance can provide guidance and advice on such matters if asked. However, given the fact that GBEs' day to day operations have been freed from Government control, PM&C and Finance consider that the development of a format for a social responsibility summary is one for each GBE to decide.

#### Response by DTC

72. DTC is concerned as to the potential for such summaries to increase workloads for GBEs while diverting attention away from the achievement of commercial objectives. On balance, DTC does not support the formalisation of social responsibilities to the extent recommended, particularly if the role recommended for the Departments of Finance and Prime Minister and Cabinet leads ultimately to a reporting regime where GBEs have to report to multiple Ministers.

73. The establishment of social responsibilities summaries should be a matter for consultation between individual GBEs and their portfolio Minister (along the lines of recent work between Australia Post and DTC on CSO strategies and policies).

#### Response by DASET

74. DASET supports the recommendation in principle. Other agencies should participate with the central agencies in developing an appropriate format.

#### Recommendation 24 (paragraph 5.28 of the Report)

The Department of Finance examine the advisability of extending program management and budgeting to the community service obligations of government business enterprises.

#### Response by Finance

75. CSOs can be funded by either the Budget or by cross-subsidisation. For budget funded CSOs, Parliament's scrutiny of such appropriations would be no different to that required for other appropriations. This would include the existing Program Management and Budget framework which places the responsibility on portfolio Ministers to ensure appropriations are properly accounted for to the Parliament. In this sense GBEs are treated similarly to other businesses which receive Budget subventions.

76. Finance considers that it would not be practicable to extend PMB to CSOs funded by cross subsidisation.

Response by DASET

77. Support in principle. Again relevant agencies should be involved in the development and monitoring of community service obligations.

Recommendation 25 (paragraph 5.42 of the Report)

The Bureau of Transport and Communications Economics monitor the costing of community service obligations by government business enterprises, with a view to:

- . clearly defining the extent to which such costing is valid; and
- . recommending how the system of costing might be improved.

Response by Finance

78. Finance supports independent monitoring of CSO costing with a view to ensuring that the service level determined by the Government is delivered at least possible cost.

79. Under current arrangements, responsibility for monitoring the cost of both budget funded CSOs and CSOs funded through cross subsidies rests with the portfolio oversighting the GBE. The Bureau of Transport and Communications Economics (BTCE) has expertise in this area but only in relation to Transport and Communications GBES.

Response by DTC

80. DTC agrees that the community should be assured that tax-payer funds are spent properly and efficiently and do not become a subsidy for non-profitable commercial activities.

81. The BTCE is willing to undertake the monitoring and review task set out in recommendation 25, subject to availability of resources. The BTCE's role would be confined to costing methodology matters.

82. The BTCE notes that AUSTEL already carries out a similar responsibility in relation to AOTC. The BTCE has been liaising with AUSTEL and assisting with this task, and will ensure that duplication will be avoided, while promoting consistency of treatment across all GBES. This consistency is of particular importance to DTC due to the diversity of functions carried out by each GBE and CSA.

83. AOTC has a Universal Service Obligation (USO) model based on Government-specified methodology which is used to estimate the costs in supplying USO services. The Company is required, in its Corporate Plans, to include an estimate of the cost of carrying out the Company's USOs using the specified methodology; and include an estimate of the cost of other obligations not in accordance with normal commercial practice. AOTC's approach provides one model for assessing the cost of CSOs.

84. The JCPA view that CSO costs should be monitored using the Least Avoidable Cost Method and improvements sought was generally supported.

85. Transparently defined CSOs are to be included in the mandates proposed for GBEs. For this to occur it is essential that all GBEs and CSAs follow the same definition of what constitutes a CSO, and that this definition is equally applicable to diverse organisations.

86. The Special Premiers' Conference is currently working on definition and other issues associated with CSOs.

Recommendation 26 (paragraph 5.50 of the Report)

The Department of the Prime Minister and Cabinet, the Department of Finance and the responsible portfolio departments consider introducing proceedings for assessing both the costs and the benefits of social responsibilities which may be non financial and difficult to quantify.

Recommendation 27 (paragraph 5.50 of the Report)

When the performance of these social responsibilities is evaluated the widest possible implications of their performance be considered.

Recommendation 28 (paragraph 5.50 of the Report)

Particular emphasis be placed on such analyses being carried out before major changes to the operations of statutory authority and government business enterprises are introduced.

and

Recommendation 29 (paragraph 5.50 of the Report)

The results of such analyses be made public and referred to in the annual reports of these organisations.

Response by PM&C

87. How the performance of social responsibilities is to be assessed is a very complicated issue. PM&C recognises that it is important for GBEs to know the cost and benefits of the activities that they are undertaking. At the same time, there are limitations to what information such studies could yield and to what uses the information can be put.

88. See also the responses to recommendations 1 and 2, which indicate that there are other existing processes which meet some of the Joint Committee's concerns. PM&C does not consider that it would be appropriate to duplicate any such processes.

Response by Finance

89. Budget-funded SAs are subject to the Government's evaluation strategy, which entails program evaluation and review on a regular basis, and the publication of major reviews.

90. Under the GBE guidelines, any specific social objectives which the Government has directed GBEs to include among their corporate objectives will be defined as CSOs in their corporate plans. These will be required to be met at minimum cost and detailed in the corporate plan. However, the benefits of CSOs could possibly be difficult and costly to quantify. In accordance with the increased responsibility given the Minister for Finance in the new guidelines, the Department of Finance will have a role in any monitoring of these CSOs.

91. This monitoring role should be addressed on a case by case basis.

Response by DTC

92. It is DTC's view that these recommendations, while clearly at a preliminary stage of development, foreshadow measures which could create requirements contrary to the Government's current policies on GBE responsibilities and efficiency.

93. Social responsibilities should be addressed on a case by case basis, as they vary greatly between organisations making it difficult to develop a workable uniform approach. Performance evaluation is thus best addressed by the GBE and relevant portfolio Minister.

94. Further, the cost and benefits of social responsibilities could be difficult to quantify.

Response by DPIE

95. In relation to R&D corporations, the time and therefore administrative cost which could be involved in both setting social responsibility performance measures and evaluating them could far outweigh any benefits which might be quantifiable.

Response by DASET

96. The recommendations are supported.

Recommendation 30 (paragraph 6.10 of the Report)

Statutory authorities and government business enterprises act on suggestions for improving their annual reports that they receive from the Senate standing committees, and inform the relevant committee of the reasons for not accepting any suggestions that they find inappropriate.

Response by FM&C

97. FM&C believes that existing arrangements for the formulation, clarification, amendment and approval of annual reporting requirements are appropriate. At present, SAs act on suggestions for improving or clarifying their annual reports received from parliamentary committees, and inform the relevant committee of the reasons for not accepting any suggestions that they find inappropriate. However, where a committee's recommendations are such that changes to the guidelines are required, the recommendations will be taken into account by the Prime Minister when revising the guidelines, which are subject to consideration by the Joint Committee of Public Accounts.

Response by Finance

98. Finance sees no difficulty in SAs responding to comments which relate to particular annual reports, but more frequent reviews of annual report guidelines should provide a more consistent general framework in the longer term.

99. Careful consideration would need to be given to changes to GBE accountability in annual reports to ensure that they paralleled the accountability requirements which apply to private sector competitors. There may be a case for GBE monopolies to be subject to more detailed reporting requirements to the extent that there are gaps in the regulatory framework.

Response by DTC

100. DTC notes that efficiency and reporting requirements are set by existing Government policy.

101. Continued monitoring of accountability measures in the commercial sector is warranted to ensure GBE reforms are parallel to the regime applying to the commercial sector. However, an increase in measures of accountability for GBEs in addition to recent measures is not supported by DTC.

Response by DASET

102. DASET endorses the emphasis on accountability but believes that not all the information the JCPA proposes should be monitored in this context is appropriate for inclusion in annual reports. It is DASET's view that the resources required to produce this information will place an unnecessary burden on some smaller agencies.

Recommendation 31 (paragraph 6.19 of the Report)

The Cabinet Handbook guidelines for the appointment of board members and senior executives of statutory authorities and government business enterprises draw attention to the need for candidates to have a character of high repute and qualities appropriate to the appointment in every case.

Response by PM&C

103. The Cabinet Handbook, last published in June 1991, requires Ministers to:

- . consult with the governing body of an organisation in respect of an appointment to an executive position responsible to that body (para. 7.13);
- . take into account the Government's policy of actively seeking more equitable representation of women, young people and people of different ethnic backgrounds on the governing boards of authorities and instrumentalities (para. 7.16); and
- . obtain assurances from prospective nominees, particularly in respect of potential conflicts of interest and personal financial affairs (para. 7.18).

104. Recent Government decisions have re-affirmed these requirements in respect of GBE appointments. Responsible Ministers are required to ensure that:

- . GBE boards contain an appropriate balance of people with relevant expertise and sound business acumen;
- . proposed appointees be selected having regard to whether their skills and experience in the commercial, financial, accounting, legal, marketing, industrial relations or management fields would ensure that the Board has an appropriate balance of such skills; and

board members have their fiduciary and other duties drawn to their attention in correspondence offering employment, and are to accept fully the individual responsibility this places on them.

105. The Access and Equity (A&E) Evaluation Report (see response to recommendation 10) recommends a range of measures to be taken by Commonwealth departments and agencies to increase participation. This includes targeting a proportion of vacancies on bodies responsible for policy development, service design and delivery and review of decisions to members of A&E target groups. It also includes recommendations on using data management systems relating to appointments and on seeking advice on potential appointees from ATSIC, DILGEA, OMA and other relevant bodies.

#### Response by Finance

106. Finance supports the principle underpinning this recommendation.

107. The recent GBE reforms have addressed the issue of appointments to boards and the conduct of board members. The new GBE policy is that board members are to be appointed on the basis of their individual capacity to contribute to achieving GBE objectives. Boards are fully responsible and accountable to their portfolio Ministers.

#### Response by DTC

108. Stringent guidelines have always been in operation regarding the selection of high quality Boards, and the process covering Board appointments has been further refined in recent Cabinet decisions.

#### Response by DASET

109. The recommendation is supported. It should also take account of the Government's requirements under the EEO and Access and Equity strategies.

#### Recommendation 32 (paragraph 6.26 of the Report)

Government business enterprises and statutory authorities not covered by the Public Service Act 1922 develop codes of conduct for their organisations.

#### Response by PM&C

110. The Government recognises the desirability of setting clear standards of conduct for the staff of SAs and GBEs but a fundamental element of the Government's reform process for its GBEs and statutory authorities has been to remove day-to-day Government controls and to

leave the management of the business to the Board. The detailed contents of any code should therefore be a matter for determination by the management of individual SAs and GBEs, subject to Government approval.

Response by Finance

111. Accountability arrangements impose many controls on the conduct of GBEs and SAs. Furthermore the more commercially oriented GBEs are subject to the same controls on commercial behaviour as private firms. However, the Government has implicitly given GBEs the flexibility to develop their own approaches for regulating their conduct.

Response by DTC

112. DTC notes that the amendments proposed in the Broadcasting Services (Transitional Provisions and Consequential Amendments) Act require the ABC and SBS to develop and publicise codes of practice.

113. The ABC has already developed the editorial and program policies document which is used extensively by staff in relation to their program-making activities. The SBS is in the process of providing a similar document.

Response by DASET

114. The recommendation is supported.

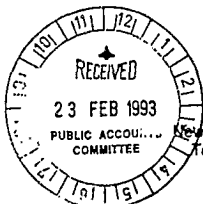


S T SEDGWICK  
SECRETARY  
Department of Finance  
19 October 1992



SUPPLEMENTARY FINANCE MINUTE ON REPORT 315  
SOCIAL RESPONSIBILITIES OF COMMONWEALTH STATUTORY  
AUTHORITIES AND GOVERNMENT BUSINESS ENTERPRISES

Reference: 92/1608  
Telephone: 263 2515  
Contact Officer: B. Thong



Newlands Street, Parkes, A.C.T. 2510  
Telephone: Canberra (06) 263 2222  
Telex: 62239  
Fax: (06) 273 0121

The Secretary  
Joint Committee of Public Accounts  
Parliament House  
CANBERRA ACT 2600

JCPA REPORT 315 - SOCIAL RESPONSIBILITIES OF  
COMMONWEALTH STATUTORY AUTHORITIES AND GOVERNMENT  
BUSINESS ENTERPRISES

I enclose the Supplement to the Department of Finance  
Minute to JCPA Report 315 entitled "Social  
Responsibilities of Commonwealth Statutory Authorities  
and Government Business Enterprises", for transmission  
to the incoming chairperson of the Committee.

In accordance with normal practice, a copy is also  
provided for the Secretariat.

I. McPhee  
First Assistant Secretary  
Financial Management Division  
February 1993

## SUPPLEMENT TO FINANCE MINUTE REPORT 315

The Department of Finance Minute on JCPA Report No 315 noted that the Committee's recommendations 15-18 and 20 would be considered in the context of developing a National Strategy for Ecologically Sustainable Development in consultation with the States and Territories, and that the Committee would be notified following a decision by the Government.

2. Responses to recommendations 15-18 and 20 are now provided as follows:

Recommendation 15 (paragraph 4.73)

Statutory authorities and government business enterprises include in their annual reports a statement about the measures taken to comply with their environment responsibilities.

Recommendation 16 (paragraph 4.73)

This environment statement include indications of whether best practice has been used.

Recommendation 17 (paragraph 4.73)

Where activities with a major environmental impact have been monitored, the nature of the monitoring and the results achieved be reported.

Recommendation 18 (paragraph 4.73)

Any violations of accepted standards and steps taken to rectify the problem be reported.

and

Recommendation 20 (paragraph 4.77)

Statutory authorities and government business enterprises:

- . incorporate environmental concerns into the planning processes of statutory authorities; and
- . within this framework, establish suitable systems for monitoring, auditing and reporting on major environmental impacts.

Response by the Department of Prime Minister and  
Cabinet

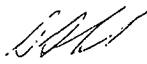
3. At the Council of Australian Government's Meeting in Perth in December 1992, Governments endorsed the National Strategy for Ecologically Sustainable Development (ESD). Undertakings which may affect the responsibilities of Statutory Authorities and Government Business Enterprises are as follows:

Governments will:

- undertake a systematic program of review to identify relevant agencies and ensure that ESD principles are incorporated into their charters and corporate plans.

The Commonwealth Government will:

- include a requirement in the next edition of the Government's Annual Reporting Requirements that all departments and agencies report on the extent to which their actions have met ESD guidelines and to which they have integrated economic, social and environmental considerations into their charters and corporate plans;
  - incorporate ESD principles into the objectives of relevant legislation as appropriate, particularly for legislation concerning natural resource use and management; and
  - seek a consistent approach by government departments and agencies to the incorporation of ESD concerns into their purchasing activities by encouraging them to draw on the principles and approach outlined in the *Better Buying: Better World Strategy*. These are a commitment to purchase goods and services with the most beneficial environmental impact; co-operation with suppliers to encourage continuous improvement in the environmental impact of their goods and services; and use of information and common standards and methods to assess environmental impact as, and when, they are available.
4. The Government will also continue its present policy of encouraging statutory authorities to comply with the Departmental Annual Reporting Requirements.



S.T. SEDGWICK  
SECRETARY  
Department of Finance  
17 February 1993

**FINANCE MINUTE ON REPORT 317**

**A CHAMPAGNE APPETITE BUT ONLY A BEER INCOME -  
DEFENCE'S SUPPLY SYSTEMS REDEVELOPMENT PROJECT**

DEPARTMENT OF  
FINANCE

Reference: 92/2385  
Telephone: 263 2448  
Contact Officer: Brendan Comensoli

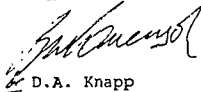
Newlands Street, Parkes, A.C.T. 2600  
Telephone: Canberra (06) 263 2222  
Telex: 62639  
Fax: (06) 273 3021

The Secretary  
Joint Committee of Public Accounts  
Parliament House  
CANBERRA ACT 2600

DEPARTMENT OF FINANCE MINUTE ON JCPA REPORT 317

In accordance with agreed arrangements please find attached the Finance Minute on the 317th Report entitled 'A champagne appetite but only a beer income - Defence's Supply Systems Redevelopment Project'

Also attached for your information is a copy of the covering letter to the Chairman of the Committee which was signed by Mr McPhee, First Assistant Secretary, Financial Management Division, on behalf of the Minister for Finance on 23 December 1992.



D.A. Knapp  
A/g Assistant Secretary  
Financial Administration Advisory Branch  
14 January 1993



DEPARTMENT OF FINANCE MINUTE  
TO  
JOINT COMMITTEE OF PUBLIC ACCOUNTS

REPORT 317

A champagne appetite but only a beer income -  
Defence's Supply Systems Redevelopment Project

DEPARTMENT OF FINANCE MINUTE ON JCPA REPORT 317

## CONTENTS

<u>Item</u>	<u>Page</u>
INTRODUCTION	3.
DEPARTMENT OF DEFENCE'S GENERAL COMMENTS TO THE PUBLIC ACCOUNTS COMMITTEE REPORT ON SSRP AND DESINE	3.
RECOMMENDATIONS AND RESPONSES	
1. DESINE	
. Request for Tender	10.
. Sole Supplier Clause	12.
. Addition of New Technology	12.
. Potential for Lock-in to IBM	14.
2. SSRP	
. Progress	15.
. Costs and Benefits	15.
. Project Management	26.
3. OTHER MATTERS	
. Use of Consultants	28.
. Reporting Hierarchy	30.
. ANZ Content	30.
4. GENERAL COMMENTS	
. DESINE	31.
. Beyond DESINE	32.
. SSRP	32.
ATTACHMENT A	
- LIST OF ABBREVIATIONS AND ACRONYMS	34.



**DEPARTMENT OF FINANCE MINUTE ON JCPA REPORT 317****INTRODUCTION**

This Minute has been prepared on the basis of responses received from the Departments of Defence, Finance, Administrative Services, Industry, Technology and Commerce, and Prime Minister and Cabinet.

2. Following the Department of Defence's general comments to the report, each of the recommendations is reproduced in turn and is followed by the response.

**DEPARTMENT OF DEFENCE'S GENERAL COMMENTS TO THE PUBLIC ACCOUNTS COMMITTEE REPORT ON SSRP AND DESINE**

3. It is not the desire of Defence to revisit the origins of the DESINE contract. The Department does not believe there was any impropriety in the decision taken at the time (and no accusations of fraud or abuse have been made by the Committee), or any major failing in the processes leading up to, or following, the contract signature which have disadvantaged the taxpayer. That said, the Department accepts that, as with some other major acquisitions, judgements were made which (evidently) not all agree upon despite the processes of high level consultation and endorsement with other Government Agencies and within Defence at that time. That perhaps is more a factor of the rate of technological developments in the computing industry than any fundamental flaws in the DESINE concept.

4. Defence also acknowledges that the Supply Systems Redevelopment Project has had substantial problems in the past. It was too ambitious and was accordingly significantly delayed. Bringing it back onto track has not been easy, and the project still requires enormous management effort.

5. On both DESINE and the SSRP, however, the Department strongly objects to accusations of misrepresentation and of misleading the Committee. The following explains in more detail the Department's concerns about the Committee's Report.

**ISSUES RELATING TO DESINE**

6. The Committee's inquiry started in early 1989. The five year DESINE contract expires in February 1994. The report is highly critical of the DESINE contract and the Departmental processes whereby the contract was negotiated and is administered.

7. There are errors of fact and interpretation, for example regarding whether operational systems were included in the RFT, that detract from the report. Additionally, changes in technology and acquisition processes over recent years place some findings out of context in today's environment. The Committee acknowledged some difficulty in this regard. A brief discussion of the following issues illustrates the nature of these problems and their impact on the Department's response.

#### Scope and Nature of the Contract

8. The Committee contends that DESINE was intended to cover only administrative systems and the wider applicability of the contract represents poor management of the tendering process by the Department.

9. It is apparent that there was not a common understanding throughout Defence that DESINE had a wider applicability prior to the release of the 1987 Request For Tender (RFT). Changes in technology, increasing commonality and off-the-shelf procurement removed the need to distinguish between operational and administrative systems in the purchasing processes. Consequently, operational systems, except those classified as embedded or specialist systems, were included in the 1987 RFT. It was considered that failure to include operational systems in these circumstances would have been poor management. The Committee is not correct to say that the RFT was restricted to administrative systems.

10. The report indicates that the RFT called for a network architecture using proven products and which included support for international standards for open systems, and that the choice of Systems Network Architecture (SNA) and Systems Application Architecture (SAA) was not 'proven' as required by the RFT according to the report. This provided a lesser solution to a degree that constituted a serious indictment against the Department of Defence.

11. The RFT stated the requirement as "a compatible range of proven hardware and software products with capacity for interoperation and distribution of data and processing within a proven and coherent network architecture". It expressed a preference for the use of equipment complying with international data communications standards but placed the use of proven solutions to provide guaranteed performance as the most important criterion.

12. The RFT did not call for support for computing standards that are now described as "open systems". Despite the similarity of the terms Open Systems Interconnection (OSI) and open systems, they relate to very different aspects of Information Technology. OSI

relates to communication and for example, allows data from one company's computer system to be exchanged with data from a different type of computer supplied by another vendor using a common architecture based on agreed international standards. Open systems, on the other hand, refers to the capability to build systems by mixing and matching hardware and software supplied by any vendor who conforms to open system standards. This capability does not yet exist in any comprehensive way.

13. The report reflects the view that the limitation of supply to one contractor for the duration of the contract was not intended, or in the best interest of the Commonwealth.

14. The contract was awarded to the tenderer who offered the most cost effective set of solutions to requirements set out in the tender. The objective of making the terms, conditions and price discounts binding for the five year period was achieved by the inclusion of the sole supplier clause. Such a clause is not unusual in return for price discounts or other benefits in Government contracts (eg recent air travel arrangements). The intent that certain special systems would not be covered, and the subsequently agreed exemptions for certain other categories and circumstances, was given legal effect by the inclusion of the exemption clause. The sole supplier clause operates to ensure that, for the categories of computing covered by the contract, Defence is provided with compatible and interoperable solutions drawn from the contract product range. The Committee was provided with detailed explanations of this, and details of purchases that show that less than 40% (ie considerably less than IBM or the Department expected) of the equipment supplied under the contract has been provided by IBM, and that the Department is not locked into IBM investments into the future.

15. The report also records as an issue that the contract was incorrectly applied to items that were not really computing equipment.

16. The first release of the Contract Product List on 1 July 1989 did inadvertently include a number of items that were not part of the DESINE solutions. The Committee was provided with details of the work that had been done to remove these items, and copies of later releases of the product list that reflected that work. Yet the report cites a circumstance that applied for a few months three years ago as a basis for a general criticism of the contract and the Department's administration of it.

17. The report implies that following from the foregoing issues, the Department of Defence and DAS have failed to negotiate a binding contract that reflects the requirements as defined in the RFT.

18. The tender evaluation was conducted by a team including representatives of all Program areas of Defence, and extensive use was made of industry consultants. The findings were endorsed by an augmented Defence Source Definition Committee (DSDC), which included representatives of DAS, Attorney-General's, and DITAC. The terms of the contract were drafted in consultation with the Attorney-General's Department and the award of the contract to IBM was approved by the then Minister for Defence. The contract clearly is binding on the Commonwealth and IBM. It is equally clear that it reflects the requirements of Defence as defined in the RFT.

#### Development and Use of Technology under the Contract

19. The report makes much of the choice of IBM's Systems Application Architecture (SAA) as the medium for integrating systems across the various platforms that comprise the DESINE solution, and proposes that the Department is at serious risk of being locked in to IBM by the use of this "proprietary" architecture.

20. Almost all of the entire suite of SAA compliant products that are on the DESINE contract now fully implement the OSI standards incorporated in the Government Open Systems Interconnect Profile (GOSIP). There is no question of Defence being dependent on IBM as the only possible future supplier because under GOSIP other equipment suppliers are interoperable with SAA. The Committee was provided with detailed answers to their concerns about SAA, including assurances about IBM's commitment to the incorporation of OSI standards in SAA.

#### UNIX

21. The DESINE RFT sought a total solution, ie, an integrated range of equipment capable of meeting all of the requirements.

22. The report maintains that the computer operating system known as UNIX was never considered a suitable candidate by the Department of Defence.

23. A review of the records of that time shows that this is not correct. One unsuccessful tenderer has widely claimed that it was prevented from offering UNIX as part of its tender. During discussions between Defence members of the evaluation team and the company's representatives on 31 May 1988, the company was in fact invited to substitute UNIX into its tendered solution but declined to do so because its non-UNIX offering had higher functionality and better value for money. No other tenderer who had a total solution offered UNIX, and none of the part tender solutions that used UNIX were capable of useful integration into a total solution (a requirement of the RFT for part tenders).

24. In June 1991, the Department adopted international standards for UNIX products to be included in DESINE. Shortly afterwards, the RISC 6000 running AIX (IBM's UNIX operating system) was added to the contract, not primarily as a way of introducing UNIX, but as a standards compliant replacement for mid-range processors on the DESINE Standard Product List (DSPL) at that time for which their production was about to be ceased. The report indicates that the committee was particularly concerned that the addition of IBM's AIX products was made without examining other possible UNIX products. To have undertaken this examination would have in effect required a complete evaluation of all suppliers' products. Such an approach would have necessitated the issue of a new RFT with essentially the same functional requirements as the original DESINE tender, only 3 years after the DESINE contract commenced and two years before it ends. There would have been considerable cost to industry and to the Department, with no obvious benefits. The use of the extant contract's provisions for the introduction of additional products and new technologies were seen as the appropriate way to add UNIX technology and products.

25. These matters were explained in detail to the Committee, but the report rejects the position adopted by Defence and by DAS, supported by advice from the Attorney-General's Department. The report relies instead on a legal opinion obtained by a UNIX vendor, who asked whether the contract could be interpreted so as to allow Defence to buy from companies other than the prime contractor. The Department's administrative actions on the other hand are calculated to give effect impartially to both the spirit and the letter of the contract.

#### ISSUES RELATING TO SSRP

##### Common Core Approach

26. The Committee examined the common core approach of the Supply Systems Redevelopment Project (SSRP), ie the development of a single computer based system to satisfy the supply system requirements of all three Services. The Committee expressed the view that this approach imposed a level of complexity on the project which would not otherwise have existed. The Committee expressed concern that the Department has given insufficient consideration to the possibility of meeting its requirements by the use of computer systems and technology which has been proven by Australian allies. The Committee concluded that it was not convinced that the common core approach was best for Defence and that there is insufficient evidence to show that the common core approach will effectively satisfy the requirements of the Department and three Services.

27. The Department accepts that it experienced difficulties in pursuing the common core approach in the early years of the project. In its initial submission to the Committee in March 1989, the Department advised the Committee that the overall rate of progress on the project had been less than desired and that "difficulties in reaching tri-Service solutions for the common core system has been one of the significant contributors to delays on the project to date". Further, the Department advised that in 1987 the Secretary of the Department and the Chief of the Defence Force had decided that it was necessary to review the project to ensure that it was progressing in the right direction. One of the Key Terms of Reference of that review was:

"to advise on whether the existing SSRP concept continues to be a cost effective means of meeting requirements for efficient supply management within the Defence function, and changes which might have to be made to the concept to improve its cost effectiveness".

That review was conducted by Arthur Andersen and Co and a full copy of its report was provided to the Committee.

28. Arthur Andersen and Co confirmed that the common core approach was viable but that it could be strengthened via the use of commercially available "off the shelf" software as a focus. It advised that commercially available software packages were "attractive because they reduce design and implementation risks". It added that such packages are also attractive because they "offer opportunities for standardisation by introducing appropriate commercial practices to the Defence supply environment". The use of commercially available software was incorporated as a key feature of the revised development strategy for the project which was adopted by the Department subsequent to the Arthur Andersen and Co review, and endorsed by the ADP Acquisition Council in 1989. This decision has proven to be a watershed in successfully achieving the common core approach, the planning base for which involves the replacement of up to 10 single Service supply systems by a single tri Service supply system across all organisational levels of the ADF.

29. A contract has been awarded to an Australian software company, MINCOM, for the provision of commercial inventory management software known as MIMS. This software is used widely in the mining industry, and other capital intensive industries, by companies such as BHP. The software, which forms the basis of what is known as the Standard Defence Supply System, has been implemented on a trial basis at several Defence sites across Australia in support of day-to-day supply operations.

Experience to date has confirmed that the software generally meets Defence's requirements, and planning is underway for the implementation of the Standard Defence Supply System throughout Army during 1993/94 and throughout Navy and Air Force in the period 1993 to 1996.

30. While noting the Committee's comments on the use of systems which have been proven by our allies, the Department is aware that a number of countries in our region, as well as our allies in Canada and the United States, have expressed an interest in our use of commercially available software as the basis for the Standard Defence Supply System. In response to this interest, a demonstration of the capabilities of the MIMS software, and how it will be implemented by Defence, was arranged for delegates to the Pacific Area Senior Officers' Logistics Seminar (PASOLS), held in Cairns in May 1992.

31. In the light of practical experience to date, including successful software trials, the Department's view is that there is now sufficient evidence to show that the common core approach will effectively satisfy the requirements of the ADF. The Committee appears not to be fully aware of the substantial progress made on this issue over the recent period, particularly the success of the use of commercial software.

**RECOMMENDATIONS AND RESPONSES****1. DESINE****. Request for Tender**

Recommendation 1 (paragraph 2.17)

**The Department of Administrative Services review and where necessary revise the tendering procedures for major information technology acquisitions systems to ensure that requirements as stated in the tender are reflected in the final contract.**

Response by the Departments of Administrative Services, Defence, Finance, and Industry, Technology and Commerce.

32. Because virtually every IT project has different features, it is impossible to be prescriptive about the best procedure to follow in all cases. This applies to the above recommendation. Under current procurement guidelines, tender specifications define the problem, not the solution. Requirements are defined in functional and performance terms where possible. It is quite possible, for instance, that in the process of calling for and assessing tenders, the procuring agency may realise that the tender specifications did not accurately identify its requirements. Requirements may change at the evaluation and acceptance or negotiating stages. In some circumstances there may be a need to issue a new request for tender, but this is not always the case. Clearly, it would not be in the Commonwealth's best interest to proceed with a contract that reflected the tender requirements if the procuring agency decided that the requirements had changed.

33. Considerations such as the above indicate that, within broad guidelines and subject to Acquisition Council arrangements, individual agencies should be responsible for determining their own purchasing procedures and not be bound to follow specific directives that may not be appropriate in all cases. Accordingly, the Government's IT purchasing policy and guidelines issued by the Minister for Administrative Services allow for flexibility to meet the requirements of each individual project in ways that will best achieve the overall objectives of fair and open tendering and value for money. The recommendation for review by the Department of Administrative Services is therefore not supported.

Recommendation 2 (paragraph 2.19)

**Departmental annual reports include a detailed listing of current information technology assets, with quantity and current value, including detailed information on information technology purchases during the current financial year.**



Response by the Department of the Prime Minister and Cabinet and Finance.

34. The Government is reviewing the annual report requirements and consideration will be given to this recommendation in that context. The above departments, however, do not favour including in annual reports (which are already very lengthy documents) a detailed listing of all information technology assets. Nevertheless, it may be appropriate for some departments to provide specific details of their IT systems and of the role played by IT in the management of departmental programs in their annual reports.

35. It is not correct to say that "very little is known about the equipment and systems owned by Commonwealth departments" (Report - paragraph 2.18) since certification and reporting processes already exist in relation to these and other assets. Heads of Departments and agencies whose operations are governed by the Audit Act 1901 and Finance Regulations have been accountable for IT purchasing since March 1991 and have been required to certify in annual reports, in relation to IT acquisitions, that all aspects of government policy have been considered and satisfied.

36. Registers of assets are required to be maintained by all Departments. The Financial Statements Guidelines for Departments issued by the Minister for Finance require that certain information from the registers be reported in aggregate in the Supplementary Financial Statements prepared by Departments. While the details of these registers will generally not be publicly available, information from the registers could be provided on request to the JCPA or Senate Estimates Committees if required. A contact area within each Department could be referred to in the annual reports for information on asset holdings.

Recommendation 3 (paragraph 2.25)

Commonwealth agencies adopt a two-stage tendering process for all information technology projects and that it be mandatory in those instances where the total information technology purchases will exceed appropriate threshold dollar values determined by the Department of Administrative Services, the Department of Information (sic) Technology and Commerce and the Department of Finance.

Response by the Departments of Administrative Services, Defence, Finance, and Industry, Technology and Commerce.

37. As indicated in the response to recommendation 1, individual agencies are responsible for their own procedures subject to the Acquisition Council arrangements and broad guidelines. Prescribing a two stage process may unnecessarily increase the cost of some

projects as it may not, in those cases, be the most appropriate way to seek tenders. Nevertheless, Government policy as reflected in the procedure guidelines encourages the use of staged tendering procedures where this will improve the acquisition process to reduce costs for both buyers and bidders. Whether a two or three stage procedure is adopted will depend on the circumstances of each project.

. **Sole Supplier Clause**

Recommendation 4 (paragraph 2.42)

No future Commonwealth information technology acquisition contract contain a sole supplier clause and no future information technology acquisition contract be written in such a way that a sole supplier could eventuate.

Response by the Departments of Administrative Services, Defence, Finance, and Industry, Technology and Commerce.

38. As indicated in the responses to recommendations 1 and 3, individual agencies are responsible for their own procedures subject to the Acquisition Council arrangements and broad guidelines. Flexibility is desirable because there may be occasions when sole supplier arrangements are the most appropriate for a particular project. However, there would seem to be strong arguments against such an approach if it applied for too long a period without competition, or if it effectively tied the Commonwealth to a monopoly supplier.

. **Addition of New Technology**

Recommendation 5 (paragraph 2.48)

For any future additions of new technology equipment to the DESINE Contract, new IBM products not be added automatically to the Contract without an evaluation of non-IBM products which may better match existing and future computing environments at a similar or lesser cost to the new IBM product.

Response by the Department of Defence.

39. Not Agreed. A contractual obligation exists. New technology items that provide functionality that Defence needs and which are compatible with DESINE are accepted from IBM and the 28 sub-contractors as is provided for in the contract. Only in cases where the required functionality cannot be provided by the contractors is it appropriate to consider the acquisition of other vendors products because to accept such products where the functionality can be provided by IBM or the sub-contractors would breach the new technology clause of the contract. It is important to note that IBM and its

sub-contractors were chosen because they could provide the best value for money for the range of equipment that satisfied the total requirement of the RFT.

Recommendation 6 (paragraph 2.48)

Non-IBM products which are evaluated and compare favourably with new IBM products should be added to the DESINE Contract at the same time as the new IBM products.

Response by the Department of Defence.

40. Not Agreed. A contractual obligation exists. Further to the response to Recommendation 5, the DESINE contract is a Prime Contractor arrangement under which IBM is obligated to supply integrated solutions to Defence. Unless an exemption is approved, Defence is obligated to use the DESINE contract. The recommendation would turn it into a panel period contract, under which Defence would forgo the services of the prime contractor, and the guaranteed interoperability of the contract solutions.

Recommendation 7 (paragraph 2.49)

Wherever cost effective, the Department of Defence use Panel Period Contracts to supplement the DESINE Contract.

Response by the Department of Defence.

41. Not Agreed. A contractual obligation exists. The DESINE contract is binding on the Commonwealth until February 1994. Only where a particular requirement cannot be met by the DESINE contract solutions, and an exemption is granted, is procurement outside the DESINE contract possible. In those circumstances, procurement is made through a Panel Period Contract or via a RFT as appropriate to the project.

Response by the Department of Finance.

42. Major contracts like DESINE are awarded on the basis of assessment against a comprehensive set of selection criteria including, for example, cost effectiveness and industry development. To fully realise such benefits it is necessary to work within the framework of the contract, which should be flexible enough to accommodate relevant new technology. Any acquisitions outside the contract should be subject to an assessment of their potential impact on the effectiveness of the original contract and only undertaken if shown to be cost effective.

. Potential for Lock-in to IBM

Recommendation 8 (paragraph 2.57)

The Delegate for the DESINE Contract ensure that all possible alternative vendors' solutions be examined to determine whether it is possible to meet requests under the exemption clause.

Response by the Department of Defence.

43. Not Agreed. A contractual obligation exists. Acquisition must be via the contract where the requirement can be satisfied by the contract equipment. Only where that is not the case is it appropriate to begin evaluations of alternative solutions. The workload in identifying and evaluating all possible alternative vendors' solutions for every request for exemption would be prohibitive.

Recommendation 9 (paragraph 2.59)

The Delegate for the DESINE Contract be an officer at the Deputy Secretary level within the Department of Defence.

Response by the Department of Defence.

44. Noted. The function of Contract Delegate is at the First Assistant Secretary level which is seen as appropriate and consistent with management arrangements in the Department of Defence. Where necessary, issues are raised to Deputy Secretary level.

Recommendation 10 (paragraph 2.60)

Any dispute between IBM and the Department of Defence be published in the Department's annual report.

Response by the Department of Defence.

45. Noted. The Department of Defence reports regularly on major equipment projects in Program Performance Statements and in the Annual Report, but these reports would not include disputes unless they involved major problems for the project in terms of cost, performance or schedule. Contract administration staff meet weekly and monthly with the contractor to identify and resolve any potential issues. If a dispute arose that could not be settled in those forums, recourse would be had to formal negotiation or to arbitration. Any decision to publish the details would have to take account of the commercial sensitivities and implications for future relationships under the contract, and achieving value for money for the Commonwealth over the life of the contract. To date, there have been no disputes involving major problems between the Department and the Prime Contractor.

## 2. SSRP

### . Progress

Recommendation 11 (paragraph 3.43)

With a view to rationalising the content and number of Supply Systems Redevelopment Project tasks currently underway, the Department of Defence critically re-examine its current Supply Systems Redevelopment Project implementation plans to assess how they reflect the current information technology strategic direction of the Department and modify the plans where necessary to align them with this strategic direction.

Response by the Department of Defence.

46. Noted. The SSRP implementation plans reflect the current information technology strategic direction of the Department. The computer equipment and systems software requirements for the project are DESINE compliant solutions (ie the SSRP implementation plans reflect Defence's policy of movement towards open systems, presently being achieved through the use of the DESINE contract). For the Standard Defence Supply System, the largest sub-project under SSRP, Computer Power Group is contracted as the Prime System Integrator, to recommend and implement appropriate business and technical solutions. Computer Power is contractually obliged to propose solutions which meet Defence and broader Government IT policies and standards.

### . Costs and Benefits

Recommendation 12 (paragraph 3.54)

The Department of Finance review its quality assurance procedures for the acceptance of data included in the reports of IT Acquisition Councils with a view to establishing whether there is a flaw in the IT Acquisition Council process.

Response by the Department of Finance.

47. The Department of Finance's Information Technology and Systems Group is working within the Information Exchange Steering Committee (IESC) framework to enhance the guidelines for the planning and cost benefit analysis for IT projects and charging for IT services.

48. Finance would not agree with the Committee's view that the estimates in the IT Acquisition Council Reports were misleading, nor that there is a flaw in data acceptance in the IT Acquisition Council process.

49. The Committee argues that Defence used the benefit estimate calculated in 1988 by Arthur Andersen & Co in its submission to the 1989 IT Acquisition Council, but deliberately chose not to use the Arthur Andersen and Co cost estimate. The Committee further suggested that a 1986 revised lower cost figure was used, which was "an inexcusable misuse of data which artificially raised the value of net benefits" (3.46).

50. Finance agrees that the estimates of costs and benefits have changed since the Arthur Andersen & Co Report. However, these changes reflect continual refinements to the estimates due to changes in the structure and scope of the project, and the quantification of additional benefits. We do not agree that the original cost and benefit estimates should remain unchanged throughout the development of the project and not take into account identifiable changes. In fact, the Arthur Andersen & Co Report notes (para 9.2.5):

"Cost and benefit estimates for SSRP will need to be refined progressively during redevelopment.... The costs and benefits of each project also need to be progressively confirmed and updated at appropriate points during each development phase. The work completed during this review provides a starting point and method for those tasks."

51. In our view, the estimates of costs and benefits that should be reported at each stage of project development are those which are the most accurate at that time.

52. The role of the Department of Finance in the IT Acquisition Council process is to provide advice on technical, managerial and cost effectiveness aspects, and to agree the Summary Schedule of Outcomes and Financial Impact Statements. These statements, which are developed in accordance with the Department of Finance Handbook of Cost Benefit Analysis, should always include the latest and most up-to-date estimates of both costs and benefits. Therefore, where a large developmental project is involved, such as SSRP, we would expect these estimates to be continually refined over time.

53. The original Business Review Working Group (BRWG) cost estimate was \$187m (December 1982 prices); however, a re-evaluation of systems structure and computer hardware, and the inclusion of unattributed manpower costs, led to large cost increases. In 1986, the estimated cost of SSRP was \$410m (December 1986 prices). The Arthur Andersen & Co Report identified total lifecycle costs of \$433m (\$366.7m plus contingency of \$66.7M) and total benefits of \$462m over the period 1983-84 to 1997-98 in present value terms using 1988 as the base year.

54. The Committee suggests that Defence chose to use a 1986 revised lower cost figure based on the BRWG report in the 1989 IT Acquisition Council Report. However, the Department of Finance does not agree that the Defence figure was based on the BRWG report alone. The 1989 IT Acquisition Council Report contained a benefit estimate of \$462m and a cost estimate of \$389m, (including contingency of \$43m). These figures were agreed by Finance as part of the Summary Schedule of Outcomes and Financial Impact Statements on the basis that they were the most accurate available and consistent with Defence costing policy. We understand that the benefit estimate of \$462m was used by Defence because it was the most accurate estimate of quantifiable benefits at that time. However, a lower cost estimate was used because the project was restructured following the consultancy Report because Defence argued that there was a more cost effective way of achieving the same levels of benefits identified by Arthur Andersen & Co, but with a lower project risk. Of the total cost reduction of \$44m, some \$24m was due to a reduction in project contingency.

55. In relation to issue 2 of the Summary Schedule of Outcomes and Financial Impact Statements, dated January 1992, the Committee argues that the cost/benefit analysis was "extended into a period when little cost was being incurred and maximum benefit was being realised" (3.48).

56. Finance agrees that the analysis period in the Arthur Andersen & Co Report was extended by three years in the 1992 Summary Schedule of Outcomes and Financial Impact Statements. However, SSRP is a large developmental project and different elements are approved by Government at different times. Therefore, at each stage of consideration, the analysis usually extends for a period of 10 years from the date for which approval is sought for that particular element because it is a "generally accepted planning cycle for ADP systems" (paragraph 26 of the 1992 IT Acquisition Council Report). The net benefits in the 1992 Report were calculated over a ten year period to 2001 because Defence was seeking approval for a new phase of the project which was to commence in 1991-92. The original analysis period used by Arthur Andersen & Co was "to 1997 (ten years from now for planning purposes" (9.2.2). However, the Arthur Andersen & Co Report also notes (paragraph 6 of the Executive Summary):

"The nominal service life of some of the systems would extend beyond the planning period. The expected result is that benefits, not able to be quantified during this review, will be earned late in the planning period and beyond it".

57. In practice, the life of major ADP systems within Defence has proved much longer than 10 years, in some cases up to 20 years. Therefore, the benefits flowing from implementation of some systems are expected to accrue at least until 2010. We would expect the latter years to involve little cost, but also to be a period where further net benefits are realised.

58. Finance does not agree that benefits not identified in the original Financial Impact Statements in 1989 should not be included in subsequent analyses. The purpose of revising these Statements is to assess the cost effectiveness of the project based on the latest estimates of costs and benefits. If these benefits can be attributed to SSRP and can be quantified, they should be included. We do not agree that the estimates should be derived from a common base to allow comparisons to be made with earlier analyses. Rather, the revised Financial Impact Statements provide a snapshot of the cost effectiveness of the project at a point in time which overrides previous analyses.

59. The Committee also argued that the estimated benefits were overstated because of advice by Defence on 23 April 1992 that some benefits accruing from other initiatives had been attributed to SSRP.

60. Defence advised in its submission to the JCPA dated 23 April 1992 that it was reviewing the achievability of planned savings from all of the major Defence savings initiatives, including the achievability of planned savings from SSRP, and that the outcome was not expected to be completed until June 1992. The Department of Finance does not agree with the Committee that this advice indicates that some benefits accruing from other initiatives have been attributed to SSRP. Rather, Defence simply noted that some of the SSRP savings may be affected because the number of bases and supply depots etc, could be reduced as a result of these other initiatives.

61. In relation to SSRP savings, the Committee might wish to note that we were advised by Defence on 17 January 1992 that:

"your requirement for annual reports to the Department of Finance is agreed.... Those reports will be specific to SSRP (ie not aggregated reports that will include other Defence reviews and initiatives) and will provide sufficient detail for Finance to properly consider project progress towards agreed outcomes and the achievement of savings".

62. Finally, we agree that some phases of SSRP have a negative cost/benefit ratio and should be critically re-assessed prior to funding being sought. However, the Committee might wish to note that some phases include significant capital costs and are a prerequisite for



later phases which should realise significant benefits. For example, Phase 8A (Standard Defence Supply System) had a negative cost/benefit ratio, but proceeded on the basis that there were significant intangible benefits which should accrue from its implementation, along with other benefits which accrue beyond the analysis period.

63. In other cases, we agree that some phases which can be considered separately should be critically re-assessed. We have previously raised concerns about Phases 11 and 13 (Deferred Executive), and advised Defence on 22 October 1991:

"... this element should only proceed if it is cost-effective in its own right.... At this stage, however, we accept there are some difficulties in identifying savings and note your intention to identify quantifiable benefits and develop a sound business case before seeking the proposed expenditure of some \$85m on this element."

Response by the Department of Defence.

64. Noted. The Department of Defence is concerned about the assertions made by the Committee elsewhere in the report that the Department has variously misused data, misinterpreted costs and benefits and misled the Committee over the actual costs and benefits which accrue to SSRP.

65. The recommendation appears to be based on the Committee's conclusion "that the cost benefit justification of the common core approach is now under considerable threat because of this misrepresentation of costs and benefits" (paragraph 3.50).

66. It is for the Department of Finance to formally respond to the Committee on this recommendation. The Committee has reported that the Department of Defence has variously:

- a. inexcusably misused data to artificially raise the value of net benefits (paragraph 3.46);
- b. misrepresented the costs and benefits by providing data not derived from a common source (paragraph 3.50); and,
- c. misled the Committee over the actual costs and benefits which accrue to SSRP (paragraph 3.51).

67. The Committee's conclusions appear to centre on two key areas of interpretation of the data which was provided to them. These are:

a. the basis of the cost estimates in the Financial Impact Statements considered by the ADP Acquisition Council in 1989, and agreed between Defence and the Department of Finance in 1989 (paragraphs 3.45 to 3.47); and,

b. the means of comparing on a consistent basis, the Financial Impact Statements agreed between Defence and the Department of Finance in 1989 and 1992 (paragraphs 3.48 to 3.51).

68. Concerning the issue at paragraph 67a above, the Financial Impact Statements considered by the ADP Acquisition Council in 1989 were based on the recommendations arising from a review of the project by Arthur Andersen and Co which was completed in 1988. While the Department restructured the SSRP development strategy using the recommendations of the Arthur Andersen and Co review as a guide, it did not accept all of the Arthur Andersen and Co recommendations in every detail. A key area of difference, for example, concerned the computer systems to support the supply depots and bases of the Services. While Arthur Andersen and Co recommended separate systems to support the supply depots and bases of the Services, the Department saw no reason to discontinue the previous approach of developing common depot and base systems, but modified this approach to pursue the use of commercial software for both organisational levels. Subsequent development of the Standard Defence Supply System has proven the Department's decision to be correct.

69. In essence, the Department considered that in some areas there was a more cost effective way of achieving the same levels of benefits identified by Arthur Andersen and Co. The Department also decided that in some areas, costs included by Arthur Andersen and Co in their report were costs that the Department would incur regardless of what happened with SSRP, and therefore should not be charged to project costs. The Department also considered that the levels of contingency funding in the Arthur Andersen and Co estimates of costs were too high. As the level of benefit was expected to be the same from either the Department's or Arthur Andersen and Co's approach, there is nothing improper in what has been endorsed as SSRP costs by either higher Defence Committees, or between Defence and the Department of Finance. The costs endorsed by the Department, and agreed between Defence and the Department of Finance, reflect the Department's approach rather than that of Arthur Andersen and Co.

70. The basis for the differences between the benefits included in the Financial Impact Statements agreed between Defence and the Department of Finance in 1988/89 and 1991/92 is as follows:

First, there is the application of the Department of Finance Guidelines to the SSRP project which has a number of separate phases being approved by Government in different timeframes. The cost benefit analyses conducted by SSRP are entirely consistent with the Department of Finance's Guidelines for the Operation of IT Acquisition Councils. But because elements of SSRP are approved at different times, there are different periods for which the benefits are calculated for individual elements of SSRP. While this gives rise to some changes between subsequent versions of the Financial Impact Statements, it does not detract from the validity of the supporting cost benefit analyses, as the aim is to provide the most up-to-date statement of costs and benefits for a ten year period from the year of approval for the individual elements of SSRP.

Second, additional manpower benefits were properly included in later cost benefit analyses. In 1989 when the whole of SSRP was approved, in principle, to proceed in accordance with the restructured development strategy, it was agreed (by Defence, the ADP Acquisition Council and the Government) that further cost benefit analyses were required to be completed prior to seeking Government approvals for individual elements of SSRP. Additional manpower benefits attributable to the implementation of the Standard Defence Supply System, which are incorporated into later Financial Impact Statements, result from one such later study. Inclusion of these additional benefits agreed by the Services is entirely appropriate.

71. Understandably, the Committee has had difficulty in reconciling the Financial Impact Statements produced in 1988/89 with those produced in 1991/92, to assess the costs and benefits of SSRP on a consistent basis. The Department, through the higher Defence Committee process of endorsing the implementation of the Standard Defence Supply System, and in reaching agreement with the Department of Finance on the Financial Impact Statements, did however carry out just such a comparative analysis; indeed, the analysis is included at paragraph 11 of the overview to the Summary Schedule of Outcomes and Financial Impact Statements document agreed with the Department of Finance. There is therefore no basis for the Committee's conclusion that either it, or for that matter, the Department of Finance, has been misled over the actual costs and benefits which accrue to SSRP, though the material is complex.

72. Finally, the Committee appears to have misinterpreted information provided on the impact of the Force Structure Review and related Defence initiatives on the cost/benefit case for SSRP. Since the more recent cost/benefit studies advised to the Committee in July 91 were undertaken, the Department has commenced the implementation of major departmental and single Service initiatives such as the Force Structure Review, the Commercial Support Program, the Defence Regional Support Review and, for Air Force, Electronic Purchasing at Units. As the SSRP cost/benefit studies pre-date these initiatives, clearly the impact of the closure of Defence bases and the contracting out of functions will have some impact on the benefits previously identified under SSRP.

73. The Committee was advised that the Department had initiated a review to identify what the impact of these initiatives might be. The Committee has interpreted this advice as "Benefits accrued from the Force Structure Review and other similar projects appear to have been incorrectly included in the benefits resulting from SSRP" (paragraph 3.48). This interpretation of the Department's advice is incorrect as detailed in paragraph 72 above. Notwithstanding that, as a consequence of the continuing review and monitoring of the Project, the Department foreshadows further changes to the costs and benefits that are likely to accrue to SSRP. Some of these changes will flow from the impacts of the initiatives mentioned in paragraph 72 above. Other changes will result from differences in implementation schedules and the methodology of determining costs and benefits (eg the use of per capita rates from Ready Reckoner Personnel Costing Tables rather than full on-cost per capita rates). While the effects of these changes are currently being determined, it is expected that they will result in some reduction in the benefits flowing from the project, although other initiatives being pursued have the potential to reduce project costs. The outcome of these studies will be advised to the Department of Finance prior to initiation of the subsequent stages of the Project.

Recommendation 13 (paragraph 3.61)

The operation and management of the Supply Systems Redevelopment Branch be reviewed to ensure that appropriate project controls and procedures are now in place, especially in the area of quality assurance.

Response by the Department of Defence.

74. Noted. The processes for oversight and approval have been specifically strengthened since this issue was raised during Committee hearings. This includes independent higher Defence Committee scrutiny of the

Standard Defence Supply System (SDSS) Stage 1 outcomes and a report to the Minister for Defence before proceeding with Stage 2 of the SDSS.

75. The Committee's concern with the operation and management of the project related to perceived inconsistencies between information provided in two submissions (18 January 1990 and 5 July 1990) regarding the costs of various activities within SSRP. The Committee's concerns raised at paragraphs 3.58 and 3.59 do not appear to have taken into account the advice provided by the Department in September 1990, at the Committee's request.

76. The Committee's recommendation focuses in particular on the area of quality assurance. By far the largest and most important SSRP subproject is the SDSS. Computer Power, which has been contracted as the Prime Systems Integrator on this subproject, is contractually required to undertake project activities and provide contract deliverables consistent with the Australian quality standards for software quality management systems (AS3563-1988) and for quality systems for design/-development, production, installation and services (AS3901). SSRP and the Defence Quality Assurance Organisation have developed a Quality Assurance Management System to comply with AS3563-1988. Quality reviews and audits of each deliverable received from Computer Power are conducted by Branch staff. Additionally, a member of the Defence Quality Assurance Organisation is assigned full time to the SSR Branch to advise on, and monitor, quality assurance activities. A member of Management Audit Branch is also assigned to SSRP, and an agreed audit program of the development activity has been established with Management Audit Branch.

77. Formal monthly Contract Progress Meetings are held with Computer Power, with representation from numerous Departmental interests external to SSRP, and including the Director General, Communications and Information Systems, who is responsible for information systems master planning, and for information systems policy and standards, across the Department.

78. For the project generally, overall project performance against scheduled milestones is monitored at quarterly intervals by the SSRP Steering Committee. SSRP is funded from the Major Capital Equipment appropriations and, as such, is subject to review by Departmental committees for approval and funding on a regular basis.

79. It is considered that the project management arrangements already in place, provide a highly structured management framework by which Computer Power's progress, and the project's progress generally, in terms of cost, schedule, technical performance and quality, can be evaluated with a high degree of confidence.

Recommendation 14 (paragraph 3.65)

In view of the stated intention by the Department of Defence to follow the Systems Application Architecture strategy for implementation, the Department justify this proposition by providing alternative costed implementation strategies for the Supply Systems Redevelopment Project which reflect the alternative options of technology available.

Response by the Department of Defence.

80. Noted. This recommendation relates to the cost effective use of information technology available under the DESINE contract, and in particular, the use of microcomputers. Computer Power as the Prime Systems Integrator for the Standard Defence Supply System, which has the requirement for the largest numbers of microcomputers under SSRP, is required under its existing contract to recommend the most cost effective DESINE compliant solution to meet the business needs of the Defence Supply organisations.

81. Different microcomputer solutions, with different levels of functionality, are available under DESINE. At no stage has SSRP had, as an aim, standardisation on one particular microcomputer solution. Rather, the intention has always been to match the appropriate technical solution to the particular functional requirement of the Services.

Recommendation 15 (paragraph 3.65)

The Department of Defence review its current purchasing policies under the DESINE Contract to ensure that purchases are in line with the hardware and software strategy necessary for the future implementation of applications.

Response by the Department of Defence.

82. Noted. The direction for implementation of computer applications within Defence is governed by the Government Open Systems Interconnection Profile (GOSIP), which is being implemented through the selection of suitable products for inclusion in DESINE. Almost all of the entire suite of Systems Application Architecture (SAA) compliant products that are now on the DESINE contract fully implement the Open Systems Interconnection (OSI) standards incorporated in GOSIP, and there is no question of Defence being dependent on IBM as the only possible future supplier.

Recommendation 16 (paragraph 3.72)

The Prime Systems Integrator urgently provide new cost estimates for using the IBM personal computers and IBM proprietary software options in a Systems Application Architecture environment. The estimates should take account of the requirements for the additional technology requirements such as Random Access Memory, hard disk and level of technology platform required in the Supply Systems Redevelopment Project/DESINE environment.

Response by the Department of Defence.

83. Noted. Computer Power Group, as the Prime Systems Integrator for the Standard Defence Supply System, is required under its existing contract to recommend the most cost effective DESINE compliant solution to meet the business needs of the Defence Supply organisation. The cost of personal computers to be installed by the Prime Systems Integrator for SSRP systems is not affected by the SAA environment. Rather, that cost depends on the level of functionality required at the various implementation sites across the country. Further, personal computers provided under SSRP are considered to be a corporate resource, under the Department's policy objective of no more than one terminal per desk. Apart from SSRP system capabilities, the functionality provided must cater for the known requirements of other systems such as the Department's financial management system known as DEFMIS. That broader requirement will affect, for example, the selection of hard disk size and amount of Random Access Memory needed to support the conduct of effective business operations.

Recommendation 17 (paragraph 3.73)

The Prime System Integrator urgently provide costings for alternative solutions which will provide similar computing facilities, without the high overheads needed to support applications such as Office Vision in the OS/2 Extended Edition environment, using Windows.

Response by the Department of Defence.

84. Noted. As advised for Recommendations 14 and 16, Computer Power, as the Prime Systems Integrator for the Standard Defence Supply System, is required under its existing contract to recommend the most cost effective DESINE compliant solution to meet the business needs of the Defence Supply organisations.

85. Different microcomputer solutions, with different levels of functionality, are available under DESINE. At no stage has SSRP had, as an aim, standardisation on one particular microcomputer solution. Rather, the intention has always been to match the appropriate technical solution to the particular functional requirement of the Services.

. Project Management

Recommendation 18 (paragraph 3.80)

The Defence Audit Branch examine the project management activities used in relation to the Supply Systems Redevelopment Project to ensure that there is sufficient evidence of their consistent application, especially in the day-to-day running of subprojects.

Response by the Department of Defence.

86. Accepted in principle. A member of Management Audit Branch is assigned to SSR Branch and each year an audit program of the development activity is established with Management Audit Branch. With the appointment of Computer Power as the Prime Systems Integrator for the Standard Defence Supply System, the role of the SSR Branch has changed, with most of the Branch's activities being directed towards managing the PSI contract. Management Audit Branch (in Audit Report ACT 21/91) was able to verify that the Branch's Quality Assurance (QA) section was fulfilling its role in ensuring that the project deliverables required under the contract were being correctly processed. The report recommended that the role of the QA section be extended to include the AUTOQ and SLIMS subprojects, and this is being pursued by the SSR Branch.

Recommendation 19 (paragraph 3.80)

In conducting this examination, close attention be paid to the introduction of extra unscheduled activities and activities undertaken out of logical sequence, such as the completion of the Advisory Study for the release of the Prime Systems Integrator Request for Tender.

Response by the Department of Defence.

87. Accepted in principle. The general principle outlined in the recommendation is accepted as there would be no argument that close attention needs to be paid to introducing unscheduled activities or activities undertaken out of logical sequence. The conduct of the ongoing Management Audit Branch program in SSR is addressed in the response to Recommendation 18.

88. The Department would, however, have difficulty accepting the example cited in Recommendation 19 as an indication of previous work that has been undertaken out of sequence. Engagement of a Prime Systems Integrator and the conduct of an Advisability Study are not parts of the one process. The Advisability Study is the final step in the System Definition stage of the development lifecycle and brings together important financial, technical and strategic information upon which the decision to proceed further can be based. The decision



to engage a Prime Systems Integrator might be taken at any stage of a system's development and represents a resourcing strategy to reduce risks to the timely progression of the system development. Unlike the Advisability Study however, it is an approach which is not part of that development process per se.

Recommendation 20 (paragraph 3.81)

The Defence Audit Branch examine and report to the Supply Systems Redevelopment Project Steering Committee where short cuts have occurred in the application of project management activities; in particular, any reduction in SPECTRUM activities, where insufficient detail may have been collected which would affect the quality assurance aspects of the documentation held for the system definition of subprojects.

Response by the Department of Defence.

89. Noted. Management Audit Branch has advised that the SPECTRUM methodology should not be implemented dogmatically. As the methodology has been generalised to allow its global allocation, it needs to be adapted to each particular project.

90. The Department does not consider that any "short cuts" have been taken, or "insufficient detail..collected" in the system definition phase of SSRP subprojects, which have affected the quality assurance aspects of the documentation held. The Department advised, in response to a request from the Committee, that the freedom for interpretation of SPECTRUM performance during system definition facilitates both fast tracking and the maintenance of sufficient quality. The primary aims of the project would still be achieved within the strategic direction of the project, but a commercial applications package could be used. The Department advised the Committee of certain activities which were given less emphasis, or which were not considered necessary, in the knowledge that development activity in support of selection and installation of a software package was different to that required for the custom development of software. The Department remains of the view that it would have been quite inappropriate to have followed SPECTRUM dogmatically in all instances in the situation where Defence was seeking to alter the way it approaches its supply business in order to maximise not only the use of commercial software, but also the underlying commercial practices which the software supports.

Recommendation 21 (paragraph 3.83)

The Department of Defence establish a separate Branch to administer the preparation and evaluation of information technology related tenders.

Response by the Department of Defence.

91. Noted. As for all Defence major capital acquisitions, significant IT source selection recommendations must be endorsed by the Defence Source Definition Committee. That committee is established to perform an independent function, inter alia, attesting to the probity, propriety and thoroughness of the capital equipment acquisition and source evaluation process. It is chaired by the First Assistant Secretary, Capital Equipment Program, and is serviced by the Project Policy and Evaluation Branch. The need for external scrutiny is also covered by the use of Acquisition Councils (on which Finance is represented, and DAS and DITAC have the option to provide a representative) for projects exceeding \$5M, and through consideration by Cabinet of large acquisitions. To further enhance the discipline and consistent treatment applied to the Department's IT projects, a standing Acquisition Council has now been introduced for Defence ADP acquisitions.

### 3. OTHER MATTERS

#### . Use of Consultants

Recommendation 22 (paragraph 4.4)

The Department of Defence develop and implement procedures to ensure that the necessary skills transfer occurs between consultants/contractors and departmental personnel to reduce dependence on consultants and contractors.

Response by the Department of Defence.

92. Accepted in principle. There will be many instances when skills transfer will be necessary. Where this need is present, the general principle in Recommendation 22 is relevant and accepted. However, there will be areas where skills transfer will not be needed given Government policies on outsourcing of Information Technology and initiatives such as the Commercial Support Program (CSP). The Department is currently looking at putting the majority of Information Technology activities through the CSP process.

93. SSRP planning focuses on outsourcing, rather than obtaining or retaining skills, subject to testing the market, cost effectiveness, agency efficiency and public policy considerations. Under the endorsed SSRP development strategy, the bulk of expenditure on contractors/consultants would be directed towards prime contractors or systems integrators. This approach is consistent with the Government's industry policy in the area of Information Technology as announced in the Industry Statement of March 1991, and the Defence policy of allowing the private sector to compete for activities that are not considered to be 'core', ie support activities that are not central to the Defence mission.

Recommendation 23 (paragraph 4.7)

Defence Audit seek justifications for the continued engagement of each consultant/contractor with information technology skills, and in particular examine any lack of skills transfer from these consultants/contractors who have been engaged for a considerable time with a view to terminating contracts as soon as possible.

Response by the Department of Defence.

94. Noted. SSRP has in the past relied upon external contractors to provide the expertise and experience which would not otherwise be available from Defence resources. With the contracting out to Australian industry of the major components of SSRP, only two information technology contractors remain engaged on the project overall. These meet the policy requirements for outsourcing as outlined in paragraph 93 above. It is agreed that Defence should avoid the costs associated with continued use of consultants where it would be more cost effective to utilise skills transfer to Departmental officers. While it is not the role of Defence Audit to ensure that skills transfer occurs during the period of each consultancy, Defence Audit does advise from time to time on the use of consultancies (eg as part of a management review) and, where a transfer of skills is required in a contract, it checks that those responsibilities are being/have been properly discharged by the area that engaged the consultant.

Recommendation 24 (paragraph 4.10)

Department of Defence review its policy of engaging the same consultants/contractors for the preparation of tender specifications as well as the evaluation of the same tender with a view to ensuring that there is independence in the external advice given for each process and that each stage of the process is clearly defined.

Response by the Department of Defence.

95. Noted. The Department sees considerable advantage in retaining a core of expertise throughout the entire process of preparing complex tender specifications and assessing the responses to those tenders. To have to assemble separate teams to undertake the tender evaluations could extend the process considerably as a long familiarisation period could be required. That view is held irrespective of whether or not external consultants are involved. Moreover, separate processes to select consultants for tender specifications and tender evaluations must add to overall tender costs to industry, an area of wide concern in industry.

96. The tendering process for all major acquisitions is subject to the scrutiny of the Defence Source Definition Committee. Additionally, proposals for major IT acquisitions, including details of any proposals for the use of external consultants, are submitted for independent review by an ADP Acquisition Council (on which Finance is represented, and DAS and DITAC have the option to provide a representative). This provides the appropriate oversight of tender preparation and evaluation as well as removing any potential for conflicts of interest.

#### . Reporting Hierarchy

Recommendation 25 (paragraph 4.13)

A supply information centre be established to co-ordinate the identification of the supply requirements, management standards, performance and interface standards between the three Services.

Response by the Department of Defence.

97. Not Agreed. Arthur Young recommended a new central organisation to support the Logistics Division requirement for performance data rather than a project management information system as suggested in the report. The recommendation by Arthur Young was rejected by Defence, in favour of an information system supporting devolution and all Program Managers' reporting requirements under PMB. A central organisation as proposed would be contrary to the aims of devolving management responsibility.

#### . ANZ Content

Recommendation 26 (paragraph 4.17)

The Department of Defence monitor more vigorously the levels of ANZ content in the DESINE Price List to ensure that no erosion of ANZ content occurs.

Response by the Department of Defence.

98. Accepted in principle. The monitoring of local industry participation in support of the Government's industry development objectives will continue to be given prominence in accordance with DITAC/DAS guidance.

Response by the Department of Industry, Technology and Commerce.

99. DITAC considers that ANZ content measures are one indicator of the industry development consequences of a purchase. Undue emphasis should not be placed on such measures since longer term and more commercially strategic contributions to industry development can be achieved through the Partnerships Program, the Fixed Term Arrangements and through strategic government purchasing arrangements.

## 4. GENERAL COMMENTS

## . DESINE

Recommendation 27 (paragraph 5.10)

The Department of Defence re-activate the UNIX Working Party and task it with exploring options for the introduction of alternative UNIX solutions.

Response by the Department of Defence.

100. Noted. The UNIX working party has already identified the standards appropriate to UNIX products that might be included in DESINE. These have been promulgated and are being applied. Work is now proceeding to identify products that can meet these standards and user needs within the framework of the integrated DESINE solution. This is being done by the contract administrators in consultation with users and the prime contractor.

Recommendation 28 (paragraph 5.11)

A preference policy be established to favour products which increase support for open systems rather than proprietary products.

Response by the Department of Finance.

101. The Department of Finance supports this recommendation, subject to tests of cost effectiveness, which is consistent with the Government's decision to move to a more open computing environment. The Information Exchange Steering Committee (IESC) is preparing an Open Systems Environment Specification which will greatly assist this process.

Response by the Department of Industry, Technology and Commerce.

102. DITAC considers that the long-term strategic benefits of open systems should be recognised by the tendering process and that such benefits are clearly part of value for money. The formal adoption of a preference margin is unnecessary given the government's open systems policy.

Response by the Department of Defence.

103. Accepted in principle. Defence understands that the Information Exchange Steering Committee will report to the Government later this year on the open systems standards that the Government might endorse for use in the public sector. Subject to contractual issues, any such policy will be implemented in Defence. The GOSIP is already being implemented through the selection of suitable products for inclusion in DESINE.

. Beyond DESINE

Recommendation 29 (paragraph 5.14)

The Department of Defence not extend the DESINE Contract.

Response by the Department of Defence.

104. Agreed. The existing DESINE contract will not be extended beyond its February 1994 end date. Options for IT acquisition strategies that may be appropriate after February 1994 are being examined and an outcome will be known in early 1993.

Recommendation 30 (paragraph 5.18)

An information technology advisory group be established, sponsored by the Inspector-General and including representatives of the Departments of Administrative Services and Finance, to monitor information technology purchasing decisions in the Department of Defence.

Response by the Department of Defence.

105. Noted. Apart from the mechanisms within Defence for the scrutiny and coordination of IT projects, external scrutiny is covered by the use of Acquisition Councils (on which Finance is represented, and DAS and DITAC have the option to provide a representative) for projects exceeding \$5M, and through consideration by Cabinet of large acquisitions.

Response by the Department of Finance.

106. The existing IT Acquisition Council process extends through the procurement phase and provides representation from the Departments of Administrative Services (where appropriate), Industry, Technology and Commerce and Finance. There is also provision for additional members, which could include the Inspector-General. We believe that the Acquisition Council provides a suitable forum for monitoring purchasing decisions.

. SSRP

Recommendation 31 (paragraph 5.31)

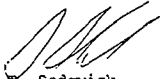
The Australian National Audit Office commence an Efficiency Audit of the Supply Systems Redevelopment Project in 1993.

Response of the Auditor-General.

107. ~~The~~ Auditor-General has provided his response directly to the Committee and it is not duplicated in this Finance Minute.

Response by the Department of Defence.

108. Agreed in principle. While ANAO will need to consider this recommendation, the Department would appreciate the opportunity to discuss the timing of such an audit, and its relationship to internal audit, to ensure SSRP resources are not unduly diverted from their primary task of delivering systems during this key implementation year. Defence would prefer such an audit to be held over until 1994.



S.T. Sedgwick  
Secretary  
Department of Finance  
22 December 1992

ATTACHMENT A

## LIST OF ABBREVIATIONS AND ACRONYMS

ADF	Australian Defence Force
ADP	Automatic Data Processing
AIX	Advanced Interactive Executive (IBM's UNIX)
ANZ	Australian and New Zealand
AUTOPROC	Automated Procurement
AUTOQ SSRP	Army Quartermaster System
BRWG	Business Review Working Group
CENCAT	SSRP Central Cataloguing
DEFMIS	Defence Financial Management Information Systems
DEPOT/BASE	SSRP Depot and Base System
DESINE	Defence EDP Systems Integrated Network Environment
DFDC	Defence Force Development Committee
DSPL	DESINE Standard Product List
FSRP	Financial Systems Redevelopment Project
GMSSR	General Manager Supply Systems Redevelopment
GOSIP	Government Open Systems Interconnection Profile
HLID	High Level Integrated Design
IBM	International Business Machines
IDC	Interdepartmental Committee
IT	Information Technology - IT is now used instead of ADP
JCPA	Joint Committee of Public Accounts
LAN	Local Area Network
MIMS	MINCOM Information Management Systems
MINCOM	Australian software company which markets the MIMS package
MSRP	Manpower Systems Redevelopment Project
OA	Office Automation
OS/2	Operating System for microcomputers
OSI	Open Systems Interconnection - a set of standards for computer networks
PC	Personal Computer
POSIX	Portable Operating System Interface for Computing Environments
PSI	Prime Systems Integrator
RAM	Random Access Memory
RFT	Request For Tender
SAA	Systems Application Architecture
SLIMS	Ships Logistics Information Management Systems
SNA	Systems Network Architecture
SPECTRUM	Proprietary System Development Methodology
SSRB	Supply Systems Redevelopment Branch
SSRP	Supply Systems Redevelopment Project
UNISYS	UNISYS is an information technology company
UNIX	Universal Executive - a non-proprietary operating system
WLAN	Warehousing Local Area Network
X/OPEN	European-based Open Systems Organisation



FINANCE MINUTE ON REPORT 318  
PUBLIC SECTOR RESEARCH AND DEVELOPMENT - VOLUME 1  
OF A REPORT ON RESEARCH AND DEVELOPMENT

DEPARTMENT OF  
**FINANCE**

Reference: 92/2420  
Telephone: 263 3544  
Contact Officer: D J Evans

Newlands Street, Parkes, A.C.T. 2600  
Telephone: Canberra (06) 263 2222  
Telex: 62639  
Fax: (06) 273 3021

The Hon Gary Punch, MP  
Chairman  
Joint Committee of Public Accounts  
Parliament House  
CANBERRA ACT 2600



Dear Mr Punch

I enclose the Department of Finance Minute on your Committee's 318th Report entitled 'Public Sector Research and Development - Volume 1 of a Report on Research and Development.'

Yours sincerely

N P McKenna  
Acting First Assistant Secretary  
Financial Management Division  
13<sup>th</sup> January 1993

## DEPARTMENT OF FINANCE MINUTE ON REPORT 318

This Minute has been prepared on the basis of responses by the Departments of Defence, Employment, Education and Training, Industrial Relations, Industry, Technology and Commerce, Primary Industries and Energy, Finance and the Australian Bureau of Statistics.

2. As many of the recommendations contained in the Report involved matters of policy, a separate response on those recommendations will be provided directly to the Chairman of the JCPA by the Government. A number of the recommendations raised issues both of policy and administration. Consequently, the Government's response, when provided, will override any departmental comments covering the same subject matter that are included in this Minute.

3. In this Minute each of the Committee's recommendations which departments have addressed is reproduced and is followed by the response.

### Setting National Research Priorities

#### Recommendation 1 (paragraph 4.34)

The Government review on a regular basis the effectiveness of the mechanisms for establishing national research directions for Science and Technology White Papers.

Response by the Department of Industry, Technology and Commerce (DITAC):

4. This is a matter that may be addressed in the Government's response to policy matters.

5. This issue was addressed in the White Paper on Science and Technology (1992). Research programs are established in accordance with the goals of the community, as articulated through a wide range of consultative mechanisms. The White Paper specifies some of these goals:

- . Advancing knowledge and developing a better understanding of ourselves, our country and our place in the universe.

- . Improving the performance and international competitiveness of the primary, manufacturing and service industries.

. Improving the quality and effectiveness of social services and enriching the quality of life of all Australians through, for example, better health care and health knowledge, improved and cheaper communications, and environmental management.

. Maintaining national security.

. Meeting international responsibilities and representing Australian interests in areas such as standards setting, meteorology, nuclear non-proliferation and other global issues.

. Ensuring that development takes place in a sustainable way to guarantee the well-being of future generations of Australians.

6. At the most general level, allocation of resources to realise these goals takes place through the Budget process, primarily in Cabinet.

7. However, the Government indicated in the White Paper that research directions are most effectively set through strong interaction of users with researchers. This process takes place at different levels - researchers, institutions, government - each with a different scope of decision-making and information base. Judgements are made by those with the best access to the most relevant information.

8. Within that context, the agencies set more detailed priorities to meet the broader social and economic objectives, often specified in their enabling legislation.

9. The degree to which this process is formalised varies - CSIRO, for example, has developed a sophisticated information based priority-setting mechanism to assess the potential of competing research opportunities and national capacity to benefit from research results.

10. At the level of individual researchers and groups of researchers priorities are set on the basis of the interaction with the users of the research, knowledge of the field of research and the national and (where appropriate) corporate context.

11. The market is playing an increasing role in establishing research directions. This has been a major focus of recent policy-making, for example the 150% tax concession, the Co-operative Research Centres (CRCs) program, and external funding targets for research agencies.

12. Co-ordination is effected through:

(i) The Australian Science and Technology Council (ASTEC) is a statutory body in the Department of the Prime Minister and Cabinet reporting to the Prime Minister

(through the Minister for Science and Technology) on various issues. Under the Australian Science and Technology Council Act 1978, ASTEC is charged with providing information and advice on seven matters relating to science and technology.

(ii) The Co-ordination Committee on Science and Technology (CCST) is chaired by the Chief Scientist and brings together senior officers from all departments with an interest in science and technology. It is the CCST's responsibility, as noted in the White Paper, to report to Government on the mechanisms used to set science and technology priorities and address the adequacy of these mechanisms.

(iii) The Prime Minister's Science and Engineering Council (PMSEC) includes 9 senior Ministers, spanning portfolio interests in the economy, industry, health, environment, primary industries, energy, education and trade. As indicated in the ASTEC review, ASTEC provides analysis of broad long-term issues and the PMSEC provides a mechanism to raise such issues at the highest level of government.

#### Recommendation 2 (paragraph 4.40)

The Commonwealth and State Governments take action to implement the options for improving intergovernmental co-ordination suggested by the Australian Science and Technology Council in its report, Research and Technology: Future Directions.

#### Response by DITAC:

13. This is a matter that may be addressed in the Government's response to policy matters.

14. Mechanisms already exist for Commonwealth/State science and technology policy co-ordination.

15. For example, technology policy co-ordination is effected through the Australian Industry and Technology Council (AITC). When the Commonwealth-State Industry Ministers' Meeting was upgraded to Ministerial Council status in 1984, technology Ministers were included, reflecting a concern by the two levels of government to pursue a more integrated and co-ordinated approach to industry and technology development. It is the vehicle through which the different responsibilities and policy instruments of the Commonwealth and the States can be harmonised.

16. The Council consists of all Commonwealth, State and Territory Ministers directly responsible for industry and/or technology policy. New Zealand accepted an invitation to take up full membership in mid-1991. The Council is supported by a Standing Committee which consists of senior officers designated by their respective Ministers. The Council and the Standing Committee are served by a Secretariat of officers provided by DITAC and assisted by State and New Zealand departments.

17. Technology issues considered by the Council include:

1986-87

Software Industry Study  
Regulation of Biotechnology  
Technology Transfer Study  
Management Awareness and Attitudes Study  
Review of High Technology Purchasing Arrangements

1987-89

Studies of the R&D process  
Identifying Growth Industries

1989-90

Technology Parks Report  
Multifunction Polis

1990-91

Advanced Manufacturing Technology

18. Ministerial Councils in other areas - education, environment, transport and primary industries, for example - deal with relevant issues in research and technology.

19. There are a range of other mechanisms including:

(i) ASTEC - Following the recent review of ASTEC the Governments will consider the appointment, as members, of employees of State Government, and the occasional meeting of ASTEC in places other than Canberra. ASTEC convenes meetings of its state counterparts twice yearly.

(ii) DITAC, through its State offices, maintains close links with State Departments on matters relating to industrial research and technology.

(iii) CSIRO consults extensively with relevant State Departments. Researchers at CSIRO and the Universities are linked by the research data network AARNet (Australian and Academic Research Network).

(iv) The Australian Institute of Marine Science (AIMS) has close contact with Queensland and Western Australian State Government Departments and liaison with the Northern Territory Government to further consultation and co-operation in achieving the best results in tropical marine research. It also consults and collaborates with Universities and the Great Barrier Reef Marine Park

Authority to maintain its knowledge at the organisational level.

(v) The Australian Nuclear Science and Technology Organisation (ANSTO) has signed memoranda of understanding with the Western Australian and Queensland Governments providing for scientific and technological co-operation and maintains close contacts with other State Authorities. ANSTO's supercomputing facilities are similarly linked into AARNet.

Recommendation 4 (paragraph 4.64)

The Government take immediate action to facilitate the development of comprehensive, consolidated databases on various aspects of the Commonwealth-funded public sector R & D effort, including:

- . research that is planned, completed or in progress within the universities and research agencies;
- . public sector research expertise that is available to industry or other organisations interested in collaboration;
- . publicly produced knowledge that could be, but has not yet been exploited for commercial gain;
- . the level of contracting out of public sector research requirements to industry; and
- . publicly performed research that has, or is being, funded by industry.

Response by the Department of Employment, Education and Training (DEET), Department of Industry, Technology and Commerce (DITAC) and Department of Prime Minister and Cabinet (PM&C):

20. This is a matter that may be addressed in the Government's response to policy matters.

21. Much of this information is already available. Moves to create additional databases would need to consider the high cost of creating and constantly updating them, the resource constraints of those required to provide the information, whether there is sufficient demand for the product, whether databases are the best mechanism and commercial confidentiality considerations.

Response by the Australian Bureau of Statistics (ABS):

22. The ABS already has a database of information about Commonwealth-funded public sector R&D, collected as part of

its normal R&D survey program. This database, however, contains aggregate statistics rather than the detailed data envisaged in this recommendation. Databases of this latter type are likely to be very expensive both to set up and maintain.

Recommendation 5 (paragraph 4.70)

The Department of Industry, Technology and Commerce and the Department of Primary Industries and Energy consider means of coordinating the regular and systematic collection, synthesis and dissemination of detailed and comprehensive information on:

- . the characteristics of all sectors of Australian industry;
- . the nature and extent of private sector innovation and R & D investment; and
- . the barriers to innovation faced by Australian firms.

Response by the Australian Bureau of Statistics (ABS):

23. The Australian Bureau of Statistics has primary responsibility for data collection and dissemination of statistics. ABS already provides a wide range of statistical information covering all or part of Australian industry. The information includes annual data about the R&D conducted by Australian industry and two yearly data on Government and Higher Education Sector R&D. In addition ABS has started work on two areas raised by the Committee in this recommendation. It has:

- (i) conducted two surveys on the characteristics of all sectors of Australian industry. The first bulletin containing the results from these surveys is currently being finalised and should be available to users early in 1993.
- (ii) allocated resources to look at the feasibility of collecting statistics from businesses on their innovative activities and any barriers to innovation. This feasibility study is expected to be completed in 1993.

Response by DITAC:

24. Primary data collection in these areas is the responsibility of ABS which consults regularly with a wide



range of users of its information. ABS has principal responsibility for responding to this recommendation.

25. DITAC produces a wide range of analytical information on industry and innovation, often based on ABS data, and generally targeted at specific audiences.

Response by the Department of Primary Industries and Energy (DPIE):

26. The co-ordination of industry data collections is primarily the responsibility of the ABS which has principal responsibility for responding to this recommendation, however:

- . Australian Bureau of Agriculture and Resource Economics (ABARE) collects a wide range of economic and physical data on rural industries and also collects data on energy use by major energy users;
- . ABARE's collections for rural industries are integrated with ABS's collections, and population lists and other structural information on the rural industries are obtainable from the ABS;
- . ABARE's energy use collection is separate from ABS's collections.

Recommendation 7 (paragraph 4.89)

The Australian Technology Group synthesise and provide information on an ongoing basis on:

- . publicly performed Australian research;
- . international science and technology developments; and
- . commercial opportunities within domestic and international markets.

Response by DITAC:

27. The ATG is being established as a commercial operation. Minister Free released Draft Guidelines in April 1992 and announced the appointment of three private sector Directors to the Board in October. The Government has indicated that it intends to attract private capital to the Group and accordingly would be only one of several shareholders. It has further indicated its preference that it should not be subject to non-commercial restrictions or limitations. There are no provisions in the guidelines for the ATG to provide this type of information to the Government or the public, but it could choose to do this on a commercial basis.

## Infrastructure for R & D: People, Accommodation and Equipment

### Recommendation 9 (paragraph 5.33)

The Government review on an ongoing basis the salaries paid to public sector researchers, teaching academics and school teachers working in science and science-related areas, with a view to establishing more appropriate relativities for the salaries paid to these professionals vis-a-vis those paid in the wider community.

Response by the Departments of Industrial Relations(DIR), DITAC and DEET:

28. This is a matter that may be addressed in the Government's response to policy matters.

29. The salaries of academics at higher education institutions were reviewed in 1991 resulting in significant salary increases. The salaries of academics and science teachers are set through the normal industrial relations processes.

30. DIR notes that there have been significant salary increases for researchers, academics and school teachers over the period 1990-92, with the possibility of further increases under enterprise bargaining.

31. The salaries payable to research scientists and academics were reviewed in 1990-91 as part of the Structural Efficiency Principle (SEP), resulting in significant increases. In 1990 the Australian Industrial Relations Commission (AIRC) approved pay increases of between 11% and 19% for various grades of CSIRO and ANSTO research scientists. In 1991 it granted broadly similar increases for APS research scientists. The AIRC approved pay rises for academics of up to 20% in July 1991. A further outcome of the case was the removal of restrictions on payment of above award rates. Academics in the APS received pay increases in February 1991 broadly in line with other SEP increases within the APS.

32. Salaries for teachers are a State responsibility. There has been considerable effort in recent years to implement pay structures for teachers based on national benchmarks which treat teachers as a single professional group. This was progressed through the SEP and implementation of new structures involving improved career paths and substantial pay increases began in 1991. Tasmania is the only State yet to implement the new structure - a decision by the Tasmanian Industrial Commission to adopt the new structure is being appealed by the State Government.

33. Recent changes to the wages system increase the flexibility for agencies to reward staff within the limits of their overall budgetary resources.

34. In its October 1991 National Wage Case decision, the AIRC adopted the Enterprise Bargaining Principle in order to enable wage increases based on productivity increases at the enterprise level. In July 1992 the Government amended the Industrial Relations Act to encourage the use of certified agreements as a vehicle for workplace bargaining.

35. On 4 December 1992 an agreement between the Government and public service unions titled Improving Productivity, Jobs and Pay in the Australian Public Service 1992-94 was certified by the AIRC. This provides for a total of 4.9% for all classifications, including APS research scientists and academics, over the life of the Agreement. In addition it provides for:

- the introduction of performance-based pay for the Senior Executive Service, Senior Officers, and related groups such as Research Scientists and Academics; and
- the possibility of productivity pay, based on negotiations at the agency level.

36. In the case of teachers, the Australian Teachers Union has discussed with the Government a similar approach.

37. Base salaries are only one component of the total benefits available to public sector academics and researchers. These include superannuation, tenure, and in the case of research scientists, the availability of merit advancement and accelerated advancement. The CSIRO has provision for performance-based pay and this is also being introduced in ANSTO. The CSIRO also has the power to pay bonuses to persons or teams in respect of discoveries or inventions made by them. Academics often have rights to engage in consultancy up to a certain percentage of salary.

38. In addition, other rewards such as undertaking work of public value and the intrinsic interest of the work have always been factors in public sector pay fixation.

#### Recommendation 10 (paragraph 5.40)

The Government regularly monitor the universities' needs for capital funding and, using a formalised priority-setting process, plan to meet these needs.

#### Response by DEET:

39. The Government does this and has decided that, from 1994, capital funds for higher education institutions will be provided as part of their operating grants. This will enable institutions to make their own funding decisions regarding the expenditure of capital funds.

Recommendation 11 (paragraph 5.40)

The Government monitor the level of funding per Effective Full Time Student Unit such that the increase in the number of university places is matched by appropriate improvements to university infrastructure, bearing in mind the greater funding needs of science and science-related university places.

Response by DEET:

40. The Government does this. The funding provided per EFTSU to institutions takes into account the different funding needs of the various disciplines and covers the full teaching costs including infrastructure. It is a matter for each university to decide how these resources are allocated.

Recommendation 12 (paragraph 5.44)

The number of science research fellowships and postgraduate research awards be progressively increased to a level where supply equates more closely with evolving demand in Australia and overseas.

Response by DEET:

41. In the 1992 Budget the Government announced that it would provide 200 additional Australian Postgraduate Research Awards (APRA's), bringing the total number of new awards made annually to 1500. The Postgraduate Awards Scheme has recently been reviewed by an ARC working party whose recommendations included:

- . an increase in the numbers of APRAs to 1900 new awards annually (including 200 industry-linked awards)
- . an increase in APRA stipends by \$2000 pa, with the stipend in future maintaining its parity with academic salaries
- . changes to the formula used to allocate awards to institutions.

42. The ARC has considered this report and is preparing advice for the Minister for Employment, Education and Training, which is required to be tabled in Parliament. It is expected that the Government will respond to this advice in due course.

43. The Research Fellowships Scheme supports researchers from the postdoctoral level through to professorial level. A total of 105 new research fellowships are available each year. The scheme was last reviewed in 1989 following a reference from

the Minister. The review resulted in the National Research Fellowships being replaced by a scheme which provided three levels of fellowships:

- . The Australian Postdoctoral Fellowships (for researchers with less than two years postdoctoral experience);
- . The Australian Research Fellowships (for researchers with more than two years postdoctoral experience);
- . The Australian Senior Research Fellowships (for researchers at Senior Lecturer level or above);

Recommendation 13 (paragraph 5.52)

The Government evaluate the contribution of the 1% training levy to improving the skills needed by Australian firms for the successful performance of R & D and its commercialisation.

Response by DEET:

44. An evaluation of the training guarantee is underway and will be completed by December 1994. Among the areas to be covered by this evaluation is the interaction between training practices and innovation in industry.

Recommendation 15 (paragraph 6.17)

As a general principle, the full cost of carrying out research should be recovered from the user or from research grants obtained from funding bodies.

Response by DEET and DITAC:

45. This is a matter that may be addressed in the Government's response to policy matters.

46. Higher education institutions and Government research agencies are aware that in the S&T White Paper the Government announced principles for the costing and pricing of research which stated that "decisions on price should be based on the understanding of the objectives and responsibilities of the research performer and funder, and the extent to which the benefits from the conduct and results of the research can be captured by each party".

47. Government has asked the National Board of Employment, Education and Training (NBEET) to review research infrastructure. The review will report on the adequacy of research infrastructure, future funding needs and appropriate

allocative mechanisms, and the report is expected to be available in the second quarter of 1993.

Recommendation 17 (paragraph 6.29)

The Department of Industry, Technology and Commerce further investigate means of regularly collecting and publishing information on the involvement of Australian research agencies, higher education institutions and private sector organisations in research collaboration and exchange with overseas organisations.

Response by DITAC:

48. This is a matter that may be addressed in the Government's response to policy matters.

49. Some information is already available. Moves to create additional databases would need to consider the high cost of creating and constantly updating them, the resource constraints of those having to provide the information, whether there is sufficient demand for the product, whether databases are the best mechanism and commercial confidentiality considerations.

50. The private sector has extensive collaboration with overseas organisations both public and private. Collection of this sometimes commercially sensitive data would have the potential to reveal the commercial strategies of Australian firms to their international competitors.

Response by DEET:

51. DEET does not believe that there is a demonstrated need for such information, and considers that it would impose too great a burden on institutions. In the case of higher education, if it were to be done at all, it would more appropriately be done by DEET working in collaboration with the Australian Vice-Chancellors' Committee.

Recommendation 18 (paragraph 6.35)

The Australian Science and Technology Council continue to use and refine its approach to prioritising national needs for large scale research facilities.

Recommendation 19 (paragraph 6.35)

A regular review of such facilities be undertaken, as proposed by the Australian Science and Technology Council.

Response by DITAC and DEET:

52. It is expected that these matters will be addressed in the Government's response to policy matters.

53. In the White Paper the Government indicated that the Co-ordination Committee on Science and Technology has been tasked with a watching brief on the development of specific proposals for national research facilities, particularly those that cross departmental boundaries.

#### Performance and Funding of R & D by the Private and Public Sectors

Recommendation 21 (paragraph 7.39)

Research agencies be required to continually monitor private sector capabilities in relevant areas, and actively explore the possibilities of subcontracting work to private sector agencies.

Response by DITAC:

54. This is a matter which will be addressed in the Government's response to policy matters.

55. DITAC notes that "contracting out" by research agencies is usually a mechanism to facilitate commercialisation and technology transfer or to achieve other objectives rather than a means of cost reduction.

Response by Defence:

56. The Defence Science and Technology Organisation (DSTO) contracts out just over 4% of its total annual budget to universities and industry as research agreements, research contracts or contracts for technology support. It is expected that this percentage will increase in future years.

Recommendation 23 (paragraph 7.41)

The Australian Bureau of Statistics collect and regularly publish sufficient information on research contracts let to private industries by government agencies to allow regular monitoring of the extent of this practice.

Response by the ABS:

57. As part of its regular R&D surveys program the ABS collects data on the -

. Payments made by Commonwealth, State and Local Government authorities to other organisations for the conduct of R&D;

. funds obtained by private businesses from Government authorities for the conduct of R&D.

58. These statistics are published every two years in ABS Catalogues Nos. 8109.0 and 8104.0 respectively.

59. These statistics should provide sufficient information to measure trends in research work contracted out to the private sector. However, if more information is required, it may be possible to modify the R&D collections to provide the necessary detail. The ABS is prepared to do some work on this if required.

Recommendation 28 (paragraph 7.61)

Other Commonwealth research agencies evaluate the appropriateness of the attractiveness/feasibility model for use in the internal assessment of priorities for the expenditure of untied research funds.

Response by Defence:

60. The DSTO has already considered the CSIRO model for assessing research priorities and has concluded that it is inappropriate for Defence.

Response by DITAC:

61. Agencies are aware of the CSIRO priority setting model but other research agencies have developed different forms of priority-setting mechanisms more appropriate to meeting the objectives set them by Government.

Response by DPIE:

62. DPIE considers that while the CSIRO priority setting process/model is appropriate for CSIRO, the R&D organisations within the PIE portfolio are developing well thought out and equally rigorous priority setting mechanisms which match their respective needs. These models have some common features with the CSIRO model in that they consider cost-benefit, economic returns, potential benefit, feasibility and commercialisation potential.

**High Priority Public Interest Research: the Environment, Industrial Needs and Social Research**

Recommendation 33 (paragraph 8.59)

The Australian Bureau of Statistics regularly collect data on the nature and extent of private sector environmental research, and publish detailed breakdowns



of publicly and privately performed environmental research.

Response by the ABS:

63. The ABS currently produces statistics for public sector R&D classified by socio-economic objective (SEO) which separately identifies environmental R&D. The viability of the collection of such data from private business has not been established. However, the ABS is trialling the use of SEO for classifying R&D in its 1991-92 Business Enterprise survey. Should the trial prove successful ABS will incorporate the collection of this type of data in its regular R&D surveys program.

Recommendation 37 (paragraph 8.100)

The efficiency and effectiveness of the organisational, administrative and funding arrangements of the R & D Corporations be reviewed on a regular basis.

Response by DPIE:

64. In the PIE portfolio R&D arrangements have undergone a regular process of review and enhancement over recent years. For example, the R&D Corporation model was put in place following comprehensive review of primary industries and energy R&D arrangements in 1989. As noted by the Committee, the R&D Corporation model was recently the subject of a comprehensive review. The review was commissioned by the Primary Industries and Energy Research Council in July 1991. The principal objective of the review was to determine the impact of corporatisation on the effectiveness and accountability of research and development funding in the primary industries and energy portfolio. This review supported the R&D Corporation model in general.

Recommendation 38 (paragraph 8.111)

The Government take action:

- . to identify the national needs for social science research, including humanities research and research into the social impact of technology;
- . to improve the co-ordination of social research; and
- . to ensure the adequacy of funding for social research.

Response by DEET:

65. It is expected that this will be addressed in the Government's response to policy matters. It should be noted that ASTEC is currently undertaking a major study of the contribution of social science and humanities to national

economic and social welfare including their contribution to science and technology.

66. DEET notes that social science research at higher education institutions is primarily funded through DEET's research funding programs, including research grants, fellowships, postgraduate awards, research infrastructure grants and research centres. These programs are allocated on the advice of the Australian Research Council. In 1993, over \$6 million will be provided in large research grants to higher education institutions to support projects in the social sciences. In addition, social science research is also supported through the institutions' operating grants and through the Research Schools of Social Sciences and Pacific Studies at the Australian National University.

### Commercialisation

#### Recommendation 42 (paragraph 10.12)

The Government foster the acceptance of an agreed definition of commercialisation.

#### Response by DEET:

67. It is expected that this will be addressed in the Government's response to policy matters. Consistent definitions of terms such as development, product development, commercialisation and innovation could significantly enhance the quality of debate in Australia on science and technology policy.

#### Response by DITAC:

68. Australia is participating with other OECD countries to implement standard guidelines for collecting technological innovation data. "Commercialisation" is an arbitrary segment of the wider innovation spectrum. A definition of commercialisation may be addressed as part of the continuing work of international experts in the area of innovation. These matters are of great interest to many countries and Australia will make a contribution, but there would be limited value in adopting a definition of only national scope.

#### Response by Defence:

69. While this is a matter to be addressed by the Government, Defence notes that in discussing a definition for commercialisation (paras 10.4 to 10.12), the Committee chose the relatively narrow definition: "the transfer of intellectual and industrial property for financial return to the research organisation" for the purpose of the report. The Committee's definition excluded consultancies and contract research. The Committee noted that CSIRO uses a wider

definition and that DSTO representatives (para 10.10) expressed some confusion about what commercialisation meant within DSTO.

70. Paragraph 10.6 of the report stated that "the concept of commercialisation excludes various processes by which R&D is sometimes pursued". It is submitted that it is in Defence's long term interests to use a broader definition for commercialisation, which also sets commercialisation in context as one facet of Defence policy for industry. It should include advice provided by DSTO consultants and DSTO research under contract to external organisations. If a common definition of commercialisation is needed for national and international R&D reporting purposes, this could be a sub-set of a broader definition better suited to Defence needs.

Recommendation 43 (paragraph 10.26)

The goals and objectives of major research organisations, which have received a government directive to generate a portion of their funding from non-appropriation sources, include reference to commercialisation within their goals and objectives.

Response by DEET and DITAC:

71. Agreed. These matters have been taken up with all research organisations in the above portfolios. Many already have implemented the matters raised.

72. DITAC notes that, in particular, CSIRO is working towards this and ANSTO and AIMS business plans include commercial objectives.

73. DEET notes that the universities have become more conscious of the benefits of commercialising their research and many have established technology transfer companies.

Recommendation 44 (paragraph 10.28)

The commercialisation objectives of research organisations performing R & D be included in their management plans.

Response by DITAC:

74. This recommendation is accepted and is being implemented.

75. CSIRO is actively working towards this, where it is appropriate - major recent moves include the relocation of its headquarters to Melbourne and the devolution of Sirotech. However, commercialisation is not necessarily appropriate to all kinds of research.

76. The Australian Institute of Marine Science's (AIMS) Act was amended in November 1992 to give it freedom to pursue its commercialisation objectives. A draft Business Plan was tabled at the November meeting of Council and received favourable comment. AIMS is going ahead with proposals and is receiving some attention from industry. A recent scientific collaboration with scientists at the University of Rhode Island, New York has resulted in a marketing and distribution arrangement for Australia and South East Asia for simulation software for the trajectory and fate of oil spills.

77. ANSTO refers to commercialisation in its Corporate Strategies. Each business unit has a business plan, most of which include commercial objectives. The Synroc Study Group, for example, comprises representatives from BHP, CRA, ERA (Energy Resources of Australia), Western Mining, ANSTO, and the Australian National University and is investigating international opportunities for Synroc.

Response by Defence:

78. In its recently issued Corporate Planning Statement 1992-96, DSTO identified one of its objectives as to:

"Facilitate the timely transfer of the results of defence research to industry, and provide access by industry and other agencies to DSTO's research facilities and expertise."

79. In practice, this objective is fulfilled by a wide variety of activities. DSTO undertakes, on a commercial basis, the provision of consulting services, contract R&D, training and the hire of unique facilities. Other types of commercial activity involve the medium to long term exploitation of DSTO's intellectual property. These activities include the licensing of technologies to industry, collaborative research and development, and joint venture arrangements. Currently DSTO holds 76 patents, has arranged 40 manufacturing licences with industry and is involved in three incorporated joint ventures. Accordingly DSTO sees no advantage in adopting the recommendation.

Recommendation 46 (paragraph 10.39)

Research organisations involve commercial partners with resources to successfully commercialise the results of R & D at an early stage of the R & D.

Response by DITAC:

80. This is already happening. Major examples at CSIRO include the recent Memoranda of Understanding with BHP, Boeing and the Sydney Water Board.

81. AIMS is positioning itself to involve commercial partners. It is in discussion with a number of companies with a view to working together with industry on a number of projects. Industry is well represented on AIMS' Council and

the Council provides guidance on commercialisation matters in developing AIMS' policies.

82. ANSTO accepts that the ultimate wealth of the nation is dependent on the uptake of research by the private sector. The 70/30 applications/strategic split in ANSTO's research recognises the importance of this uptake. All research projects in the applied research area will require a customer before commencement and for continuation.

**Response by Defence:**

83. The Department of Defence concurs with the importance of having a market-driven (paras 3.31 and 10.38) approach to the commercialisation of R&D rather than one driven by technology, and with the need to involve commercial parties at an early stage as this recommendation proposes. This recommendation is also consistent with fostering strategic alliances. However, whilst it is recognised that the ideal is to pass the products of the public good R&D to the private sector as quickly as is feasible, in Defence terms this may not be wise or even desirable, particularly where the ADF has obtained a technological advantage over foreign military forces as a result of DSTO work.

**Recommendation 48 (paragraph 10.59)**

The performance of the Australian Technology Group be monitored and consideration be given to utilising more effectively the expertise of the Industrial Research Development Board.

**Response by DITAC:**

84. See the response to Recommendation 7. The Government, as a shareholder in ATG will actively monitor the Group's performance.

85. The IR&D Board assists grant applicants but does not provide general brokerage facilities. The IR&D Board has a large amount of information on private sector research projects. Analysis of this will continue in order to develop a better understanding of the barriers to and opportunities for commercialisation.

**Recommendation 50 (paragraph 10.66)**

Research organisations regularly review the systems and practices used to commercialise their research and give priority to introducing any improvements suggested by these reviews.

Response by DITAC:

86. This is already happening in departments and the research agencies.

CSIRO

Recommendation 57 (paragraph 11.65)

CSIRO assess the need to rationalise its location at 108 sites and 150 laboratories in terms of the economical, efficient and effective utilisation of its resources.

Response by DITAC:

87. CSIRO accepts and is acting in accord with this recommendation. Following an extensive Workshop in July 1992 in which it reviewed the progress of CSIRO, the CSIRO Board suggested that the Organisation should continue to be active in "seeking opportunities both to reduce costs and to improve flexibility, such as through further site rationalisations (not necessarily centralisation) and from streamlining provision of site services." CSIRO is strongly committed to further developing its major sites in Canberra and at Clayton and North Ryde and to rationalise elsewhere to the extent that this is compatible with research and collaboration needs. In doing so, it has to respond to very strong pressures upon it to open new sites, a recent example being the recommendation by the Joint Parliamentary Committee on Public Works to locate the CSIRO Division of Food Processing at Wagga Wagga.

Recommendation 58 (paragraph 11.65)

CSIRO develop a longer term capital replacement program in the light of the assessment.

Response by DITAC:

88. CSIRO is committed to maintaining its capital infrastructure, has developed a long-term capital replacement program and is acting to link this more closely with forecasts of the demands of its evolving research priorities.

Recommendation 59 (paragraph 11.65)

Future annual reports of CSIRO provide information regarding rationalisation studies and the implementation of the 10 to 20-year building and refurbishment program.

Response by DITAC:

89. CSIRO agrees with this recommendation.

## Defence Science and Technology Organisation

### Recommendation 60 (paragraph 12.17)

The Defence Science and Technology Organisation review and update the policies and procedures which define the strategic and corporate planning process and the fit between its own plans and the Defence Five Year Plan.

Response by Defence:

90. Agreed. This is already being put into effect.

### Recommendation 61 (paragraph 12.17)

The plans be updated on a yearly basis in the light of both performance against timed targets within those plans and factors external and internal to the organisation.

Response by Defence:

91. Revised procedures will be implemented in the 1993/94 financial year. The essential features of the revised process are:

- . the provision, on an annual basis, of a Defence Science and Technology Strategy, providing essential top down guidance to DSTO for long term planning of its research program;
- . the introduction of a Client Program structure (for planning, reporting, reviewing and evaluating the program) with four Defence client segments, and a fifth commercial segment; and
- . the introduction of a planning cycle, which involves face to face interaction with the senior clients in an Annual Planning Meeting to shape the future R&D program.

### Recommendation 62 (paragraph 12.28)

Adequate capital funding be provided for the accommodation and equipment needs of the Defence Science and Technology Organisation.

Response by Defence:

92. Agreed in principle. DSTO's operating efficiency is being hampered by existing facilities and equipment needs. DSTO Salisbury has developed costed options to consolidate its activities into new, refurbished and recently built accommodation on part of its present site. Such consolidation would achieve a very substantial reduction in site operating costs and would also provide gains in research output.

However funding must be considered in the light of overall Defence priorities.

Recommendation 63 (paragraph 12.33)

The Defence Science and Technology Organisation establish a mechanism whereby it can effectively establish its funding needs and attach priorities to these needs.

Recommendation 64 (paragraph 12.33)

The Department of Defence monitor the adequacy of the funds allocated to the Defence Science and Technology Organisation in relation to its capacity to maintain its technological base and provide additional funds when they are needed.

Response by the Department of Defence:

93. Implementation of these recommendations is closely allied to the current restructuring of DSTO's planning procedures as previously mentioned.

Recommendation 65 (paragraph 12.46)

The level of funding provided for the commercialisation of the Defence Science and Technology Organisation's research be monitored.

Response by Defence:

94. Defence agrees with this recommendation. However, it takes issue with some of the statements made in paras 12.38 to 12.45 on commercialisation issues. Para 12.38 is too narrow a view; it underrates the rest of the world. A significant amount of the interest shown by commercial enterprises in DSTO research is in research which has the potential to result in products for world defence and commercial markets. To a large degree this is the factor which can make manufacture in Australia cost-effective, by providing for manufacturing sustainability and economies of scale. DSTO will not be successful in commercialisation if it does not seek overseas sales - local "volumes" are too small.

95. With regard to technology transfer from DSTO, the mechanisms referred to in para 12.39 are only two of many successful mechanisms used by DSTO. Other mechanisms are: staff training and programs, industry contracted R&D expertise, facilitation of outside development of DSTO technologies through Technical Support Service contracts, the Defence Industry Development program, direct provision of technical data, licensing, joint venture development and scientific presentations.



96. The examples cited in para 12.41 are only a small snapshot of DSTO's licensing activities. A complete list is publicly available.

97. The reference in para 12.45 to the Report of the Task Force on Commercialisation of Research is misleading; DSTO's commercial activities are not concerned solely with "commercialising" existing inventions, but with exploiting its overall R&D capability for the national benefit.

98. The JCPA correctly noted that the 1% limit reflected the level of effort Defence is prepared to divert to supporting the commercial exploitation of DSTO's R&D capability. However as a result of the November 1992 review of industry policy conducted for the Parliamentary Secretary, the 1% limit on net diversion of appropriated resources to commercial activity will be removed, and DSTO will increase its formation and use of strategic alliances with Australian industry. These changes are supported by the findings of the Australian National Audit Office's review of DSTO's commercial activity. It is intended that DSTO will manage these changes without detriment to its ability to meet Defence R&D requirements.

99. As a result of their commercial activities, Business Development Units have developed considerable expertise in managing and protecting intellectual property, which is of significant value to DSTO's mainstream activities for the Department.

Recommendation 66 (paragraph 12.46)

This funding be adjusted, in the light of cost-benefit analyses, to maximise the income from the Defence Science and Technology Organisation's commercial activities.

Response by Defence and DITAC:

100. The Departments do not accept this recommendation. Maximising the income from commercial activities may not provide the best results in terms of national benefit. National benefit, rather than income maximisation, should be the key criterion in determining priorities for commercial activity. The two are not synonymous. The programs must respond to strategic and national goals. For example, maximum income from a licence might be achieved by selling it to a foreign company, but the national interest might be better achieved by selling at a lower price to an Australian company, thus providing employment, export income and industry infrastructure growth.

Recommendation 67 (paragraph 12.50)

The Department of Defence, the Department of Finance and any other organisations, that are identified as delaying the commercialisation of the Defence Science and

Technology Organisation's research, review their procedures with a view to streamlining them.

Response by the Department of Defence(DSTO):

101. The Department agrees with this recommendation.

Response by the Department of Finance:

102. The Department of Finance notes that the current arrangements for the commercialisation of DSTO research are conducted within existing guidelines and legislative requirements. Specifically, the Government, in determining its response to the report of the Senate Standing Committee on Finance and Public Administration on "Government Companies and their Reporting Requirements" (1989), decided that the Minister for Finance and the Attorney-General be consulted in advance on any proposals to establish or vary a direct Commonwealth interest in a company. Nonetheless, Finance is willing to review any proposal to streamline administrative procedures that may assist in the satisfactory resolution of DSTO commercialisation proposals

Recommendation 68 (paragraph 12.54)

An independent review be carried out of the adequacy of the funds available to employ individuals with the best available skills for negotiating, establishing and managing the commercialisation arrangements of the Defence Science and Technology Organisation.

Response by the Department of Defence (DSTO):

103. This recommendation is not accepted. This should be handled internally as the situation has to be balanced against DSTO's prime customer requirements. It is not clear that an independent review (assuming this means external to Defence) would be able to comprehend all the issues. With regard to employing individuals "with the best available skills", DSTO recognises the importance of this but believes that such skills are best obtained externally by contracts or consultancies.

104. Paragraph 12.55 is now somewhat dated. DSTO is now assessing the industrial capability of its innovations.

Recommendation 69 (paragraph 12.57)

The Defence Science and Technology Organisation identify those areas where its expertise coincides with Australian industrial capability and defence requirements, and concentrate on these areas by:

- setting up an industry advisory group to devise industry development strategies for the Organisation's expertise; and

. forming long term alliances with companies.

Response by Defence:

105. The department agrees with the recommendation.

Recommendation 70 (paragraph 12.64)

Priority be given to making funds available for the establishment of the Industry Support Office at the Aeronautical Research Laboratory.

Response by Defence:

106. Agreed. DSTO's Aeronautical Research Laboratory's Business Development Unit is now being trialled as an Industry Support Office (ISO), which is a distinct, commercially oriented entity designated to manage all of ARL's business activities. The ISO concept will be trialled until October 1993 with funding of \$1.5M derived from the DSTO Commercial Activities Account and, if successful, consideration will be given to extending the ISO structure to other DSTO laboratories.

Recommendation 71 (paragraph 12.67)

Publicly available reports of the work of the Defence Science and Technology Organisation be produced annually.

Response by Defence:

107. Defence agrees with this recommendation.

#### Australian Institute of Marine Science

Recommendation 77 (paragraph 14.26)

The Department of Industry, Technology and Commerce scrutinise the effectiveness of the existing mechanisms for providing advice on funding and research priorities for marine R & D.

Recommendation 78 (paragraph 14.25)

Bearing in mind the recommendation of the McKinnon Review that an Australian Marine Industries and Sciences Council be established, the Department of Industry, Technology and Commerce consider whether new mechanisms are required to provide advice on funding and research priorities.

Response by Department of Industry, Technology and Commerce (DITAC):

108. In the Government's response to the McKinnon Review it decided not to proceed with the formation of the Australian Marine Industries & Science Council (AMISC) but rather to make more effective use of existing mechanisms. As such, the Heads of Marine Agencies group (HOMA) was asked by Government to provide appropriate advice to ensure that important areas of marine research and development of national benefits and/or commercial opportunity are funded, directly or in liaison with NBEET, ARC, FIRDC, the IR&D Board, ERDC, CSIRO or other appropriate bodies.

109. At the request of the Co-ordinating Committee for Science & Technology (CCST), HOMA has undertaken a major review of the state of publicly funded marine research in Australia.

110. The study examined current funding levels and the extent and effectiveness of existing co-ordination mechanisms. A preliminary report on the study was presented to CCST on 18 November 1992.

Recommendation 79 (paragraph 14.30)

The Department of Industry, Technology and Commerce and the Heads of Marine Agencies develop effective processes to identify ways in which Australia's research capability in marine sciences and technology can be used, disseminated and marketed overseas, especially among semi-tropical nations.

Response by DITAC:

111. A number of mechanisms for marketing Australian expertise in marine sciences and technology are already in place. In 1989 the Australian Marine Science & Technology Project Office was established with the aim of marketing the expertise of the Commonwealth marine research agencies to these areas. The Government allocated \$250,000 seed money in the 1989 Science and Technology Statement and INTERMARC (International Tropical Marine Resources Centre) based in Townsville, was established in 1991 with the role of promoting the use of Australian expertise in tropical marine ecosystems and in training in this area.

112. Other action the government is taking includes work done by the Office of Northern Development and the ASTEC Review into research in tropical Australia.

## Bureau of Mineral Resources

### Recommendation 89 (paragraph 16.21)

The Department of Primary Industries and Energy allocate additional resources to the National Geoscience Database Program as a matter of high priority.

### Recommendation 90 (paragraph 16.23)

The Bureau of Mineral Resources review the 40-year timeframe for the completion of the Minerals and Petroleum Programs and identify the measures to be taken to decrease the long lead time.

### Recommendation 93 (paragraph 16.34)

The Bureau of Mineral Resources restructure the form of its estimates so that the costs of research programs are separately appropriated in the annual Appropriation Acts and will not be aggregated as running costs.

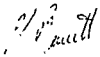
### Response by DPIE:

113. The Government recently announced a number of measures relating to the Bureau of Mineral Resources which took place following the release of the Committee's report. These include:

- (i) A change of name of BMR to the Australian Geological Survey Organisation (AGSO) consistent with its contemporary role.
- (ii) An enquiry into the administrative arrangements under which the BMR (AGSO) operates, including whether it should be established as a separate institute within the CSIRO or remain within the Department of Primary Industries and Energy;  
  
- The review team will consult widely and report to the Government before August 1993. In particular, the Terms of Reference of this review take into account the June 1992 JCPA Report and seek advice on the most appropriate funding arrangements for the AGSO.
- (iii) The resources currently allocated to petroleum and minerals resource assessment within BMR will be merged with the current Bureau of Rural Resources in DPIE. This new bureau which will include the National Resource Information Centre (NRIC) will operate as a professionally independent bureau within DPIE.

- (iv) Within DPIE, an explicit management system will be put into place to properly link the AGSO scientific mapping activities with the resource assessment function of the new Bureau.

114. DPIE is awaiting the outcome of this review process before recommending any changes to the Government on AGSO's resource allocation.

  
P J Barrett  
ACTING SECRETARY  
Department of Finance  
11 January 1993

FINANCE MINUTE ON REPORT 319  
REVIEW OF THE INDEPENDENT AUDITR - WATCHING THE  
WATCHDOG



Reference: 92/4105  
Telephone: D.J. Evans  
Contact Officer: 263 2371



Newlands Street, Parkes, A.C.T. 2400  
Telephone: Canberra (06) 263 2222  
Telex: 65439  
Fax: (06) 273 3221

The Secretary  
Joint Committee of Public Accounts  
Parliament House  
CANBERRA ACT 2600

DEPARTMENT OF FINANCE MINUTE ON THE 319TH REPORT OF THE JOINT  
COMMITTEE OF PUBLIC ACCOUNTS (JCPA)

I enclose the Department of Finance Minute to the JCPA Report 319 entitled 'Review of the  
Independent Auditor' for transmission to the incoming Chairperson of the Committee.

2. In accordance with normal practice, a copy is also provided for the Secretariat

I. McPhee  
First Assistant Secretary  
Financial Management Division  
7 May 1993



## DEPARTMENT OF FINANCE MINUTE ON REPORT 319

This Minute sets out each of the Committee's recommendations followed by the response provided by the Department of Finance

### Appointment

#### 2. Recommendation 1 (paragraph 2.6)

The Audit Committee of Parliament or, in the absence of such a committee, the Joint Committee of Public Accounts:

- be consulted as part of the appointment process to approve the Independent Auditor nominee to be put forward by the Prime Minister to the Governor-General; and
- be consulted in making arrangements for exercising the powers and performing the functions of the Independent Auditor.

Response by the Department of Finance:

3 The Government has agreed that the legislation to replace the *Audit Act 1901* will provide for the Governor-General to have power to appoint the Independent Auditor on the advice of the Prime Minister. As a matter of course, the JCPA has been consulted on the selection processes for the appointment of the Independent Auditor and proposals for significant changes to the *Audit Act 1901*, and the Department of Finance would expect this level of consultation with the Committee to continue. Consultation with an audit committee of Parliament would take place if the Parliament were to establish such a committee.

### Selection Criteria

#### 4. Recommendation 2 (paragraph 3.4)

Each of the criteria mentioned in paragraph 3.1 and 3.2 be considered as relevant selection criteria.

Response by the Department of Finance:

5. The Department of Finance supports the major part of the JCPA Recommendation for the inclusion of additional criteria for the selection of the

Independent Auditor as set out in paragraph 3.2. Finance does not, however, favour the inclusion of a criterion which would rule out the possibility of an appointment to the position of Independent Auditor of a person associated with the same professional firm as the outgoing Independent Auditor. The appointment of the Independent Auditor is a personal appointment and should be based on the most suitable individual from the field of interested applicants. That said, it is the case that to date, successive appointments of Independent Auditor have come from different firms.

6. Recommendation 3 (paragraph 3.4)

The legislation makes reference to the general criteria of knowledge and experience and provides for the specific selection criteria to be agreed in consultation with the Audit Committee of Parliament or, in the absence of such a committee, the Joint Committee of Public Accounts.

Response by the Department of Finance:

7. The provisions to be included in the legislation to be introduced to replace the Audit Act are a matter for the Government to decide, in the first instance. The Department of Finance will inform the Minister for Finance of the Committee's views.

Conflict of Interest

8. Recommendation 4 (paragraph 4.5)

The individual appointed as the Independent Auditor not be permitted to hold any other contracts with the Commonwealth Government during the period of appointment.

Response by the Department of Finance

9. The Department of Finance agrees with the JCPA Recommendation. This requirement will be included in future Memoranda of Arrangements between the Independent Auditor and the Commonwealth.

10. Recommendation 5 (paragraph 4.5)

Secrecy provisions similar to those applying to the Auditor-General and the Australian National Audit Office staff should apply to the Independent Auditor and the Independent Auditor's staff.

Response by the Department of Finance:

11. The Department of Finance accepts the Recommendation. Secrecy provisions already apply to the Independent Auditor through the *Audit Act 1901* and the requirement has been specifically referenced in the arrangements with the current Independent Auditor (*Mr David G Boymal of Ernst and Young*). It is proposed that the legislation to replace the *Audit Act 1901* will contain similar provisions for the Independent Auditor and his/her staff.

Term of Office

12. Recommendation 6 (paragraph 5.2)

The Independent Auditor be appointed for a term of no less than three years and no more than five years.

Response by the Department of Finance:

13. The Department of Finance accepts the Recommendation and notes that the Government supported a similar proposal by the JCPA in its Report No 296 titled "Reform of the Australian Audit Office". The Government has agreed that a provision to this effect be included in the legislation to replace the *Audit Act 1901*.

Definition of Audit Framework

14. Recommendation 7 (paragraph 6.7)

The *Gazetted Auditing Standards of the Australian National Audit Office* be applied to all audits performed by the Independent Auditor.

Response by the Department of Finance:

15. The Department of Finance supports the Recommendation on the basis that there are unlikely to be any significant conflicts between the standards set by the professional accounting bodies and the ANAO.

Financial Audit

16. Recommendation 8 (paragraph 7.4)

The impact of Auditing and Accounting Standards on the wording of the audit report resulting from financial audits conducted by the Independent Auditor be considered in drafting revised legislation.

Response by the Department of Finance

17. The Department of Finance accepts the Recommendation

Performance Audit

18. Recommendation 9 (paragraph 8.7)

The term 'performance audit', as contemplated by the Accounting Bodies, be adopted in drafting legislation.

Response by the Department of Finance:

19. The Government has accepted that the term "efficiency" audit as used in the Audit Act, should be replaced by the term "performance" audit in the proposed new legislation and that this change in terminology will not alter the scope of the mandate of the Auditor-General in the conduct of audits of such a nature

20. Recommendation 10 (paragraph 8.7)

The scope of performance audits expected of the Independent Auditor be similar to that expected of the Australian National Audit Office.

Response by the Department of Finance

21. The Department of Finance accepts that the scope of performance audits by the Independent Auditor be similar to that expected of the ANAO

22. Recommendation 11 (paragraph 8.7)

The details of areas to be covered by performance audits conducted by the Independent Auditor be developed in consultation with the Audit Committee of Parliament or, in the absence of such a committee, the Joint Committee of Public Accounts.

Response by the Department of Finance:

23. The Department of Finance has no objection to the Independent Auditor consulting with the Audit Committee of Parliament or, in its absence the JCPA, in developing the details of the areas to be covered by performance audits. However,

Finance notes that the final decision on performance audit coverage should be one for the Independent Auditor.

24. Recommendation 12 (paragraph 8.10)

Performance audits should be carried out once every three years.

Response by the Department of Finance

25. The Department of Finance considers that the frequency of performance audits is a matter for the Independent Auditor's judgement in the light of his/her audit assessment and the Committee's views.

#### The Removal or Resignation of the Independent Auditor

26. Recommendation 13 (paragraph 9.2)

The legislation provides appropriate procedures for resignation and removal of the Independent Auditor.

Response by the Department of Finance:

27 The Department of Finance accepts the Recommendation

#### The Relationship of the Independent Auditor with the Parliament

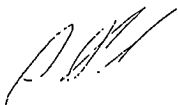
28 Recommendation 14 (paragraph 10.2)

Arrangements made with respect to the Independent Auditor provide for:

- the Independent Auditor to meet with the Audit Committee of Parliament or, in the absence of such a Committee, with the Joint Committee of Public Accounts; and
- the Parliament to publicly respond to reports issued by the Independent Auditor.

Response by the Department of Finance:

29 The Department of Finance notes that these are matters for the Parliament and its committees but considers the implementation of these recommendations would be highly beneficial.



S T Sedgwick  
Secretary  
Department of Finance  
3 May 1993

FINANCE MINUTE ON REPORT 320  
REVIEW OF SIX PERFORMANCE AUDITS



Reference: 92/4231  
Telephone: 2515  
Contact Officer: B. Thong

Newlands Street, Parkes, A.C.T. 2600  
Telephone Canberra (06) 263 2222  
Telex: 62639  
Fax: (06) 273 3021

The Secretary  
Joint Committee of Public Accounts  
Parliament House  
CANBERRA ACT 2600

JCPA REPORT 320 - REVIEW OF SIX PERFORMANCE AUDITS

I enclose the Department of Finance Minute to JCPA Report 320 entitled "Review of Six Performance Audits", for transmission to the incoming Chairperson of the Committee.

In accordance with normal practice, a copy is also provided for the Secretariat

I McPhee  
First Assistant Secretary  
Financial Management Division  
6 May 1993





## DEPARTMENT OF FINANCE MINUTE ON REPORT 320 - REVIEW OF SIX PERFORMANCE AUDITS

This minute has been prepared on the basis of responses received from the Departments of the Arts and Administrative Services, Defence, Finance, and Industry, Technology and Regional Development, Social Security and Veterans' Affairs. The Department of Defence was the only department subject to a specific recommendation in the Report.

2. In this Minute the Committee's recommendations are reproduced and followed by the responses.

Recommendation for the Department of Defence (paragraph 2.23 of the Report)

The Department of Defence:

- expedite the development and implementation of its Computer Aided Maintenance Management System (Mark 2) (CAMM2); and
- evaluate CAMM2's output regularly to ensure that it meets the Department's information requirements for monitoring performance in relation to maintenance and utilisation of equipment.

Response by the Department of Defence

3. The development phase for CAMM2 has been endorsed by the Department of Defence's Force Structure Policy and Programming Committee for inclusion in the 1992-93 Budget. The development phase is estimated to be completed by June 1995. Approval for the implementation phase is planned to be sought in the 1995-96 Budget to enable a contract to be placed for full implementation to start in September 1995.

4. As noted in previous responses to the JCPA on CAMM2 development, existing Departmental processes aim to introduce management information systems on the basis of 'value for money'. Timing, within financial programming constraints, is already acknowledged as a major factor in achieving this goal.

5. The JCPA is advised that, as part of a follow up to the Squirrel audit, CAMM2 request for tender documentation is being reviewed by the Australian National Audit Office (ANAO) to ensure that the performance monitoring recommendations of the original Squirrel audit have been addressed. CAMM2's ability to monitor and report on performance will be tested and, if necessary, enhanced during the development stage of the project. Furthermore, CAMM2's design will enable monitoring and reporting functions to be readily varied to meet changing requirements.

6. In addressing the Committee's concern relating to the inefficiencies in the maintenance of Squirrel helicopters, appropriate maintenance standards in terms of specified turn around times for major aircraft servings are being developed by the Department in advance of CAMM2. In particular, performance based contracts requiring completion of servings

within specified turn around times are being pursued. A recent example is the Iroquois maintenance contract which requires major servicing to be completed in 22 days.

7 Internally, for major aircraft servicing, the RAAF has introduced a computer based project management system known as the Aircraft Servicing Planning System (ASPS) which enables turn around times for major servicings to be estimated, monitored and, most importantly, improved upon through better planning processes.

8. In addition to the CAMM2, ASPS (for RAAF), and performance based contracting initiatives mentioned above, the Department is, through the commercial support program (CSP), critically examining the efficiencies of non-core maintenance activities. Briefly, CSP provides for the most cost effective in-house maintenance proposal to be developed and compared with competing commercial options for the same work. Final selection is based on the Commonwealth's value for money principles.

9 The JCPA is advised that the ANAO has recently embarked on a performance audit of 'contracting for RAAF aircraft maintenance' which should provide an in depth analysis of resource efficiencies with respect to contracted maintenance activities.

Recommendation on the development of new IT system (paragraph 8.12 of the Report)

Before commencing development of a new IT system, departments and agencies:

- undertake a rigorous cost-benefit analysis of the proposed project and identify those indicators by which the performance of the project can be assessed;
- establish an *Information Technology Steering Committee* with proactive responsibility to ensure that:
  - time, cost and performance criteria are prepared for the project development and implementation;
  - responsibility is allocated for the management of individual components of the project;
  - project costs are regularly monitored against projected cost-benefit outcomes; and
  - routine testing is undertaken at each stage to ensure the system will meet the project objectives, including a post implementation review to be conducted for each project within 12 months of its introduction;
- ensure that there is an efficient allocation of resources to the project; and
- ensure that adequate system documentation and appropriate training courses and manuals will be prepared and issued to personnel prior to the implementation of the project.

Response by the Department of the Arts and Administrative Services (DAAS)

10 DAAS agrees with the Committee's recommendation. It is generally accepted in industry that information requirements analysis is one of the most difficult and also the least developed and understood phases of software development. Generally tangibles like hardware, functionality and screen and report layouts, can be clearly defined. Intangible benefits, including concepts such as usability, and the means to describe and measure these concepts are not well understood nor applied. Methods and techniques, borrowed from the social sciences are beginning to appear in the market place. One such method, "SPACER", developed by the Australian Software Research Centre, is being used by some private sector and public sector agencies.

11. Management discipline is required in both the adoption and application of an appropriate development framework for systems development and implementation. DAAS believes that there is sufficient material available to assist agencies with the development and implementation of systems - an extensive "Model Framework for the Management and Control over Automated Information Systems" has been developed and published by the US Federal Government under the sponsorship of the "President's Council". This methodological framework is to ensure that the application development is within budget and timeframe. This framework and its component parts are available as a number of the US Federal Information Processing Standards (FIPS) publications.

12. A successful implementation strategy is more likely where the education and training of management, developers and users of formal framework is given prior to and during the development and implementation phases. DAAS has promulgated a set of internal guidelines which outline the responsibilities of owners for the development and implementation of IT systems.

Response by the Department of Industry, Technology and Regional Development

13. Recommendation 2 represents an appropriate project management approach for the development and implementation of new IT systems.

Response by the Department of Finance

14. The recommendation raises a number of issues germane to the management of IT projects. Two of the more significant of these involve the cost-benefit analysis of such projects, and performance indicators for IT.

15. Guidelines on cost-benefit analysis of IT projects are being prepared by Finance and are expected to be issued to agencies in June 1993. These guidelines will replace those issued by the (then) Public Service Board in 1981, and will stress the importance of regularly monitoring project costs and benefits against projected cost-benefit outcomes, including at a post-implementation review to be conducted within twelve months of the project being completed.

16. With respect to performance indicators for IT, the Information Exchange Steering Committee (IESC) has undertaken a consultancy into the issue. A report has been prepared,

and is about to be followed-up with a pilot involving six agencies to develop some IT performance indicators

17. As for the other issues raised in the recommendation, Finance has issued guidelines to assist agencies with IT planning and acquisition (as paragraph 85 of the Report acknowledges) These documents provide general guidance addressing issues raised in the recommendation, such as ensuring that resources are efficiently allocated to projects and project performance information In particular, they recommend the establishment of steering committees which would address matters consistent with the planning for IT systems

18. Finance does not consider its role extends to providing specific guidelines to assist agencies with developing, implementing and monitoring IT systems Agencies are, and should remain, responsible for implementing systems development and project management processes and practices appropriate to their particular needs.

19. However, as part of its support for the IESC, the Information Technology and Systems Group (ITSG) of Finance is a reference point for agencies seeking advice on all IT issues, including systems development and implementation.

#### Response by the Department of Veterans' Affairs

20. Cost-benefit analysis is an integral component of effective project management practice, and current IT staff are well-versed in IT project management best practice The Department agrees with the Committee's recommendation on undertaking a rigorous cost-benefit analysis before commencing development of a new IT system

21. Veterans' Affairs has established program-based IT steering committees, comprising senior management representatives from user areas within each program Each steering committee monitors the progress of projects undertaken on behalf of the relevant program area with respect to the criteria detailed in this recommendation Project steering committees are established for major projects

22. Post implementation reviews have not, in the past, been conducted for all systems However, the Department's commitment to ensuring the quality of its IT services will result in post implementation reviews being conducted for all major systems in the future The Department is now well advanced in the implementation of a quality management system, leading to demonstrated performance at Australian Standards level The implementation of this system will ensure that effective project management, reporting and review practices are adhered to

23. The Department's IT financial reporting is set up at the project level, thus allowing project costs to be monitored against estimates Monthly financial statements are issued by the IT Branches to program areas, ensuring that project sponsors are able to scrutinise resource usage in some detail.

24. Following the programs' rigorous fiscal planning involved in the budgetary cycle, financial resourcing for IT is cleared by the Executive once per year Programs determine project priorities and commit their resources in project priority order IT managers ensure that

these resources are utilised in the most effective manner and they report on resource utilisation and project status through program IT steering committees.

25. While some shortcomings have been identified in this area in the past, the Department is acutely aware of the need to provide adequate documentation and training for new systems, and system developers and project teams ensure that the issue is addressed as effectively as possible. The quality management system will be a means of ensuring that this issue continues to be addressed appropriately.

#### Other Responses

(While no specific recommendation was made by the Committee, the Department of Social Security (DSS) provided the following response in relation to issues raised in chapter 4 of the Report titled 'Telephone Rental Concession, Financial Management and Information System, and Human Resources Management System'.)

26 The Telephone Rental Concession (TRC) was replaced in June 1992 by a Telephone Allowance, established by the Social Security Legislation Amendment Act 1992

27 TRC was the subject of earlier reports of the Auditor-General from 1976-77 onwards. JCPA Report 229 tabled in 1985 examined these reports. The JCPA asserts that the concerns identified in Report 229 are "generally similar" to those in Report 320

28 The key issues raised by the Auditor-General were that

- the TRC scheme did not properly establish eligibility for the concession, and
- controls over the use of vouchers on which the scheme was based were inadequate

The Auditor-General estimated that losses due to these deficiencies were \$5m

29 The Department advised the JCPA in November 1991 that remedial action had been implemented and that the establishment of Telephone Allowance would address the Auditor-General's concerns.

30 In regard to the Financial Management and Information System (FINMIS) the Auditor-General found that DSS had not implemented a post-implementation review of FINMIS. JCPA stated its view that all new information technology systems should be the subject of post-implementation review within 12 months of their introduction.

31 Although no formal post-implementation review of FINMIS has been undertaken, a decision was taken in January 1992 to evaluate FINMIS in its current state. This exercise was an evaluation of the current system with recommendations made regarding amendment to the system or system procedures that would improve performance of the existing system. As such, many aspects of the system that would have been investigated during the course of a post-implementation review have been covered by this evaluation.

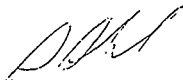
32 The Auditor-General reported weaknesses with the FINMIS system relating to cash receipting, purchasing, accounts payable, data security and staff training. As noted by the

JCPA remedial action has been undertaken by DSS. This action included development of three computer based training packages covering Overview, Legislation and Cash Receipting which were completed in May and July 1992.

33 On the Human Resources Management System (ADMINS) the JCPA noted a delay of 20 months in the issue of an updated managers' guide, and stated that this delay was unsatisfactory. A computer based training package has now been developed that provides an overview of the principal ADMINS functions and how they are accessed

(While no specific recommendation was made by the Committee, the Department of the Arts and Administrative Services provided the following response in relation to issues raised in chapter 6 of the Report titled 'Australian Government Analytical Laboratories'.)

34. The Department accepts the comments made by the Committee



S T SEDGWICK  
SECRETARY  
Department of Finance  
5 May 1993

FINANCE MINUTE ON REPORT 325

THE MIDFORD PARAMOUNT CASE AND RELATED MATTERS



## Minister For Finance

Hon Ralph Willis M P

Mr L Scott, MP  
Chairman  
Joint Committee of Public Accounts  
Parliament House  
CANBERRA ACT 2600



Dear Mr Scott

In accordance with the agreed arrangements I enclose the Department of Finance Minute on the Committee's 325th Report entitled "The Midford Paramount Case and Related Matters"

Yours sincerely

Ralph Willis

- 8 JUL 1993



## DEPARTMENT OF FINANCE MINUTE ON REPORT 325

This Minute has been prepared on the basis of responses received from the Commonwealth and Defence Force Ombudsman, Commonwealth Director of Public Prosecutions, the Australian Federal Police, the Australian Customs Service, the Departments of Foreign Affairs and Trade, Industry, Technology and Regional Development, Prime Minister and Cabinet, Finance and Attorney-General's Department.

2. General comments by the Attorney-General's Department, the Australian Customs Service and the Director of Public Prosecutions are attached as an Appendix.

### Response to Recommendations

3. Recommendations 1, 3, 64, 76, and 77 involve matters of policy and they will be the subject of a separate response by the Government. In the following paragraphs each of the Committee's recommendation is reproduced in turn and followed by the relevant responses

#### Recommendation 2 (paragraph 6 105)

Customs warrants only be issued by judicial officers and only upon written applications, and the present powers under the Customs Act enabling officers of Customs to issue warrants for search and seizure action be revoked.

#### Response by ACS

4. This recommendation is accepted and will be taken up in the context of the Australian Law Reform Commission (ALRC) Report No 60 proposing a new Customs and Excise Bill

#### Recommendation 4 (paragraph 30.7)

Matters raised in the public submissions to the Inquiry that do not relate specifically to the Midford case be investigated by the Ombudsman.

#### Response by the Ombudsman

5. The Ombudsman offers the general observation that the investigation of issues which are raised other than by way of an individual complaint to her office has to be

considered in terms of the exercise of her power to conduct investigations of her own motion

6 This power is discretionary and, depending on the nature of the issue, there may be a variety of factors which are relevant to its exercise. For example, where specific individuals are affected there may be a question whether they could have pursued, or might still pursue, redress through other, more appropriate, channels (and, if so, whether there is nevertheless a broader issue of administration which warrants investigation). Where there has been a substantial lapse of time since the issue arose there may also be a question of whether an investigation is likely to be fruitful. In the case of broadly based issues there may be public interest and resource considerations to be taken into account in determining whether an investigation should be undertaken.

7 The Ombudsman is not aware of the nature and number of matters encompassed by Recommendation 4, but clearly any consideration of whether she should exercise her own motion power would necessitate examining all the relevant material. This in itself could have significant resource implications, as could any decision to undertake investigations of the matters in question. In this context the Ombudsman has noted that paragraph 17 of the Executive Summary to the JCPA Report indicates that the Committee sees recommendation 4 as being linked to recommendation 3.

Recommendation 5 (paragraph 32.139)

The Australian National Audit Office give appropriate consideration to conducting an efficiency and skills audit of the Australian Customs Service Investigations function.

8 (The Australian National Audit Office has indicated that it will provide a separate response direct to the Committee.)

Response by ACS

9 The ACS has commissioned an audit of Investigation Operations by Price Waterhouse. ANAO will be provided with a copy of the Price Waterhouse report to consider in the context of this recommendation.

Recommendation 6 (paragraph 32.139)

Customs report back to the Committee within twelve months of the tabling of this Report detailing the progress of the reforms recommended by this Inquiry.

Response by ACS

10 Considerable progress in implementing the majority of the recommendations has been made. This recommendation is considered as being met by the totality of the responses in this document.

Recommendation 7 (paragraph 11 23)

**Whilst the Committee recognises the importance of test cases, the desire to obtain a prosecution and attendant publicity should not be a factor in determining whether or not the Commonwealth should prosecute a case. In particular, Commonwealth agencies should not lose sight of the legal presumption of innocence.**

Response by ACS

11 The recommendation has been accepted. It reflects current practice of Commonwealth agencies. It should be recognised that appropriate publicity is useful in educating the general public on what the law is and on the consequences of breaches.

12 The Attorney-General as First Law Officer, has, through the Australian Government Solicitor (AGS) an independent responsibility to protect the position of the Commonwealth as a model litigant in the conduct of legal proceedings. If the AGS considered that the instructions given by ACS appeared improper, it would raise the matter with ACS and, if necessary, bring the matter to the attention of the Attorney-General.

Response by DPP

13 The DPP does not, and never has, prosecuted "test cases" or prosecuted for the purpose of securing publicity. The guidelines under which we operate are set out in the Prosecution Policy of the Commonwealth (p. S160). There was no departure from the guidelines in this case.

14 The guidelines set out the evidential and other tests that need to be satisfied before a prosecution can proceed. The Prosecution Policy does not need to be amended as a result of the Midford case.

## Recommendations Concerning General Procedures

### Recommendation 8 (paragraph 9.92)

Section 81.8g of the Customs Act 1901 be amended to allow the use of electronic accounting systems for bondstores and that this be reflected in the Customs Manual.

#### Response by ACS

15. The intent of this recommendation is accepted in principle. Extensive use of electronic accounting systems is currently made by bondstores and this is acceptable to Customs. Legal advice has been that this is empowered by existing legislation. The need for specific amendment of the Customs Act will be considered in the context of the ALRC Report No 60 proposing a new Customs and Excise Bill.

### Recommendation 9 (paragraph 12.62)

Representatives from both the Department of Industry, Technology and Commerce and Customs attend any meetings where it is known that the discussions will involve the actions or responsibilities of both entities. Officers from both organisations should adequately prepare for such meetings, ensuring that they are in full possession of the facts within their respective areas of responsibility.

#### Response by ACS

16. This recommendation has been accepted. A revised Memorandum of Understanding (MOU) on coordination between ACS and the Department of Industry, Technology and Regional Development is to be prepared.

#### Response by the Department of Industry, Technology and Regional Development

17. Agreed. A directive is to be issued to all Departmental staff. The recommendation is being incorporated into the Departmental training program and the Agreement on the working relationship between Customs and the Department will be amended accordingly.

### Recommendation 10 (paragraph 12.62)

Improved checking procedures be introduced in the Department of Industry, Technology and Commerce to ensure that advice provided to importers and their advisors correctly reflects government policy.

including where applicable, verification to source documentation such as Cabinet documents.

*Response by the Department of Industry, Technology and Regional Development*

18. Agreed A directive is to be issued to all Departmental staff and the recommendation is being incorporated into the Departmental training program

Recommendation 11 (paragraph 13.28)

*The Australian Customs Service focus increased attention on the provision of all statements under the Administrative Appeals Tribunal Act within the statutory time limits and procedures be introduced within the Australian Customs Service to monitor the progress of supplying Statements under these Acts with a view to ensuring that their provision is timely.*

*Response by ACS*

- 19 The recommendation has been accepted New procedures and data bases have been implemented and instructions issued to all staff

- 20 A report is to be furnished to the Deputy Comptroller-General (Operations) immediately it appears that a statement of reasons cannot be furnished within the statutory period so that he may institute corrective action

Recommendation 12 (paragraph 13 28)

*Statements of Reasons prepared within the Australian Customs Service contain full and complete disclosure of all reasons taken into consideration in arriving at the decision in question.*

*Response by ACS*

- 21 The recommendation has been accepted The ACS recognises that the Administrative Decisions (JR) (AD[JR]) Act requires a full and complete disclosure of the reasons for a decision

Recommendation 13 (paragraph 13 28)

*Statements of Reasons be prepared by the Australian Customs Service officer who made the original decision, unless valid reasons to the contrary are shown.*

Response by ACS

22 The recommendation has been accepted Under the AD(JR) Act the ACS provides statements of reasons by the decision maker unless s 17 of the Act applies (decision maker unavailable).

Recommendation 14 (paragraph 13.28)

**Requests for Statements of Reasons with the Australian Customs Service shall be a means of prompting an independent review of the decision in question, irrespective of the applicant's right to pursue formal avenues of review.**

Response by ACS

23 The recommendation has been accepted. All decisions in relation to which a request for a statement of reasons has been received, are to be critically re-appraised by an officer other than the original decision maker. Where this re-appraisal concludes the decision should be reviewed, a formal review is to be undertaken so that a new decision can be made

Recommendation 15 (paragraph 18 68)

**For Australian Customs Service officers travelling overseas, there should be formal briefing from the Department of Foreign Affairs and Trade, and when legal proceedings are likely to eventuate, from the Australian Government Solicitor or the Director of Public Prosecutions.**

Response by ACS

24 The recommendation has been accepted and instructions now in the ACS Investigation manuals stipulate that where the Department of Foreign Affairs and Trade (DFAT) considers that a pre-departure briefing is warranted, ACS Overseas Co-ordination Section (OSCORD) will attend and ensure that the officers travelling receive the proper instruction prior to leaving Australia

25 Where legal proceedings are likely to eventuate the DPP and the AGS have indicated that they will be available for a briefing.

Response by DPP

26 We have no difficulty with this recommendation in so far as it affects the DPP The terms of any briefing will, of course, depend on the circumstances of the case

Response by the Department of Foreign Affairs and Trade (DFAT)

- 27 This recommendation is supported.

Recommendation 16 (paragraph 18 68)

There be a review of OSCORD with a view to setting up a formal set of procedures for liaising with overseas bodies.

Response by ACS

- 28 A review of OSCORD has commenced. Formal procedures for liaising with overseas bodies in the context of investigations are now set out in the ACS Investigation manuals.

Recommendation 17 (paragraph 18.68)

The Australian Customs Service implement a policy of no open-ended tickets for any travel undertaken by its officers.

Response by ACS

- 29 The recommendation has been accepted. The ACS Manuals now state "ACS officers travelling overseas must have firm ticketing arrangements. The use of open dated tickets is not allowed".

Recommendation 18 (paragraph 18 68)

The arrangements for Australian Customs Service officers undertaking overseas activities include formal notification of Australia's representatives in that country.

Response by ACS

- 30 The recommendation has been accepted. The ACS manuals list the responsibilities of OSCORD in arrangements for officers travelling overseas. These include notification of ACS representatives overseas, DFAT desk officers, overseas Customs authorities, and Australian Missions.

Recommendation 19 (paragraph 28 20)

Customs not seek to redetermine values for duty purposes beyond the statutory time limit or 12 months.

Response by ACS

31. This recommendation is not accepted. There is no statutory time limit on re-determining values for duty. Where value for duty has been re-determined there is a twelve month limit on making refunds of overpayments or seeking recovery of underpaid duty. However, where there is evidence of deliberate fraud, there is no twelve month time limit for investigation and prosecution action.

**Recommendations Concerning Investigations Procedures**

Recommendation 20 (paragraph 6.105)

Australian Customs Service officers never again alter an importer's invoices by removing existing figures and substituting others.

Response by ACS

32. The recommendation has been accepted. The ACS Investigation Manuals have been amended to include an instruction that documents are not to be altered in any way. This will be further reinforced at training courses and by Regional Managers.

Recommendation 21 (paragraph 6.105)

Australian Customs Service Investigations officers seek appropriate expertise where they do not fully understand the technicalities of explanations provided by importers or agents.

Response by ACS

33. The recommendation has been accepted. It has been the practice for officers to seek expert opinion in complex or technical matters particularly where these matters relate to evidence to be produced in court. The practice has been reinforced by insertions in the ACS Investigation manuals and will be further reinforced in training sessions.

Recommendation 22 (paragraph 6.105)

Senior Australian Customs Investigations officers thoroughly check the work of more junior Investigations officers before agreeing to undertake raids or other action proposed.



Response by ACS

34. The recommendation has been accepted ACS Investigation manuals have been amended to reflect this The Investigation Case Management training course reinforces this requirement.

Recommendation 23 (paragraph 6.105)

Where Australian Customs Service Investigators seek to rely on investigatory work conducted by other groups within or outside of the Australian Customs Service, a formal meeting or meetings be held to ensure correct interpretation of that work and minutes of these meetings be made and retained.

Response by ACS

35. The recommendation is accepted The current practice of seeking or receiving outside advice has been reinforced within the Investigation sub-program. Specific instructions now apply for those situations where the ACS seeks to rely on the investigatory work of other agencies To avoid any misunderstanding it is now a requirement to record information upon receipt and, if the issues are complex, to meet and discuss the matter with the relevant officers of the other agency The ACS Investigation Manuals have been amended to reflect this

Recommendation 24 (paragraph 14.97)

Expert opinions be obtained in all cases where the evidence sought or under consideration involves technicalities beyond the competence, training or experience of the Australian Customs Service investigators assigned to the case.

Response by ACS

36. The recommendation has been accepted. Instructions have been incorporated in the ACS manuals dealing with these matters.

Recommendation 25 (paragraph 14.97)

Senior Australian Customs Service Investigations officers undertaking the role of 'Case Officer' remain alert to the potential for Investigations officers to encounter situations where the evidence or explanation necessitates expert interpretation and ensure such expertise is obtained where required.

#### Response by ACS

37 The recommendation has been accepted. The ACS has formalised the practice by amendments to the ACS Manual. Case officers or team leaders are required, if possible, to review all documents secured as part of an investigation. Where it is not possible to personally review all documents the case officer is required to monitor closely and where necessary identify requirements and arrange for specialist assistance.

#### Recommendation 26 (paragraph 14.97)

Checking mechanisms be introduced with the Australian Customs Service to detect instances where Investigations officers misconstrue or misunderstand the documentary evidence subject to their examination.

#### Response by ACS

38 The recommendation has been accepted. The response to this recommendation has been covered in recommendations 24 and 25.

#### Recommendation 27 (paragraph 17.59)

Procedures within the Australian Customs Service be implemented to ensure that its officers only take the statement of the witness, not what Customs would like the witness to say.

#### Response by ACS

39 The recommendation has been accepted. ACS Investigation Manuals outline the requirement for taking of witness statements. Officers taking statements will be accredited in terms of recommendation 28.

#### Recommendation 28 (paragraph 17.59)

Australian Customs Service Investigations officers be required to be 'accredited' prior to taking witness statements and that such accreditation involve appropriate training and testing of the officers.

#### Response by ACS

40 The recommendation is accepted. The ACS Investigation manuals set guidelines for interviewing which require officers to be accredited. Accreditation will be given by the National Training Co-ordinator when officers have completed training to an acceptable level.

Recommendation 29 (paragraph 18 68)

The Australian Customs Service should make more use of foreign Customs services and Australian overseas representatives to collect information in other countries.

Response by ACS

41 The recommendation is accepted Where practicable and where trade sensitivities permit, foreign customs services may be requested to assist Likewise Australian overseas representatives may be requested to assist where DFAT has no objections In both cases the over-riding factor will be the requirements of State Evidence Acts and the relative costs of witnesses who may be required to travel to Australia.

Response by DPP

42 It is clearly desirable when information is required from overseas that it be obtained as quickly and cheaply as possible In some cases it may be feasible to use an overseas customs service or Australian overseas representatives for the task In many cases, however, it will not be practical to do so

43 As will appear from our response to Recommendation number 30, it is our view that the Committee has understated the difficulties involved in conducting inquiries in a foreign country There are likely to be false economies involved in entrusting an inquiry to a person who has no knowledge of the case, no knowledge of Australia's rules of legal practice and procedure, and no knowledge of the techniques of criminal investigation

44 It is also doubtful that there will be any cost saving at the end of the day What must be borne in mind is that it will often be necessary for a person who secures information overseas to give evidence in proceedings in Australia If that person is not an Australian resident he or she may need to be brought to Australia at least twice, once for the committal hearing and once for the trial Accordingly, there will often be more cost and inconvenience involved in using a foreign customs service or an Australian overseas representative to collect information

45 There may also be protocol problems in using a foreign Customs officer to conduct inquiries for the Australian government

46 There could be problems in securing the attendance of a foreign officer, or even an embassy official, when the matter comes to court It is not inconceivable that the officer concerned may have changed jobs by the time the case comes on for hearing

and may have no interest in travelling to Australia. The officer would not be amenable to an Australian subpoena.

47. A decision will need to be made in each case on the most efficient and effective manner of obtaining the information in question.

48. It should be remembered that in the Midford case the officers who travelled to Malaysia were already travelling as far as Singapore on an unrelated matter. The additional cost involved in them travelling to Malaysia was minimal.

#### Response by DFAT

49. DFAT already has the capacity through its overseas posts to obtain copies of documents publicly available in other countries on behalf of Commonwealth agencies, including the ACS. While useful to facilitate an initial inquiry, such a service would not normally assist prosecutions as the documents obtained in such a manner would not usually be admissible in evidence.

#### Recommendation 30 (paragraph 18.68)

The Australian Customs Service and the Australian Government Solicitor or Director of Public Prosecutions, as appropriate, should produce a formal document to be given to foreign Customs Services and Australian overseas representatives to acquaint them with the methods and requirements for collecting information so that information conforms to State Evidence Acts.

#### Response by ACS

50. The recommendation is not accepted. The different State Evidence Acts, the varying provisions in overseas jurisdictions, the range of treaty obligations and agreements with foreign co-operating agencies and the specifics of particular cases create a multitude of variables. Accordingly, a document of the nature proposed would be too unwieldy to be of any use as it would have to cover far too many eventualities.

51. The DPP and the AGS have indicated that they are available to provide the ACS with advice on any legal problems associated with the collection of evidence on a case by case basis.

#### Response by DPP

52. This recommendation is not practical. A document of the type envisaged would need to deal with every type of inquiry a foreign service or Australian post may be

asked to undertake, would need to address the evidential requirements of each Australian jurisdictions and would need to foresee any particular problem that may arise in the jurisdiction in which the inquiries are going to be carried out

53 The resulting document would, in effect, be a manual for the conduct of investigations in foreign countries covering the requirements of all Australian jurisdictions. We do not have the resources to prepare and constantly update a document of that kind, or to assist ACS in doing so.

54 Obviously, if a foreign Customs service or an Australian post was asked to conduct inquiries in an appropriate case it would need to be given guidance on how to go about conducting them. That can only be done on a case by case basis when we know what information we require, how and where we intend to use it, and the jurisdiction we are seeking it from.

#### Response by DFAT

55 This recommendation is not supported. DFAT is most concerned at the implication contained in Recommendation 30 that its officers overseas should become formally involved in collection of evidence in relation to customs prosecutions. DFAT officers have neither the training nor expertise to discharge adequately the technical function of collection of evidence for customs prosecutions, and it is doubtful that preparation of a manual setting out the requirements of the various State Evidence Acts would remedy this situation. Furthermore, if DFAT officers on posting overseas should become involved in the collection of evidence, technical requirements related to the proving of the chain of evidence might require such officers to return to Australia to give evidence in customs prosecutions. Apart from the disruption this would cause to the operations of posts with very limited numbers of Australia-based staff, DFAT is not convinced that such a practice would be any more cost-effective than current procedures.

#### Recommendation 31 (paragraph 19 111)

The Australian Customs Service officers manual should include a section on behaviour expected of officers engaged in overseas investigations.

That section should state that:

- upon knowledge of a Court Order having been obtained the officers should cease activities and remain in the country and not attempt to circumvent the order;
- upon receipt of details of a Court Order, whether formally served or not, the officers are expected to obey it forthwith.

Response by ACS

56 The intent of this recommendation is accepted. The ACS Manuals now set standards of behaviour for officers travelling overseas. The Manuals also outline procedures to be followed where an injunction or a subpoena is taken out in a foreign country. The Manual amendments reflect acceptance of the thrust of the recommendation.

57. However, there appears to be no legal reason why officers should not leave a country if in so doing they are not in breach of any local law or court order.

Recommendation 32 (paragraph 19.111)

Australian Customs Service Management should ensure that there is consistency in the keeping of diaries and notebooks by their officers. The correct method should be specified in the Australian Customs Service officers manual and management should ensure it is complied with.

Response by ACS

58. The recommendation is accepted. Detailed guidelines are set out in the ACS Manuals. Amendments to internal check procedures have been made to ensure that the provisions of the manual are observed.

Recommendation 33 (paragraph 19.111)

Australian Customs Service Management shall ensure that, in accordance with the Customs Manual, entries in official notebooks, besides being signed and dated, shall indicate the time at which they were made.

Response by ACS

59. The recommendation has been accepted. The ACS Manuals include a reference to time. Internal check procedures will verify compliance as for recommendation 32.

Recommendation 34 (paragraph 19.111)

The Australian Customs Service officers manual instruct officers in Australia to return documents obtained in overseas investigations which became subject to Court Orders if the return is officially requested by the equivalent Customs department of that country.

Response by ACS

60 The recommendation is not accepted. The effect of the recommendation is to require compliance with an order of a foreign court at the request of the customs department of that country even though the order might not be enforceable in Australia and regardless of the effect of compliance on legal proceedings in Australia. The ACS may also be in contempt of an Australian court by sending documents out of the country.

Response by DPP

61. This recommendation is not practical. If relevant documents are needed in connection with court proceedings in Australia, ACS could be in contempt of an Australian court by sending them out of the country.

62. The appropriate course of action if ACS receives a request for the return of overseas documents is for ACS to consult DPP, or AGS as appropriate, and determine a course of action that meets the needs of the case and particular requirements of any Court of law.

Recommendation 35 (paragraph 32.139)

The Australian Customs Service examine and implement procedures designed to ensure briefs and reports on investigations are timely, accurate and informative.

Response by ACS

63 The recommendation has been accepted. The format of the monthly and quarterly report is continually monitored. The Case Analysis and Management System (CAMS) system provides a ready access to an accurate up to date source of information for briefing purposes. Regional Managers have been reminded of the need to provide regular briefs on potentially sensitive cases.

Recommendation 36 (paragraph 32.139)

The Australian Customs Service introduce formalised systems for planning, budgeting and costing of all Investigation activities for commercial cases.

Response by ACS

64 This recommendation has been accepted. It has been implemented as part of the *Investigation Management Training* course and is incorporated in a new section of the ACS Investigation Manuals.

**Recommendations Concerning the Seizure of Documents or Goods**

Recommendation 37 (paragraph 6.105)

In accordance with the law, documents only be seized by Customs that relate to the alleged offence specified on the warrant. Customs should initiate steps to ensure that all staff are cognizant of this requirement.

Response by ACS

65. This recommendation will be considered in the context of the ALRC Report No 60 which proposes a new Customs and Excise Bill. The present law is open to different interpretation.

Recommendation 38 (paragraph 6.105)

Certified copies of documents seized by the Australian Customs Service be provided to the owner within seven days.

Response by ACS

66 It is the intention of the ACS to implement this recommendation as far as is possible. There will be occasions where the owner does not require certified copies of documents as well as occasions when the number of documents makes it impracticable to provide copies within seven days. Under normal circumstances every effort will be made to implement the intention of the recommendation. The ACS Investigation Manuals have been amended accordingly.

Recommendation 39 (paragraph 6.105)

No document be seized without firstly recording sufficient details to ensure its identification on a receipt to be provided to the owner.

Response by ACS

67. The recommendation is accepted. Instructions have been issued in ACS Investigation Manuals.



Recommendation 40 (paragraph 8.98)

The underlying facts supporting an application for seizure action be checked within the Australian Customs Service at a suitably senior level prior to forwarding the application for approval.

Response by ACS

68 The recommendation has been accepted. Instructions have been issued in the ACS Investigation Manuals requiring a proposal for seizure to be referred to an officer at an appropriate level. Case Decision Records will be maintained on decisions made on whether to seize or not to seize.

Recommendation 41 (paragraph 8.98)

Tamper proof seals be placed on all containers of goods subject to seizure.

Response by ACS

69 The recommendation is accepted. However, it is generally recognised that no truly tamper proof seal exists. A new section in the ACS Investigation Manuals dealing with seized goods of high value instructs officers in the sealing and securing of containers.

Recommendation 42 (paragraph 8.98)

The quantity of goods seized be counted and documented as soon as possible after seizure is effected. Such documentation should be retained.

Response by ACS

70 The recommendation has been accepted and instructions issued in the ACS Investigation Manuals. These instructions emphasise the provisions of s205 of the Customs Act and state that a fully documented Seizure Notice should be issued as soon as practicable after seizure, preferably within the same day.

Recommendation 43 (paragraph 8.98)

Breaking of the tamper proof seals and Australian Customs Service verification of the quantity of seized goods be witnessed by a nominated representative of the importer.

Response by ACS

71. The recommendation is accepted. Instructions in the ACS Investigation Manuals state that seals should not be broken until after the owner or a representative of the owner has been invited to witness the event. Depending on the quantity of goods seized, verification may be done at that time or when the details of the seizure are being documented.

Recommendation 44 (paragraph 8.98)

To prevent situations arising where importers can be accused of interfering with seized goods, all such goods subject to seizure action be removed from the importer upon seizure, or actions be taken to prevent access by anyone other than the seizing officer.

Response by ACS

72. The recommendation is accepted. Seizure guidelines in the ACS Manuals detail requirements for securing seized goods.

Recommendation 45 (paragraph 8.98)

Whilst acknowledging that circumstances may arise where both seizure and prosecution are necessary, the Australian Customs Service give greater consideration to pursuing a course of prosecution without invoking seizure action where prosecution action appears warranted. That is, where appropriate, a conscious choice be made for seizure or prosecution, not both.

Response by ACS

73. This recommendation is to be considered in the context of the ALRC Report No. 60. This report's recommendations would alter the present seizure and forfeiture regime so that the Courts would determine forfeiture. Additionally, the ACS would initiate proceedings rather than the current process of statutory condemnation or requiring recovery action to be taken by the owner

Response by DPP

74. We do not support this recommendation. It is not possible to prosecute all Customs offenders under the Crimes Act. Nor would it be appropriate to do so given that there is a range of administrative and civil measures available as an alternative to prosecution.

75 It is our view that criminal proceedings should be reserved for cases that are clearly too serious to be met by any lesser response. Prosecution should, in other words, be reserved for cases that exhibit a significant degree of criminality.

76 If such a case arises, and it can be proved, we see no reason in principle why the offender should not be both prosecuted and suffer seizure action. Indeed, to proceed otherwise could mean that some offenders will be better off if they are charged and fined, but avoid forfeiture, than if they are not prosecuted.

77 In our view, the appropriate course where charges are laid is for ACS to take the same administrative action it would have taken if charges had not been laid. If the defendant is ultimately convicted, the sentencing court will always take into account the fact that there has already been a seizure if it considers that the total penalty would otherwise be too severe.

#### Recommendation 46 (paragraph 8.98)

Appropriate delegations be introduced for Australian Customs Service officers supporting recommendations for seizure action such that commercial (non narcotics) cases exceeding \$50 000 must be endorsed by the National Manager, Investigations, all cases exceeding \$100 000 in value be endorsed by the Deputy Comptroller-General, and cases exceeding \$250 000 be personally endorsed by the Comptroller-General prior to forwarding an application for seizure to a judicial officer. A range of delegations should also be established for State based Australian Customs Service officers covering seizures of up to \$50 000 in value. These amounts should be regularly reviewed by the Minister, by regulation, to keep pace with the consumer price index.

#### Response by ACS

78 The intent of this recommendation is accepted. The move to judicially determined Forfeiture will be taken up in the context of the ALRC Report No. 60 which proposes a new Customs and Excise Bill. The delegation approach proposed will also be considered at that time.

79 In the interim, it is not possible to remove the statutory power of Customs Officers to seize goods. However, amendments to ACS Investigation Manuals now require that proposals for seizure above the value cutoffs recommended by the JCPA, be referred to the appropriate senior officer for decision.

Recommendation 47 (paragraph 8.98)

Seizure notices clearly quantify the alleged underpayment or evasion of duty.

Response by ACS

80. This recommendation is accepted. Seizure forms are being redesigned to meet this requirement (when reasonable estimates of duty not paid can be made) while remaining consistent with the Act.

Recommendation 48 (paragraph 8.98)

For commercial cases where seizure action is contemplated, the value of goods proposed to be seized be limited to no more than twice the amount of the duty allegedly underpaid or evaded.

Response by ACS

81. This recommendation is not accepted. The cutoff proposed is too rigid and does not contemplate other relevant factors such as previous shipments or the indivisibility of some shipments. The dissenting report in the Joint Committee of Public Accounts (JCPA) report supports this position.

Recommendation 49 (paragraph 8.98)

Owners of goods seized by the Australian Customs Service be promptly advised of the amount of any security bond payable for the return of those goods.

Response by ACS

82. The recommendation has been accepted. The ACS Investigation Manual contains instructions for the return of goods on payment of security.

*Recommendations Concerning the Preparations for Legal Proceedings*

Recommendation 50 (paragraph 4.64)

Each Australian Customs Service legal brief be checked by a suitably senior and qualified officer not involved in its preparation and that such a check be evidenced on the brief.

Response by ACS

83 The recommendation has been accepted. All briefs are checked by a senior officer within Investigation Operations and are forwarded to Legal Support for a process and completeness check prior to on forwarding to the AGS. The ACS Investigation Manual reflects this requirement. Further consideration is being given to the introduction of checks by legal qualified officers within the ACS.

Response by DPP

84 The DPP has no difficulty with legal briefs being checked by ACS Legal Services Section, or other appropriate officers of ACS, provided that the purpose of the check is limited to matters such as ensuring that the brief is complete and all annexures are attached, and provided the checking process does not cause delay

85 The ultimate decision on whether charges should be laid, and if so under what provision, rests with the DPP (paragraphs 3.8 and 4.1 of the Prosecution Policy). Obviously the DPP will only become aware that a case exists if we are told about it by the investigators. We have attempted to address that conundrum by settling guidelines with ACS, and other investigative agencies, which give guidance on the type of cases that should be referred to us. The guidelines also provide that if the investigators have any doubt on how a matter should be dealt with they should discuss the case with the DPP. The guidelines are based on there being open lines of communication between investigators and the DPP.

86 The interposition of a review unit between investigators and the DPP would serve no useful purpose and would cause unwarranted delay and may result in a person, not being an expert in determining whether a matter is appropriate for prosecution, making a decision which would prevent the DPP from considering the matter.

Recommendation 51 (paragraph 4.64)

All documents included in Australian Customs Service briefs be fully described and indexed.

Response by ACS

87 The recommendation has been accepted. Instructions have been amplified in the ACS Investigation Manuals.

Recommendation 52 (paragraph 4 64)

Australian Customs Service officers contemporaneously document verbal legal advice received.

Response by ACS

88. The recommendation has been accepted Instructions have been amplified in the ACS Investigation Manuals.

Recommendation 53 (paragraph 4 64)

Where additional documentation is perused by legal advisors in connection with the subject matter of briefs, all such material be complete, identified and recorded.

Response by ACS

89 The recommendation has been accepted Any additional documentation is identified and recorded in the brief if it is to form part of the evidence, or on the particular case file if it is not relevant evidence In the latter case a notation will be made that the legal advisor has seen the material

Recommendation 54 (paragraph 4 64)

Australian Customs Service management should ensure that in accordance with existing Australian Customs Service procedures, all briefs be forwarded to the Legal Support Section for checking prior to on-forwarding to the appropriate external legal advisors.

Response by ACS

90 The recommendation has been accepted The CAMS computerised case management system will document that briefs have been forwarded to Legal Support for checking Consideration is being given to this function being performed in ACS Regions by officers of the Legal Services Component

Response by DPP

91 See response to recommendation 50

Recommendation 55 (paragraph 4 64)

All Australian Customs Service briefs for the large and more complex investigations or prosecutions be examined by the Legal Services Section within the Australian Customs Service before those briefs are provided to the Australian Government Solicitor, Director of Public Prosecutions or Counsel.

Response by ACS

92 This recommendation has been accepted. As noted above consideration is being given to a Legal Services Component presence being established in ACS Regions.

Response by DPP

93. See response to recommendation 50.

Recommendation 56 (paragraph 4.64)

The Australian Customs Service, in conjunction with the Australian Government Solicitor and Director of Public Prosecutions, develop a checklist of minimum requirement for legal briefs emanating from the Australian Customs Service.

Response by ACS

94 This recommendation is accepted. The three agencies will co-operate in developing a checklist

Response by DPP

95 We have no difficulty with this proposal. We have already provided material to ACS, and other investigative agencies, outlining the matters that should be covered in a brief of evidence. We will liaise with ACS to determine whether that material can be improved.

Recommendation 57 ((paragraph 4.64)

Customs retain copies for its records of all briefs prepared. Such copies should only be destroyed or returned to source if ordered by a Court or explicitly required as part of a settlement agreement.

Response by ACS

96 The recommendation is accepted The practice has been reinforced in the ACS Investigation Manual

Recommendation 58 (paragraph 5.81)

Australian Customs Service officers take appropriate notes during attendance at meetings with legal advisors where legal advice is sought or provided. Such notes should be retained.

Response by ACS

97. The recommendation is accepted This has been reinforced in ACS manuals as outlined in response to recommendation 52.

Recommendation 59 (paragraph 10.56)

Director of Public Prosecutions officers preparing or endorsing briefs and submissions check all facts contained therein to appropriate source documents.

Response by DPP

98 It is standard practice for any prosecutor preparing a case for prosecution to review all original documents relevant to the case, if that is at all possible In some cases original documentation may not be available (it may be overseas or no longer extant) In other cases, as occurred in the Midford matter, the original documents may only be available to be examined in a specific place or under specified conditions

99 An officer who is preparing a submission to the Director or other senior officer will ensure that he or she sees copies of key documents in the case However, even a modest fraud case can generate thousands of documents and it is not practicable for every officer involved in reviewing a case to personally examine every piece of paper generated in it. It is a matter for the professional judgment of the officer concerned to decide how much paper he or she needs personally to examine in order to properly understand the issues raised by the case.

Recommendation 60 (paragraph 10.56)

All briefs, whether prepared by the Australian Customs Service, Australian Government Solicitor or Director of Public Prosecutions, include a listing or presentation of the available evidence in chronological order.



Response by ACS

100 The recommendation has been accepted by the ACS. Briefs will include a listing of the evidence in chronological order. This is reflected in amendments to the ACS Investigation Manuals.

Response by DPP

101. This recommendation reflects the current practice of the DPP.

Recommendation 61 (paragraph 10.56)

Cases not be prosecuted by the Director of Public Prosecutions where there is reliance on an expectation that further evidence detrimental to the defendants will emerge during the committal hearings.

Response by DPP

102 It is not and never has been the practice of the DPP to commence legal proceedings in the expectation that further evidence will emerge after charges have been laid.

103 Under the Prosecution Policy, a prosecution can not be instituted or continued unless there is admissible, substantial and reliable evidence that a criminal offence has been committed by the alleged offender (paragraph 2.4 of the Prosecution Policy). However, there is no requirement that every piece of evidence that might conceivably exist has been pursued and obtained.

104 It is not unusual for additional evidence to become available to the prosecution after charges have been laid. In some cases, for example, one of several defendants may decide to plead guilty and offer to give evidence against the others. In the Midford case, an opportunity arose to obtain additional evidence because two ACS investigators were travelling to Singapore on another matter and were able to travel on to Malaysia at little additional cost.

105 If additional relevant evidence becomes available the DPP would be failing in its duties if it did not take steps to secure that evidence and make appropriate use of it.

Recommendation 62 (paragraph 10.56)

The Director of Public Prosecutions and Australian Government Solicitor assume a greater role in ensuring that evidence collected and presented by Australian Customs Service investigators is thoroughly

understood by those officers and that assertions sought to be made by the investigators or other witnesses have reasonable foundation.

Response by DPP

106 If this recommendation is concerned to ensure that the DPP exercises an independent review of evidence to ensure that a prosecution is appropriate the DPP accepts the recommendation. This is, and always has been, the practice of the DPP

Recommendation 63 (paragraph 10.56)

Evidence preparation arrangements not be entered into between the Director of Public Prosecutions or Australian Government Solicitor and the Australian Customs Service that would call into question the independence, impartiality or objectivity of the two prosecutorial entities. In particular, whilst not excluding normal consultative mechanisms, the practice of stationing Customs officers in the offices of the Director of Public Prosecutions should cease.

Response by ACS

107 The intent of this recommendation is accepted. The ACS values impartial independent and objective advice from the DPP and AGS. It also considers there must be a close working relationship between prosecutors, advisors and investigators. The consensus amongst complex crime investigators is that prosecutors need to be involved at an early stage if the investigation is to proceed efficiently.

108 Where joint evidence preparation activity between ACS and DPP is considered appropriate, this should take place in the context of a formally established task force or secondment arrangement.

Response by DPP

109 See response to recommendation 74

Recommendation 64 (paragraph 10.56)

The Government conduct a review into the operation of the Proceeds of Crimes Act to establish whether its application by the Director of Public Prosecutions is consistent with the intention of that legislation.

Response by DPP

110. The DPP enforces the Proceeds of Crime Act in accordance with the provisions of the legislation and with what is said in the Explanatory Memorandum and the Second Reading Speech. The Act has proved to be an effective weapon in dealing both with drug offenders and serious fraud against the Commonwealth.

Recommendation 65 (paragraph 10.56)

Where officers of the Director of Public Prosecutions responsible for preparation of cases seek to dismiss documentary evidence as irrelevant, supervisory checks include an examination of that evidence to ensure that an informed corporate view on its relevance can be formed.

Response by DPP

111. It is obviously important that proper supervisory checks be carried out. However, it is not possible for a supervising officer to personally examine and consider each document looked at and discarded by case officers.

Recommendation 66 (paragraph 11.23)

Cases selected for consideration of Crimes Act prosecution be subjected to closer attention by Senior Australian Customs Service management prior to referral to the Director of Public Prosecutions.

Response by ACS

112. The recommendation is accepted. It has been emphasised in amendments to the ACS Investigation Manuals.

Response by DPP

113. The DPP has no difficulty with senior officers of ACS having greater involvement when matters are being prosecuted under the Crimes Act. However, for reasons that are outlined in relation to Recommendations 63, 71 and 74, it is important that any increase in the role of ACS management not cut across the DPP's authority in the prosecution process, or impede the lines of communication between prosecutors and investigators.

Recommendation 67 (paragraph 12.62)

Where questions of a legal nature arise or are likely to arise in cases where the importer and the Commonwealth disagree over

interpretations, the Department of Industry, Technology and Commerce seek appropriate independent legal advice.

Response by the Department of Industry, Technology and Regional Development

114. Agreed. A directive is to be issued to Director, Legal and Parliamentary Section and the recommendation is being incorporated into the Departmental training program.

Recommendation 68 (paragraph 14.97)

When preparing briefs of evidence, Australian Customs Service Investigators clearly distinguish between the inclusion of known facts based on evidence available and unsupportable assertions or suppositions.

Response by ACS

115. The recommendation has been accepted. A new section in the ACS Investigation Manuals includes specific instructions relating to brief preparation.

Recommendation 69 (paragraph 14.97)

Care be taken by the Australian Customs Service not to misrepresent or misconstrue legal opinions provided, especially in relation to the sufficiency of existing evidence to support charges.

Response by ACS

116. The recommendation has been accepted. There are a number of references in the ACS Investigation Manual which emphasise the practice.

Recommendation 70 (paragraph 14.97)

Briefs of evidence be vetted and reviewed at senior levels within the Australian Customs Service to improve accuracy and completeness prior to referral to the Australian Government Solicitor, Director of Public Prosecutions or Counsel. These officers should also, to the extent that it is possible, be those who will represent the Australian Customs Service during court proceedings.

Response by ACS

117. The recommendation is accepted. As outlined in response to recommendations 50 and 54 amendments to the ACS Investigation Manual have been made. The selection of witnesses depends on their ability to give relevant admissible evidence.

Response by DPP

118. See response to recommendation 66.

Recommendation 71 (paragraph 14.97)

The Australian Customs Service refrain from seeking legal opinions where a full brief of evidence is not available for examination by the relevant legal advisor.

Response by ACS

119. The recommendation is not accepted. Legal opinions are regularly required during the course of investigations. They will be fully documented along with the information supplied to the legal advisor.

Response by DPP

120. See response to recommendation 74.

Recommendation 72 (paragraph 14.97)

Where legal opinions are sought by the Australian Customs Service, adequate time be allowed for consideration of the evidence by the legal advisor.

Response by ACS

121. The recommendation has been accepted. It has been re-emphasised in the ACS Investigation Manual.

Response by DPP

122. The DPP accepts this recommendation, but notes that time constraints often apply.

Recommendation 73 (paragraph 14.97)

**Procedures be implemented within the Australian Customs Service to ensure that explanations provided by defendants or potential defendants are not dismissed without adequate investigation.**

Response by ACS

123. The recommendation is accepted It has been re-emphasised in ACS Investigation Manuals.

Recommendation 74 (paragraph 17.59)

**The Australian Customs Service provide a formal brief to the Director of Public Prosecutions for cases where the advice of the Director of Public Prosecutions is sought.**

Response by ACS

124 This recommendation is not accepted See recommendation 71

Response by DPP

125 The thrust of recommendations 63, 71 and 74 is that ACS should be solely responsible for the investigation of alleged offences and that the DPP should only become involved when the matter has been investigated and there is a formal brief of evidence for it to consider Further, it is proposed that the DPP should not even be asked for advice unless there is a formal brief directed to us

126 These recommendations are not viable and, as such, cannot be supported

127 The current trend in the investigation of complex commercial fraud is for the development of greater contact between investigators and prosecutors, not the opposite There has been a recognition that the task of investigating commercial fraud is difficult and resource intensive. The resources that are available are not unlimited and they need to be used effectively. That can best be achieved by ensuring that the investigation is planned and coordinated from the outset

128 There have been cases in the past where investigators have spent months, or years, pursuing an investigation only to be told by the prosecutors that much of their work was unnecessary or even that they were on the wrong track entirely and that it would not be appropriate to prosecute. The community can not afford to waste resources on exercises of that kind

129 It is now generally recognised both in Australia and overseas that the only effective way of addressing the problem is for investigators and prosecutors to communicate with each other, to do so early and to do so often. It is essential to decide at an early stage whether the matter warrants investigation and, if so, what areas should be pursued. Investigators and prosecutors then need to meet frequently to ensure that the investigation remains on track, that any problems that arise are addressed, and that resources are not wasted pursuing lines of inquiry which are leading nowhere. In some cases the best way of running a complex inquiry is on a task force basis, where officers of one or more agencies work out of the premises of another agency.

130 In recent years the DPP and all major investigative agencies have entered arrangements that provide for early and frequent consultation. Such arrangements are typified by the guidelines recently settled between the DPP and the Australian Securities Commission that were the subject of a Report by the Joint Statutory Committee on Corporations and Securities in October 1992.

131 There is, clearly, a potential that case officers associated with an investigation may lose some objectivity. The solution lies in ensuring that the work of those officers is kept under review and that key decisions are taken, or reviewed, by officers not directly involved in the case. In appropriate cases the DPP has procedures in place to ensure that such controls are exercised.

132 The Committee's recommendations, if accepted, would turn the clock back ten years and would severely reduce the Commonwealth's capacity to detect, investigate and prosecute serious fraud.

#### Recommendation 75 (paragraph 17.59)

Documentation of the steps in the prosecution decision making processes be improved so that a permanent audit trail is available.

#### Response by ACS

133 The recommendation has been accepted. The Investigation Management Training Course is centred on the process of setting up and following a formal investigation plan. A Case Decision Record has been implemented to permanently record the decisions that are made within an investigation. The ACS Investigation Manual has been amended to reflect this requirement.

#### Response by DPP

134 We do not accept that there is any need to improve our procedures in this area. The Committee seems to have found fault because the DPP was not always able to

say with certainty whether a particular document was seen by a particular person on a particular day. The expectations of the Committee in this area are unrealistic. The Recommendation would lead to a great waste of resources and loss of efficiency.

Recommendation 78 (paragraph 22.29)

**Witness statements and other evidence gathered by the Australian Customs Service and intended for use in Commonwealth prosecution proceedings be more critically examined by the Director of Public Prosecutions to detect errors prior to that evidence being tendered.**

Response by DPP

135. The practice of the DPP is and always has been to critically examine all witness statements and other evidence intended to be used in prosecution proceedings. Having said that, it cannot be guaranteed that a witness will never depart from his or her statement under cross-examination.

Recommendation 79 (paragraph 23.19)

**Potential witnesses for the Commonwealth thoroughly prepare for court proceedings and review all relevant material prior to tendering written or oral evidence.**

Response by ACS

136. The recommendation has been accepted. ACS Investigation Manuals now include a section on preparation for court proceedings.

Response by DPP

137. This recommendation reflects the standard advice given to witnesses by the DPP, and indeed by every prosecuting authority.

Recommendation 80 (paragraph 23.19)

**Statements and other evidence to be used in prosecution proceedings be prepared in a balanced and objective manner, disclosing all relevant facts for which the witness has first hand knowledge.**

Response by ACS

138. The recommendation is accepted. It has been re-emphasised in the ACS Investigation Manual.



Response by DPP

139 This recommendation in fact reflects the standard practice of the DPP.

Recommendation 81 (paragraph 23.19)

**Adequate time and resources be devoted by the Director of Public Prosecution to ensuring that witness statements obtained are relevant to the proposed proceedings and do not contain hearsay evidence or other inadmissible material.**

Response by DPP

140 This recommendation reflects the present practice of the DPP in those cases where we are involved in the preparation of statements. It is axiomatic that statements should only contain relevant and admissible material.

141 It should be noted, however, that it is often difficult to say whether a particular piece of material is going to prove relevant or admissible in a complex fraud case at the stage where the matter is being prepared for a committal hearing. The prosecution usually has no idea what issues the defence intends to raise. We have difficulty in seeing how the prosecution could ever be criticised for adopting a cautious view, and including material in the committal papers rather than leaving it out.

142 It should also be noted that the preparation of statements is primarily the responsibility of the investigators rather than the DPP. In some cases we assist in drafting statements. However, that is not a common occurrence. Even when we provide advice during the investigation stage, it usually addresses more general issues than what should appear in a particular statement. It follows that in the majority of cases we have no direct control over what initially goes into the statements.

143 We often receive briefs of evidence which include some inadmissible or irrelevant material. If that occurs, the choice is between sending the investigators to take fresh statements, with consequent delay and expense, or pressing on with the statements at hand knowing that we are not going to be able to rely on parts of them. A decision needs to be made in each case on which course is appropriate. That decision will turn on the amount and nature of irrelevant or inadmissible material in the brief.

144 Finally, it should be noted that this Recommendation runs counter to Recommendations 63, 71 and 74, which would see the DPP having no role in any matter until an investigation has been completed and a brief of evidence prepared. By that time, of course, all statements will already have been taken.

Recommendation 82 (paragraph 23.19)

**The Director of Public Prosecutions take a more pro-active involvement in the selection of witnesses for Commonwealth prosecution proceedings, and greater consideration be given to their selection, including increased emphasis on selection for ability to provide first hand knowledge and lesser emphasis on the standing of the witness in the bureaucracy.**

Response by DPP

145. This recommendation reflects the past and present practice of the DPP, although again we note that it runs counter to what is recommended in Recommendations 63, 71 and 74, which would see the DPP as having no role until an investigation had been completed and a brief of evidence prepared. By that stage, of course, all witnesses will have been identified and will have made statements

Recommendation 83 (paragraph 23.19)

**Documents, statements or other material collected for use in prosecution proceedings be presented in a form which is logical, coherent and readily comprehensible to Counsel, the judiciary and the defendants. If this requires the material to be arranged in other than chronological order, a chronology should also be provided.**

Response by ACS

146. The recommendation has been accepted. The ACS Investigation Manual now contains more specific direction in this matter

Response by DPP

147. This recommendation reflects the past and present practice of the DPP in any matter of significant complexity.

Recommendation 84 (paragraph 25.28)

**Every major case where prosecution action is recommended by the Australian Customs Service be reviewed upon finalisation by each Commonwealth entity involved to identify potential areas for improvement.**

Response by ACS

148 This recommendation is accepted ACS seeks to learn from its experience in preparing cases at all times Post case analysis can be a matter for discussion at regular liaison meetings.

Recommendation 85 (paragraph 25 28)

**The outcome of all major or significant prosecutions cases, whether resulting in success or failure, be included in the Australian Customs Service annual report.**

Response by ACS

149. The recommendation is accepted.

Response by DPP

150 We see no difficulty with this recommendation, as long as case reports are prepared in a way that do not affect the privacy of people who have not been convicted of any offence and do not disclose confidential information concerning investigative techniques or matters still under investigation

Recommendation 86 (paragraph 27 27)

**The Australian Customs Service allow adequate time for proper legal consideration by the Australian Government Solicitor of any proposed terms of settlement.**

Response by ACS

151 The recommendation has been accepted and it has been emphasised in the ACS Investigation Manual.

Recommendation 87 (paragraph 27 27)

**The Australian Customs Service allow sufficient time for adequate consideration of the settlement provisions by other parties to any proposed settlement.**

Response by ACS

152 The recommendation has been accepted and has been re-emphasised as for recommendation 86

## Recommendations Concerning Disciplinary Actions and Internal Investigations

### Recommendation 88 (paragraph 5 81)

Where Australian Customs Service administrative decisions are challenged, an internal review be made by a suitably senior and qualified officer independent of the original decision.

#### Response by ACS

153 The recommendation has been accepted. The practice has been reinforced through amendments to the ACS Investigation Manual.

### Recommendation 89 (paragraph 12.62)

An investigation be conducted into the apparently false representations made by the Australian Customs Service to the Minister in connection with his letter to Midford and its Tariff Advisor dated 18 January 1988.

#### Response by ACS

154 This recommendation is accepted. The investigation has been conducted and a report furnished to the Minister for Science and Small Business (Minister responsible for Customs)

### Recommendation 90 (paragraph 14 97)

An independent investigation be undertaken into allegations received by the Committee in a submission that an Australian Customs Service officer forged evidence during a recent Crimes Act prosecution case.

#### Response by ACS

155 This recommendation is accepted. An independent investigation is being carried out by the Director Internal Affairs Unit of the ACS. This officer is a retired senior Victoria Police officer employed on contract.

### Recommendation 91 (paragraph 15.80)

The Comptroller-General review the levels, functions and suitability of the Australian Customs Service officers involved in the Midford case, together with the lines of responsibility and supervision that were clearly inadequate according to the evidence before the Committee. The

**Comptroller-General should report his findings to the Committee within twelve months of the tabling of this Report.**

Response by ACS

156. This recommendation is accepted

Recommendation 92 (paragraph 17.89)

**All Australian Customs Service Investigations officers be informed that demonstrating a belligerent approach towards members of the import/export industry is unacceptable behaviour and that officers exhibiting such an attitude will be transferred to other more suitable duties.**

Response by ACS

157 The recommendation has been accepted and has been incorporated in a new section of the ACS Investigation Manual.

Recommendation 93 (paragraph 26.31)

**Leaks of confidential information which could have come from Customs, or for which Customs is accused as being the source, be investigated either internally or, in the case of serious breaches, by the Australian Federal Police.**

Response by ACS

158 This recommendation is accepted.

Recommendation 94 (paragraph 26.31)

**In all cases of leaks of confidential information, the Minister should be advised formally; such advice to include the accusation, if one has been made, the nature of the leak, the details of the investigation, and any resulting action.**

Response by ACS

159 This recommendation is accepted.

Recommendation 95 (paragraph 26.31)

In addition to information about specific leaks, a summary sheet outlining all the leaks occurring during the year be supplied to the Minister at the time of the Annual Report.

Response by ACS

160 This recommendation is accepted. A first report will be provided to the Minister at the time of the 1992/93 annual report.

Recommendation 96 (paragraph 26.31)

Customs Central Office demonstrates to the satisfaction of the Committee that it has taken steps to reassert its authority over its NSW branch.

Response by ACS

161 This recommendation is accepted. The matters referred to in this response to the Committee have been implemented in all ACS regions including New South Wales.

Recommendation 97 (paragraph 32.139)

Internal investigation into complaints against Australian Customs Service officers be carried out by officers with no present or past connection with the area under investigation.

Response by ACS

162 This recommendation is accepted. While most Internal Affairs Unit officers have a past connection with the Investigation area, officers from interstate are used for all substantive investigations where there could otherwise be a perceived conflict of interest.

Recommendation 98 (paragraph 32.139)

Officers carrying out the internal investigation provide a summary of their findings to the Comptroller-General outlining the nature of the complaint, the findings of the investigation and the action taken. This summary should also be provided to those making the original complaint.

Response by ACS

163 The intent of this recommendation is accepted. Privacy principles may affect the extent to which reports can be provided to the original complainant, particularly where formal action has not been recommended.

**Recommendations Concerning General Communications**

Recommendation 99 (paragraph 12.62)

**Advice provided to Ministers and/or importers concerning anticipated timing of Court proceedings be based on documented advice from the respective Court Registrar.**

Response by ACS

164 This recommendation is not accepted. It would be impractical. All parties to legal proceedings are in the hands of their legal advisors. Courts communicate with litigants through their solicitors. This has been confirmed with the Registrar of the Federal Court.

Recommendation 100 (paragraph 13.28)

The Australian Customs Service include in its Annual Report a listing of all cases where Statements under the Administrative Decisions (Judicial Review) Act and the Administrative Appeals Tribunal Act were not provided within the statutory time limit, showing the extent of the delay together with the relevant reasons.

Response by ACS

165 This recommendation is accepted.

Recommendation 101 (paragraph 17.59)

**Procedures must be implemented to improve the co-ordination of Australian Customs Service investigation, particularly the dealings by all agencies of the Commonwealth with representatives of persons or firms who are subject to investigations by the Australian Customs Service.**

Response by ACS

166 The recommendation is accepted. A new section dealing with inter-agency liaison has been included in the ACS Investigation Manuals.

Response by DPP

167. See response to recommendation 103

#### **Recommendations Concerning Communications Involving the Public**

Recommendation 102 (paragraph 6.105)

**Documents provided by importers or agents in response to Customs queries be date stamped upon receipt by the Australian Customs Service.**

Response by ACS

168. This recommendation has been accepted. Appropriate procedures are being developed and ACS manuals will be amended accordingly.

Recommendation 103 (paragraph 12.62)

**Customs never again refuse to meet with representatives of entities or individuals under investigation or refuse to allow an opportunity for explanations to be provided.**

Response by ACS

169. The intent of the recommendation has been accepted, subject to legal advice in particular cases. The ACS Investigation Manuals have been amended to reflect the terms of the recommendation.

Response by DPP

170. This Recommendation deals with the situation where a company or individual under investigation wants to discuss the case.

171. It must be noted that real difficulties can arise in any case where a person who is under investigation attempts to discuss details of the case with an official with imperfect knowledge of the matters under investigation.

172. The official could easily prejudice the investigation by unwittingly disclosing that a particular line of inquiry is about to be pursued or a particular person is about to be interviewed. That could give the suspect an opportunity to destroy documents, warn off potential witnesses or even leave the jurisdiction.



173 There is also a risk of an official giving undertakings or assurances that can not be met That could create an unfairness against the suspect who may take action he or she would not otherwise have taken only to find that charges are laid in any event.

174. Traditionally, officials who have been approached by people under investigation, have declined to meet with them.

175. There may be cases where an official can properly meet with a person whose activities are under investigation, especially if the person wishes to discuss aspects of those activities that are not directly affected by the investigation. However, the official will need to exercise great care to ensure that nothing he or she says or does could impinge upon the investigation or possible prosecution.

Recommendation 104 (paragraph 12.62)

Representations from entities or individuals under investigation be formally acknowledged upon receipt and given appropriate consideration.

Response by ACS

176 The recommendation has been accepted The guidelines have been amended in the ACS Investigation Manuals

Recommendation 105 (paragraph 12.62)

Where representations do not fully clarify the matters at issue, this be conveyed to the affected parties.

Response by ACS

177 The recommendation has been accepted. The guidelines have been amended in the ACS Investigation Manuals.

Recommendation 106 (paragraph 15.80)

Questions placed on notice to Customs by Parliamentary Committees be answered, such responses be provided in a timely manner and where answers are provided, they be checked for relevance and accuracy at a sufficient senior level prior to forwarding the Committee.

Response by ACS

178 The recommendation has been accepted All National Managers have been advised in terms of the recommendation

Recommendation 107 (paragraph 17.59)

**All Australian Customs Service officers be instructed not to discuss the progress of cases under investigation or before the Courts with anyone outside of the performance of their official duties.**

Response by ACS

179 The recommendation has been accepted The ACS Investigation Manuals have been amended to re-emphasise this requirement.

Recommendation 108 (paragraph 28.20)

**Where redeterminations of Customs values are made, the importer be notified within seven days of the date of the redetermination, such advice to also include details of the importer's right to appeal against the decision and the mechanisms for lodging any appeals.**

Response by ACS

180 This recommendation is accepted

**Recommendations Concerning Communications Involving the Department**

Recommendation 109 (paragraph 12.62)

**Appropriate checks be conducted to ensure that advice provided to Ministers by Customs or the Department of Industry, Technology and Commerce is factual.**

Response by ACS

181 This recommendation is accepted.

Response by the Department of Industry, Technology and Regional Development

182 Agreed A directive is to be issued to all staff and the recommendation is being incorporated into the Departmental training program.

Recommendation 110 (paragraph 16.34)

**Policy requirements be more clearly spelled out within the Department of Industry, Technology and Commerce so that its officers and consultants fully understand the requirements of the policies they provide advice upon.**

Response by the Department of Industry, Technology and Regional Development

183. Agreed. A directive is to be issued to all staff and the recommendation is being incorporated into the Departmental training program.

Recommendation 111 (paragraph 16.34)

**Adequate and systematic liaison between the Department of Industry, Technology and Commerce and Customs be implemented to ensure that policy requirements are clearly and succinctly conveyed to the Australian Customs Service for implementation.**

Response by the Department of Industry, Technology and Regional Development

184. Agreed. A directive is to be issued to all staff. The recommendation is being incorporated into the Departmental training program and the Agreement on the working relationship between Customs and the Department will be amended.

Response by ACS

185. This recommendation is accepted. The revised MOU (see recommendation No 9) between the Department of Industry, Technology and Regional Development and the ACS will address the issue.

Recommendation 112 (paragraph 16.34)

**Feedback mechanisms be put in place to ensure that Customs clearly understands the policies conveyed to it by the Department of Industry, Technology and Commerce.**

Response by ACS

186. This recommendation is accepted. The revised MOU between the Department of Industry, Technology and Regional Development and the ACS will address the issue.

Response by the Department of Industry, Technology and Regional Development

187 Agreed. A directive is to be issued to all staff. The recommendation is being incorporated into the Departmental training program and the Agreement on the working relationship between Customs and the Department will be amended accordingly.

Recommendation 113 (paragraph 16.34)

Immediate remedial action be taken by the Department of Industry, Technology and Commerce where there are indications that Customs has misunderstood the policy requirement.

Response by ACS

188. The revised MOU between the Department of Industry, Technology and Regional Development and the ACS will address this issue.

Response by the Department of Industry, Technology and Regional Development

189 Agreed. A directive is to be issued to all staff and the recommendation is being incorporated into the Departmental training program. The revised Agreement between the Department and the ACS will address this issue.

#### Recommendations Concerning Communications Involving Parliament

Recommendation 114 (paragraph 3.32)

Comprehensive data on the costs incurred from inception of the Midford case in September 1987 to announcement of the Inquiry in December 1990 be provided to the Senate by all Commonwealth bodies involved in the case.

Response by ACS

190 The ACS has already provided comprehensive cost data to the JCPA covering these costs. The only missing element would be a small proportion of Senior officers' time during the post committal hearing period. This is not quantifiable.

Response by the Australian Federal Police (AFP)

191. In consequence of the relatively minor role and resource commitment of the AFP in the Midford Paramount matter, the total monetary cost to the organisation has been calculated at \$1,957 21. This figure excludes consequential costs as that incurred in an internal investigation into a complaint lodged during the course of AFP assistance to the ACS.

Response by DPP

192. The DPP has already provided details of costs incurred in this matter. They appear in the first submission by the DPP (S122).

Response by DFAT, the Departments of Industry, Technology and Regional Development, Prime Minister and Cabinet and Attorney-General's Department

193. This recommendation is accepted.

Recommendation 115 (paragraph 3.32)

Departmental secretaries and their equivalents introduce procedures to ensure the completeness and accuracy of costing data provided to Parliamentary Committees.

Response by Department of Finance

194. The Department has issued a Finance Circular to draw attention to the Committee's recommendation.

Recommendations to Improve the Quality of Investigations Staff

Recommendation 116 (paragraph 14.97)

Australian Customs Service Investigations officers receive further instruction in the basic legal presumption of innocence and their responsibility to conduct investigations in a manner that is, and is seen to be, thorough and unbiased.

Response by ACS

195. The recommendation is accepted. The ACS Investigation Manuals have been amended to reflect the requirements of this recommendation. Training course

material is being revised and special modules have been programmed for all ACS regions.

Recommendation 117 (paragraph 17 59)

**Training given to Australian Customs Service officers in the gathering of written statements be reviewed and improved.**

Response by ACS

196. The recommendation has been accepted. Current training course material is being re-evaluated and separate modules on the taking of statements are being developed.

Recommendation 118 (paragraph 32 139)

**The Australian Customs Service further develop and promptly implement effective strategies for improving the performance of its investigation workforce.**

Response by ACS

197. The recommendation has been accepted. The Investigation sub-program is continuously reviewing its operation and strategies with a view to further improvements.

Response by DPP

198. The DPP generally supports measures designed to improve the skills and expertise of Commonwealth investigators. However, we do not pretend to be experts on training and offer no specific comment on the recommendations made by the Committee.

Recommendation 119 (paragraph 32 139)

**The Australian Customs Service further develop the performance measures for the Investigations Sub-program.**

Response by ACS

199. The recommendation has been accepted. Performance measures are continually reviewed for accuracy and usefulness.

Recommendation 120 (paragraph 32.139)

All Australian Customs Service investigators attend the Advanced Investigation Course within six months of joining the Investigations function.

Response by ACS

200. The recommendation has been accepted. The Advanced Investigation Course has been re-developed. Two courses were run in April and May on the redesigned format. Arrangements are in hand to ensure that all officers assigned to the Investigation sub-program will attend an Advanced Investigation Course as soon as possible after joining the area.

Recommendation 121 (paragraph 32.139)

Action be taken to train all current Australian Customs investigators who have not attended the Advanced Investigation Course.

Response by ACS

201. The recommendation has been accepted. See response to recommendation 120

Recommendation 122 (paragraph 32.139)

The Australian Customs Service improve its monitoring of training delivery to detect anomalies and deficiencies as revealed in the disproportionate attendance of Victoria based investigators at the Advanced Investigations Course.

Response by ACS

202. The recommendation has been accepted. The National Training Co-ordinator is establishing a national data base of all training that has been delivered. This data base will assist in overcoming anomalies and in programming future courses in a manner designed to overcome previous shortcomings.

Recommendation 123 (paragraph 32.139)

All Australian Customs Service investigators receive structured legal training in the principles of natural justice and relevant aspects of administrative law.

Response by ACS

203 The recommendation has been accepted. The Legal Services Section is providing training to all Regions on Administrative Law, with particular emphasis on natural justice and the rights of individuals subject to investigation.

Recommendation 124 (paragraph 32.139)

Short refresher courses and updates be regularly provided to Australian Customs Service Investigators.

Response by ACS

204 The recommendation has been accepted. The establishment of the data base mentioned in response to recommendation 122 will provide information on those officers who need access to refresher courses. Courses are being developed in modular form so that training can be tailored to individual needs.

Recommendation 125 (paragraph 32.139)

A formal evaluation be conducted of the training provided to Australian Customs Service investigations officers by a panel consisting of representatives from the Attorney-General's Department, the Director of Public Prosecutions, the Australian Government Solicitor, the Law Council of Australia and the Customs Brokers Council of Australia.

Response by ACS

205 This recommendation will be considered in the light of the outcome of the Price-Waterhouse audit (see recommendation 5) which will also report on ACS Investigation training.

Recommendation 126 (paragraph 32.139)

Specific training in Crimes Act investigation requirements be provided to Australian Customs Service investigators prior to engagement in Crimes Act investigations.

Response by ACS

206 The recommendation has been accepted. Training modules specifically designed for Crimes Act operations are being developed to cater for officers' individual needs.



Recommendation 127 (paragraph 32.139)

**Adequate consideration be given by the Australian Customs Service to engage or second specialists with skills and knowledge relevant to Crimes Act investigations and prosecutions.**

Response by ACS

207 The recommendation has been accepted. A number of officers with relevant experience have been recruited recently. Consideration is being given to secondment of appropriate specialists as necessary.

Recommendation 128 (paragraph 32.139)

**The Australian Customs Service set and monitor target rates of training for Investigations staff, with particular emphasis on technical training.**

Response by ACS

208 The recommendation has been accepted. The National Training Co-ordinator will establish a national data base of training information and will use this data to set target rates of training and monitor delivery for all investigation staff. This will include technical training as well as management training.

Recommendation 129 (paragraph 32.139)

**The Australian Customs Service increase its efforts to recruit and retain suitably qualified staff to the Investigations function from institutions and organisations external to the Australian Customs Service.**

Response by ACS

209 The recommendation has been accepted. The ACS is reviewing its staff mobility policy as it applies to Investigation. In future consideration will be given to advertising vacancies in the press to encourage recruitment from external institutions and agencies.

Recommendation 130 (paragraph 32.139)

**The Australian Customs Service conduct a review of the staffing establishment in the Investigations component to determine whether any changes are required to better match classification levels with the complexity of work required to be performed.**

Response by ACS

210. This recommendation is accepted. The necessary review is being undertaken

Recommendation-131 (paragraph 32 139)

The Australian Customs Service establish within the Investigations component a suitable number of officers with specialist knowledge and expertise in Crimes Act investigations.

Response by ACS

211. The recommendation has been accepted. The recruitment activity outlined in the response to recommendation 127 together with the training initiatives mentioned in response to recommendation 126 will provide a stream of officers available for allocation to Crimes Act cases

Recommendation 132 (paragraph 32.139)

Where an Australian Customs Service investigation involves Crimes Act considerations, at least one member on the investigation team should have specialist knowledge and expertise in conducting such investigations.

Response by ACS

212. The recommendation is accepted. Joint operations with Australian Federal Police (AFP) are currently running. Further secondments or joint operations will be considered as the opportunity arises. The ACS Investigation Manuals reflect the thrust of this recommendation.

Recommendation 133 (paragraph 32 139)

The Australian Customs Service improve its efforts to match the allocation of commercial fraud cases with the expertise, training, experience and developmental requirements of individual Investigations officers.

Response by ACS

213. The recommendation is accepted. The structure of the operations area is being reviewed to facilitate the operation of investigation teams

Recommendation 134 (paragraph 32 139)

**Supervision and checking of the more complex or technical work undertaken by Investigations officers be improved.**

Response by ACS

214 The recommendation is accepted. As indicated in other responses Case Managers will constantly monitor the work of Case Officers.

**Other Comments**

215 The Commonwealth Director of Public Prosecutions (DPP) has offered some general comments on the Inquiry and Report. The Department of Finance gave the DPP the opportunity to reconsider those comments. In the event, the DPP confirmed that it wished its comments to be transmitted to the Committee. Accordingly, they are attached to this Finance Minute.

S T Sedgwick  
Secretary  
Department of Finance  
June 1993

## APPENDIX

### General Comment

#### Comment by the Attorney-General's Department

The role of the Attorney-General's Department in relation to those recommendations in the Report that are addressed in the Department of Finance Minute is essentially that of solicitor for the Commonwealth acting on instructions from the Australian Customs Service. The Australian Government Solicitor performs this role in respect of actions for the recovery of pecuniary penalties under Customs legislation. The decision whether or not to commence Customs pecuniary penalty proceedings is made by the Australian Customs Service.

2 Accordingly, whilst at least some of these recommendations concern activities of this Department undertaken upon instructions of a client, it is considered that the Commonwealth's response should be provided by those departments and agencies which have functional responsibility for the instructions given us. This Department advised relevant departments and agencies that it was available for consultation in the course of preparing their responses. The Australian Customs Service sought comments from this Department on a number of recommendations and these were provided.

#### Comment by Australian Customs Service (ACS)

3 The Australian Customs Service has accepted the great majority of the recommendations in the Report and has already implemented most of those which it has accepted.

4 The fact that the recommendations have been accepted does not, however, mean that the ACS also accepts all of the content of the body of the Report. In this regard the ACS notes the views expressed by the Director of Public Prosecutions in his general comment attached to this minute.

#### Comment by Commonwealth Director of Public Prosecutions (DPP)

5 The Report criticises some aspects of the DPP's conduct of the Midford case. It is an undoubted fact that the committal proceedings foundered at an early stage. However, that does not mean that the DPP, or the individuals charged with running the case, failed to properly perform their duties.

6 The DPP presented three detailed submissions to the Committee (at S122, S2000 & S10538) and provided additional information on six other occasions (at S2078, S2202, S3828, S7366, S8342 & S8555). Those materials outline the DPP's

involvement in the proceedings and explain why the prosecution failed. Nothing in the Report causes us to resile from what is contained in those materials. In particular, it is just not right, and in fact is inconsistent with materials before the Committee, that DPP officers failed to foresee issues that were likely to be raised in the committal proceedings or failed to see and properly understand documents that were relevant to the case.

7 In our view the Committee made a number of errors in approaching the task before it.

8 First, the Committee failed to pay any regard to the real difficulties that face investigators and prosecutors in commercial fraud cases like the *Midford* matter.

9 These cases typically involve vast quantities of documents and raise difficult issues of fact, law and commercial practice. They are among the most difficult of all cases to investigate and prosecute and they represent the biggest challenge currently facing prosecutors, and indeed the criminal justice system as a whole.

10 The problem is that there is rarely any eye-witness evidence to show what occurred and suspects rarely agree to be interviewed. These cases usually stand or fall on inferences to be drawn from the documentation. There is also rarely any indication of what matters are going to be in dispute, and what will be conceded, if the matter comes before a court. The prosecution must assume that every possible line of defence that can conceivably be raised will be raised and ensure that it has evidence to negate it. There is a risk that if the prosecution fails to foresee, and put itself in a position to negate, a possible line of defence the defendant will be entitled to an acquittal, irrespective of whether the particular defence has any intrinsic merit.

11 The net effect of these considerations is that these cases become very large and very complex. At the end of the day, it often emerges that a lot of the time and effort spent investigating and preparing the case was expended on issues which turned out not to be in dispute when the case finally came to court. Even so, court proceedings in a large commercial fraud case can often take months to complete.

12 These problems were pointed out to the Committee. However, there is no recognition of them in the Report. As a result, the Committee has tended to set unrealistic standards against which to judge the actions of those involved in the case. It has also failed to recognise that it is reviewing the case with the benefit of hindsight. (Prime examples appear at p 166 where the Committee criticised the DPP case officer's understanding of various documents and pp 287-289 where the Committee criticised the committal documents.)

13 Secondly, the Committee made the mistake of making findings on issues of law. In our view it has neither the competence nor the jurisdiction to make legal rulings.

14 Much of the criticism of the DPP is based on the conclusion that the prosecution case was flawed in relation to issues that were not reached and not considered in the committal proceedings and which have never been ruled on by a court of law.

15. The Committee found, for example, that there is a difference in law between the terms "sourced from" and "manufactured by" as they appear in relevant quota instruments (pp.10, 58ff, 276, 352), that the failure to specify conditions on the face of quota documents meant, as a matter of law, that the relevant quota had been issued free of conditions (pp.214, 277), and that the DPP misinterpreted the legal effect of certain Cabinet documents (p.175) The Committee concluded that on each issue the DPP had failed to properly prepare for the committal proceedings

16 The Committee acknowledges that it is not a court of law (p 4) It clearly does not have the function of making findings on issues of law Yet that is precisely what it proceeded to do Indeed the Committee did not even record the fact that contrary views had been expressed on each of the relevant issues An uninformed reader could be left with the impression that the findings of the Committee were unchallenged and unchallengeable.

17 Thirdly the Committee did not seek independent assistance when dealing with areas that require special knowledge or expertise

18 The Committee's own procedures recognise that the Committee does not have specialist expertise Those procedures require that an officer from the Australian National Audit Office (ANAO) and an officer from the Department of Finance attend all sessions of the Committee Those officers are able to provide the Committee with expert assistance when the Committee is considering financial or accounting issues One might have thought that the Committee would similarly seek expert assistance when considering issues in relation to the criminal law, commercial law, Customs administration and prosecution procedures The Committee did not do so

19 Indeed, when witnesses who had expertise in those areas appeared before the Committee they were often given little chance to make their views known Many government officials who appeared before the Committee were subjected to personal abuse bordering on harassment (see pp 7-9 of the DPP's Final Submission S10544 to S10546) Questions directed at government officials often took the form of diatribes, some of which take more than a page of transcript to reproduce (eg p 891, 1077 & 1140) Witnesses were often interrupted and contradicted part way through their answers On occasions the proceedings were conducted more as an inquisition than an inquiry

20 Section 19(1) of the Public Accounts Committee Act 1951 provides that a person appearing as a witness before the Committee is entitled to the same protection

and privileges as a witness appearing before the High Court. The Committee did not always comply with section 19(1) in the present Inquiry (see further at pp 6-7 of the DPP's Final Submissions: S10545-S10546)

21 The Committee has an imperfect understanding of basic matters such as the prosecution process, criminal procedure and investigative methods. Notwithstanding that, these are all matters on which the Committee has made findings

22 Fourthly, the Committee appears to have given undue status to the legal presumption of innocence. It seems to have assumed that it was obliged by that doctrine to accept everything said or presented by the former defendants as proven fact whether supported by credible evidence or not.

23 The Committee has tended to quote assertions by former defendants and their advisers as if they were proven fact (eg p 174 and most of Ch 29).

24 It also placed considerable weight on self-serving affidavits filed in Malaysian proceedings even though the deponents of the affidavits were never subjected to questioning either in Australia or Malaysia (Ch 19)

25 The Committee had no information about who prepared the affidavits, or the circumstances in which they were sworn, and had no way of knowing whether the deponents would, in fact, have confirmed the contents if called upon to do so. The evidence before the Committee was that the maker of one of the affidavits could not speak English. However, the relevant affidavit was in the English language. The matters dealt with in the affidavits were clearly in dispute. We do not see how it was reasonably open to the Committee to make positive findings on the basis of the affidavits. Yet it is clear that the Committee drew upon the contents of the affidavits in making findings adverse to the two Customs officers who travelled to Malaysia.

26 At page 344 the Committee reached the conclusion that the Midford case was "one of the causes of bad relations between Australia and Malaysia". The only authority cited for that proposition is an unnamed Senator who apparently expressed that view in an ABC radio program in 1991.

27 As a final example, at page 192 the Committee notes that at one stage Midford proposed entering an agreement under which title to machinery would pass to it retrospectively as a means of remedying an earlier failure to comply with quota requirements. The Committee seems to have had difficulty in seeing anything untoward in the proposal.

28 Fifthly, the Committee has tended to selectively quote evidence given before it. A number of examples could be given, but we will limit ourselves to four.

- At Chapter 21, the Committee quoted at length from a joint advice prepared by prosecuting counsel on 26 June 1989. The DPP prepared a detailed response to that advice on 27 June 1989. A copy of the response was provided to the Committee (S2677). The Committee made no reference to the response in its Report,
- The Committee failed to make any reference to the fact that after 1985 Midford's operations in Malaysia were limited to one employee who was, in effect, conducting a re-invoicing and relabelling operation. The fact was a keystone of the prosecution case and was also an important factor in understanding why charges were brought in the first place;
- At page 175 the Committee concluded that certain Cabinet documents were not seen during the preparation of the case by anyone other than the DPP action officer. (The footnote incidentally refers to a page of the transcript that does not deal with the issue.) The Report does not refer to the Final Submissions by the DPP which pointed out that copies of all relevant Cabinet documents were in the material originally provided to the DPP by ACS and were included in the material given to prosecuting counsel (S10545). It is not clear why the Committee disregarded that evidence, and
- The Committee failed to refer to the fact that, after the conspiracy charges had been withdrawn, a written opinion was obtained from experienced senior counsel who had not been involved in the committal proceedings. Senior counsel reviewed the available evidence, and provided advice in relation to possible further action. The then Director, who was himself an experienced senior counsel, agreed with the views expressed in relation to the evidence, although he decided that further proceedings were not warranted in the public interest. That material was provided to the Committee (See S616-S631). The opinions analysed why the committal proceedings failed. It is again not clear why the Committee disregarded that evidence.

29 Finally, the Committee has tended to assert improper motives or conduct on the part of DPP officers in circumstances where there is no evidentiary basis for such an assertion. One example of this appears at p 94 where it is asserted that the DPP and ACS were "desperate" to "get" Midford. That is a serious claim which is simply not supported by any evidence before the Committee. Another example appears at p 185 where it is inferred, by innuendo, that DPP officers deliberately withheld information



from the then Director. The suggestion is quite scandalous and, again, is totally unsupported by evidence.

30. The DPP was given no indication that these assertions were going to be made against our officers. We were given no opportunity to respond to them. The officers concerned have been denied basic natural justice.

31. In the same vein, the Committee has referred to an allegation that an investigator in an unrelated prosecution may have gained a conviction by forging evidence (p.229). The Committee recommended that the allegation be investigated (Recommendation 90). The case in question was the prosecution of Peter Bazos and Elite Woodproducts Pty Ltd. The Committee was aware that the convictions in that case have been reviewed by the Court of Criminal Appeal, and that the Court dismissed the appeals and upheld the convictions. In these circumstances it is clear that the allegation to the Committee was mischievous. The fact that the Committee gave any weight to it was inappropriate.

32. The net result of the approach taken by the Committee is assessing the evidence before it is that findings of fact made by it must be treated with considerable caution at the very least.