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JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Reference: Review of Auditor-General's reports, fourth quarter 2003-04

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**JOINT STATUTORY COMMITTEE ON
PUBLIC ACCOUNTS AND AUDIT**

Monday, 7 March 2005

Members: Mr Baldwin (*Chair*), Senators Hogg, Humphries, Moore, Murray, Scullion and Watson and Mr Broadbent, Ms Burke, Ms Grierson, Miss Jackie Kelly, Ms King, Dr Laming, Mr Somlyay, Mr Tanner and Mr Ticehurst

Members in attendance: Senators Hogg, Moore and Watson and Mr Baldwin, Ms Burke, Ms Grierson, Mr Laming, Mr Tanner and Mr Ticehurst

Terms of reference for the inquiry:

To inquire into and report on:

Review of Attorney-General's reports, fourth quarter 2003-04.

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Committee met at 11.30 a.m.

BOYD, Mr Brian Thomas, Executive Director, Performance Audit Services Group, Australian National Audit Office

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WHITE, Mr Peter, Acting Group Executive Director, Performance Audit Services Group, Australian National Audit Office

DOLAN, Mr Martin, Acting Deputy Secretary, Department of Transport and Regional Services

HOLMESBY, Mrs Denise, Director, Business Review and Improvement Section, Department of Transport and Regional Services

MOJICA, Ms Cristina, Acting Assistant Secretary, Airport Planning and Regulation Branch, Department of Transport and Regional Services

WILLIAMS, Mr Neil, Acting First Assistant Secretary, Aviation and Airports Policy, Department of Transport and Regional Services

CHAIR—I declare open today's public hearing, which is the ninth and final in a series of hearings to examine reports tabled by the Auditor-General in the financial year 2003-04. This morning we will be taking evidence on Audit Report No. 50: *Management of federal airport leases*. Firstly today I welcome witnesses from the Australian National Audit Office and the Department of Transport and Regional Services to provide evidence on report No. 50. I remind witnesses that the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. The evidence given today will be recorded by Hansard and will attract parliamentary privilege.

We will be running today's session using a roundtable format with witnesses from the two agencies appearing together; however, I ask participants to remember that only members of the committee can put questions to witnesses if this hearing is to constitute formal proceedings of the parliament and attract parliamentary privilege. If other participants wish to raise issues for discussion, I would ask them to direct their comments to the committee. It will not be possible for participants to directly respond to each other. Given the short time available today, statements and comments by witnesses should be relevant and succinct. Matters on which the committee might wish to focus are as follows: cost recovery and resourcing, annual lease reviews, lease management, airport development commitments and insurance factors. Would you each like to make a brief opening statement to the committee?

Mr Cochrane—We are happy to let the report talk.

Mr Dolan—I have some very brief opening comments to set the context. At the time the government put in place its approach to privatising airports it probably could not have foreseen

the range of external shocks that occurred in the airports and aviation industry—what has been described by the International Air Transport Association as the perfect storm—including the events of September 2001, in Australia the collapse of Ansett, the Bali bombings, SARS, the Iraq war and so on. That is a difficult environment to work in both for us and for the aviation industry—and one that, as the report recognises, we had to deal with on the way through. The question of resourcing is tied up with that in that we were allocating our resources based on a series of priorities and risks at the time. What we can draw out very clearly is that, with the increasing stability of the aviation industry, we now have the capacity to allocate resources more to the sorts of priorities laid out in the audit report. The other point I would make is that it is important—and, again, this is recognised in the report—that the management of leases be seen in the broader context of a set of regulatory processes we have in place for airports under the Airports Act, which is a series of control and planning responsibilities. Our overall interactions with the airports on leases are part of that broader framework. Having set out that context, I am happy to answer any questions.

CHAIR—I will start with a couple of questions. Firstly, and I foreshadowed this earlier, could you provide to the committee a list of the airports that are leased and details of who the lessees are and where there is commonality among the lessees—whether it be in parent companies or the like.

Mr Dolan—Yes, I will take that on notice.

CHAIR—The next issue that I would like to go to, and it is one that concerns me greatly, is insurance. I understand that there are periods of time in which there is no insurance coverage for things like war and terrorism but also including public liability in each of these airports. Can you outline which airports, how long the gap was and if there have been any claims of any known liability on these airports?

Mr Dolan—I will separate it into questions of war risk insurance and public liability, which are two separate insurance divisions. Following September 11, war risk insurance essentially disappeared from the market around about the beginning of October 2001. The government progressively stepped in and effectively issued a range of indemnities to aviation operators in Australia to cover them in the absence of that war risk insurance. That was a mechanism by which the activities of both airports, progressively, and airlines recovered. So the absence in the market of that insurance was balanced by the government stepping in as appropriate and then progressively withdrawing as the market restored. That essentially managed the gap in the risk in terms of the exposure of the airports and their lease requirement to hold appropriate insurance cover. I am not familiar with the details of public liability insurance. I thought they were in fact covered off by the airports. Mr Williams may be able to confirm that.

Mr Williams—It is my understanding that the airports have had public liability insurance in place. We conduct an annual review and we are in the middle of the current review at the moment. AON, our contractor, is discussing that with all the airports.

CHAIR—You can guarantee to me then, Mr Williams, that all the airports that have been leased have had 100 per cent coverage of third party liability—public liability—and buildings insurance? I can understand that there is a problem with the war and terrorism one, but have all the other insurances been in place and is there full coverage?

Mr Williams—That is my understanding. But, as I said, we are going through a review at the moment and we are expecting a report on the current situation for this financial year.

CHAIR—You have had plenty of time to report. I see that you have been fairly lax in the ability to get to people to do lease reviews. If you have a look at the chart that has been provided to us, the red is leases that have not been done on an annual basis. I think it is fairly important that the Commonwealth is able to understand what potential liability it may have during a period where there has been no insurance coverage on an airport.

Mr Williams—I totally agree with you. My understanding is that there have not been any gaps in the coverage. Certainly Mr Dolan pointed out that there were some gaps which were filled by the government in relation to the war and terrorism insurance.

CHAIR—I might ask the ANAO. Have you identified any gaps in insurance other than that related to war and terrorism?

Mr Boyd—Yes.

CHAIR—Where were they?

Mr Boyd—Without going to the specifics of the airports, in the first series of reports we looked at, which were provided by AON, across a number of the airports there were either instances where the adviser was unable to conclude that all the required insurances were in place because insufficient information had been provided to the adviser to be able to make a conclusion or some instances where insurances did not appear to be in place.

CHAIR—So from your understanding that there is full coverage, Mr Williams, what does the Department of Transport and Regional Services intend to do to identify what risks and liabilities there are there and provide a report back to this committee on where there have been insurance shortfalls?

Mr Williams—As I said, we are currently awaiting this year's report from AON. We expect it this month. That will identify if there are any existing gaps.

CHAIR—I am not talking about the current year; I am talking about since the lease was handed over.

Senator HOGG—I have not been convinced by anything you have said to us at all. I do not have the feeling that there has been a consistent monitoring and that you can tell us historically what has happened in this process. Are there records within the department that will allow you to assure the committee that the coverage you claim is there consistently is there? What can you actually produce for us?

Mr Dolan—We could produce a fairly extensive set of files. There are some areas of it, as my colleagues from the Audit Office have pointed out, where the information that was available to us was not as clear as possible and there are some areas where there were some questions over elements of insurance cover. In terms of the major requirement of the lease for coverage, we are confident—subject, again, to our review—that the major elements of insurance have been in

place. But there are some gaps. It would be an extensive exercise to go through the full set of documentation and review it against the records held by the airports.

Senator HOGG—But that gets to the chair’s question of identifying those areas where there is risk to the Commonwealth and trying to quantify what that risk is or may be over that period. I think that is basically what we are trying to identify.

CHAIR—I think we can accept that, if no claim has been lodged, it is very hard to identify if there is a liability. There should be a report back to you as part of your review measures with these leases. Maybe you got to some of them and not to others, but you should be able to understand exactly what the insurance provision is. How hard is it to send a request to each of the lessees asking whether they were insured for a certain period and how much the insurance coverage was for? This is not about going through volumes of paperwork; it is a fairly simple statement on insurance.

Mrs Holmesby—To clarify: one of the difficulties we have with insurance is that there has been an ongoing review and audit undertaken since the privatisation of the airports. That is being done externally. I am not aware of any issues where there has been a lack of insurance as such. The difficulty we have had has been more the clarification of the wording in the policies. As you would appreciate, the individual wording of these policies is quite complex. One of the issues that we also face is that the nature of the insurance industry is such that, whilst insurance will be renewed, the actual policies may not be provided for up to two or three months after the renewal date. Whilst airports can provide us with information, and we seek that information each year—at least at lease review time and also through the annual audit that is conducted of the information externally—the issues that are generally raised by the external auditor are in relation to specific questions regarding the wording in these insurance policies.

CHAIR—In 1999-2000 you did three lease reviews out of 17. How could you have identified how the other 14 had gone?

Mrs Holmesby—Through the audit review.

Mr Dolan—The process of auditing, through our consultant, the insurance position of the airports was separate from our annual lease reviews. It had its own process for ensuring that they were in place.

Ms GRIERSON—What is the scope of the operation of your insurance agent? Is it just to recommend on policies or to make sure that they are taken out? What does that agent do for you?

Mr Dolan—They review and advise us on the material that is available on the insurance status of the airport so that if necessary we can take steps.

Ms GRIERSON—Has your insurance agent given you that information on 17 airports—biannually, annually or whatever?

Mr Dolan—On an annual basis.

Mr Williams—That is my understanding.

Mr Dolan—We are currently going through our annual review.

Ms GRIERSON—I have to say that your ‘understanding’ is not what we are asking for. We are asking for an assurance that, for the length of the leases, the insurance policies that are adequate for the needs of the airport have been in place, and therefore, given the fact that you can retrospectively make a claim, the Commonwealth has not been liable in a way that would put it at further risk. I do not think that an understanding is enough; we have to ask you to please show us the documentation that proves that there have been insurance policies in place at all of our airports that ameliorate the risk to the Commonwealth government that we are all responsible for.

CHAIR—Could I add to that before you answer. We have got Mr Boyd from the ANAO saying that there were periods of unmet coverage, and you are saying you think it is all right. We have an audit office to run through and check that things are in place. You have got this as part of the audit report and you are not able to provide accurate answers to us at this point in time, and it is one of the key recommendations of the report that was sent to you. I have got to say that I find it fairly disappointing that you cannot come up with a matter of fact statement of ‘this is what was there’ and ‘this is what was not there’ so that we as members of this committee can get a firm understanding about where it is at.

Ms GRIERSON—Can a schedule be provided that shows the 17 airports and the insurance that they had in place that year?

Mr Dolan—I am happy to do that. Could I clarify one point which goes to risk to the Commonwealth. The insurance condition is a condition of lease, and the liability to the extent that there is not insurance cover—were that the case—actually accrues to the airport lessee company, not to the Commonwealth.

Ms GRIERSON—However, if we found that in a certain year they did not have a policy and they are acting under a Commonwealth lease, and we have a responsibility through DOTARS to review performance and make sure they had one, and we found that in that year no-one reviewed it and no-one knew that there was not an insurance policy, wouldn't the Commonwealth be liable?

Mr Dolan—No, the Commonwealth is not liable—

Ms GRIERSON—That is such a good contract, is it?

Mr Dolan—The question as to what the government may feel constrained to do as a result of what would be a breach of lease conditions is really the question that would come into play there.

CHAIR—Let me use a simple example of what you are saying to me: there is a bit of broken concrete, somebody trips and is a paraplegic. There is a range of other claims but the period was not insured. If that goes over and above the value of the company, and all of a sudden they go into liquidation and there is not enough to pay it, then I would think, in natural progression of ownership, they would be coming back to the Commonwealth seeking money to make up the insurance claim. We would probably be joined as a party, one would assume.

Mr Dolan—At the point where that occurs there is a separate provision which comes into play called a tripartite deed. Effectively, when a company no longer has the capacity to run an airport, and financiers cannot step in and rectify the situation, the airport returns to the Commonwealth. The Commonwealth's liabilities are limited to the asset value of the airport.

Mr Boyd—It is probably also a bit more complex in the sense that having adequate insurance in place is not solely a matter of having a policy; one of the requirements of the lease is that the Commonwealth be named under that policy so that, for example, if we do have to step into the airport, the Commonwealth has the benefit of that lease. Whilst you might have a policy in place today, if that policy does not extend to the Commonwealth, the Commonwealth will not have the benefit of the policy. As Mr Dolan mentioned, if it were to step in then obviously we would want that, but in other events you also want that. So if your circumstance does come to bear not only is the lessee hopefully covered but, if they then proceed to the Commonwealth, we are also covered by the same insurance, as in we are named.

In terms of assessing whether complete insurance is in place, we took the 12 reports which are listed on page 41 of the report and examined each of those. In those reports AON, the adviser, advises Transport where parts of the insurance are not in place or full insurance is not in place for a particular risk—what instances there are—and makes a recommendation as to what should happen about that. We did not examine that as part of the audit, because it had not progressed that far. By the time we finished reporting, Transport had raised some of those matters in lease review meetings with the lessees—or written to them about that—but we did not yet know at that stage what the outcome was.

Mr TICEHURST—Thunderstorms represent a problem for airports and in particular to personnel. At a number of major American airports they use warning systems to reduce the risk and to have an advance warning that personnel could be at risk, particularly on the ramps and in the loading areas. Is there anything in the leases or in the insurance policies that could indemnify the Commonwealth in cases where people are affected or killed, which does happen?

Mr Dolan—It is quite a complex set of issues that have been raised. I think the starting point is that there are two key sets of legislation in play there. The first is the Civil Aviation Act, which sets the safety standards for airports, which at a level of detail deals with questions of safety on airports as the responsibility of the Civil Aviation Safety Authority rather than the department. There are also occupational health and safety requirements that put the onus very clearly on airport management in terms of the safety of their personnel. It is not governed by the lease or by our Airports Act but by other pieces of legislation.

Senator MOORE—On the issue of the tripartite deeds, in the report in your department's comments it says that you were going to re-examine the description of tripartite deeds as part of your financial statement audit in preparation for last year's annual report. Did that happen?

Mr Dolan—That did happen.

Senator MOORE—And the basis of that review has actually helped your previous answer.

Mr Dolan—It is reflected in the financial statements of the department in relation to the treatment of the tripartite deeds. I do not think it actually added anything to my previous answer.

Senator MOORE—Your security in your description of tripartite deed arrangements was reflected in the review you had before last year's audit.

Mr Dolan—Yes.

CHAIR—I would like to move on to the question of auditing costs, the costs required to do each audit. You have a right to recover those expenses from each of the lessees. Have you have any discussion with each of the lessees to give an understanding that they are reasonable cost? Do you notify them in advance of an estimate of the cost, and what is the actual cost of doing each audit?

Mr Dolan—We have certainly had discussions with lessees about reasonable costs. They have drawn very clearly to our attention their understanding of the conditions of sale and what reasonable costs in relation to the lease actually meant. We have just finalised a review that is currently under consideration by the department's audit committee about a revised policy towards recovery of reasonable costs on leases. We go to our audit committee this Thursday. I am happy to provide you with the results of that.

CHAIR—Roughly what is the cost of doing an audit?

Mr Williams—As part of a broader review of the cost recovery arrangements across a range of departmental functions, Acumen Alliance looked at this particular question of lease management functions and they made an estimate of the staffing and departmental administrative costs of this particular function of \$242,000 per annum across the 22 airports.

CHAIR—That is \$300,000 for the 22 in total?

Mr Williams—Yes.

CHAIR—So how long does it take and how many people does it take to conduct a review of a lease?

Mr Williams—There are 35 people within my branch who have oversight responsibility for the 22 airports. It is split across four different sections. As Mr Dolan mentioned in his opening statement, there are a range of other factors that we look into. In particular the great bulk of the work of the area is related to our regulatory responsibility under the Airports Act. The lease management function I would say is a minor component of the overall work of the organisation, as reflected by that \$242,000 cost. We do annual lease reviews. That would take one or two people part of their time per annum.

CHAIR—What is part of their time: a day, two days, a week, a month? Please don't speak in round figures; we want to hear quantities.

Ms Mojica—In terms of actual lease reviews, for example, in a couple of weeks we are doing a lease review of one airport. That means that about six weeks ago we sent out a letter to the airport asking them to prepare a number of materials. We have a template that lists all the materials and the information that we require from the airport in advance. When the airport submits that, that is assessed against the regulatory and the lease requirements, and that takes

two or three days work of a supervisor to look at what the airport submitted and, on that basis, make an assessment. Prior to the lease review meeting taking place there are also some preparations to identify any issues of concern that came out of the advance information that the airport sends. So by the time the lease review meeting comes up, it is really just flagging with the airport any areas of concern and discussing these with them, then chasing up any submissions after the lease review meeting. All told, it is maybe one or two weeks work.

CHAIR—One person for one to two weeks?

Ms Mojica—Two people.

Mr Dolan—To put that in context, it is around 1½ staff, full-time equivalent, employed on this activity in the course of a year.

CHAIR—We have had provided to us a figure of around \$558,000. This figure includes the cost of 4.75 full-time staff and \$60,000 representing the cost of an insurance adviser. You must have had an awful lot of people off on leave in 1999-2000 and 2001-02. In 1999-2000 you got through three lease reviews and in 2001-02 you got through four lease reviews.

Mr Dolan—It is not a matter of staff being on leave. The point I tried—obviously inadequately—to make in my opening remarks was about the context in which we were managing airport leases over the course of that period. We were dealing with the broader impact of the collapse of Ansett, effectively the collapse of aviation war risk insurance and a whole range of other impacts on airports and on the aviation industry. So in terms of the resources we had available to us, there had to be a prioritisation of effort. Our view was that, although we were not fully meeting the standard of an annual lease review, we were nevertheless managing the risks for the Commonwealth.

Senator HOGG—Did you ask for a supplementation in terms of the resources available to assist you to meet the increased demand that you saw?

Mr Dolan—Yes, we did, and those resources have been made available to us.

Senator HOGG—But they were not at the time?

Mr Dolan—At the time, we were always looking at a range of risks to be managed and looking at the allocation of resources. We were satisfied at the time that we were managing risk appropriately. The Audit Office report had drawn attention to some areas where in their view we needed to put additional resources into managing that risk. We sought those resources and we have been given them.

Ms GRIERSON—If that cost is \$242,000 per annum, how much have you recovered from airports to cover that cost so far?

Mr Williams—None to date. As part of the broad review that Acumen Alliance did we had an estimate of the costs done for us as per the ANAO recommendation. Essentially the matter that is being considered by the audit committee later this week is whether we do seek to recover those costs.

Ms GRIERSON—Do you mean retrospectively or just from now on?

Mr Williams—From now on.

Ms GRIERSON—So there will be no attempt to recover costs retrospectively; you do not feel you are in a position to do that?

Mr Williams—No, I do not think so.

Senator MOORE—Mr Dolan, there is a more general question that has been coming out from the answers that your team has been giving. In the department's response to the audit it says that there is a bit of a difference between a degree of prescription as recommended by the ANAO report and the department's belief that a high degree of agility and a more flexible approach is the way that your department has been managing and balancing the work. Can you give me a bit more information on that? You have touched on that all the way through, but there is obviously a decision being made about the process to be taken, and it has drawn a judgment about where it should go.

Mr Dolan—It is probably best to start where we did: leases are contractual arrangements and should be managed on that basis. We manage our regulatory responsibilities to the airport somewhat differently from our contractual relationship with them. There is always a judgment in the management of a contractual relationship about what, in the context of the overall balance of the contractual agreement, it is appropriate to enforce and not to enforce—bearing in mind that most of the enforcement will end up having to be done through courts, and there is a cost associated with that.

Senator MOORE—So that is the background.

Mr Dolan—That is the broad principle that we take with respect to these. There is always a matter of judgment in there.

Mr LAMING—Could you tell me what lease review meetings have been held since the financial year 2003-04 began and the present?

Mr Dolan—Mr Williams has the details of that.

Mr Williams—I have a document that I could table for you. It lists all the lease reviews conducted in 2003-04 and ones that we have scheduled for 2005. Essentially they have all been done. That is my understanding.

CHAIR—Is it the wish of the committee that the document entitled 'Annual lease review schedule' presented by the Department of Transport and Regional Services be accepted as evidence to the Auditor-General's report sectional committee review of the fourth quarter 2003-04 reports of the Auditor-General and included in the committee's records as an exhibit? There being no objection, it is so resolved.

Ms GRIERSON—It was pointed out in the audit that there was concern that some of the airport lease documents were not available. Can you now assure us that you know or that you

can identify the whereabouts of the original airport leases for Brisbane, Moorabbin, Hobart and Townsville airports?

Mrs Holmesby—We have been in contact with AGS in regard to that, as they are the ones who are required to maintain that documentation. We understand that access to that information is being obtained. But we also hold copies of that documentation within the department.

Ms GRIERSON—So AGS have the responsibility not for holding them but for making sure they are obtained—is that right?

Mrs Holmesby—I understand that they have the responsibility to hold that documentation.

Ms GRIERSON—So they hold them?

Mrs Holmesby—Yes.

Ms GRIERSON—You do not hold them?

Mrs Holmesby—We have copies in the department but we do not hold the original. The original is held by AGS.

Ms GRIERSON—Has AGS given you any indication that they have obtained copies of all those lease documents?

Mrs Holmesby—No, they have not.

Ms GRIERSON—Have you given them a time frame in which you require those?

Mrs Holmesby—We have inquired about obtaining some copies from them but I do not believe there is any time frame.

Mr Williams—I met with them about two weeks ago and they were going back and reviewing where things were at.

Ms GRIERSON—What if one cannot be located? What are the implications of an original document not ever being located, without even a copy?

Mr Williams—I would have to take that on notice.

Ms Mojica—I understand that, for a number of states, the leases are also registered in the titles and deeds offices in the state where the airport is located.

CHAIR—Are the copies that you have certified copies of the original?

Mrs Holmesby—I believe so.

Ms GRIERSON—As leases do vary from airport to airport, one would think that you could not do an adequate review unless you were doing it on the terms of that lease. I guess we do need to be assured that reviews are being conducted on the terms of the lease itself and of the sale documents—yet, if we do not know where those documents are and we do not know you have copies of them, we cannot have confidence in the review. That is the problem.

Mr Dolan—My clear understanding, which I will verify, is that we hold copies of all the leases—

Ms GRIERSON—That is what we would like to know.

Mr Dolan—but that there is still a process with the Australian Government Solicitor to verify, in some cases, against the originals that everything is precisely as it should be.

CHAIR—That is why I asked you whether they were certified copies. Does the Audit Office have any comment in relation to that relating to your investigation of the matter?

Mr Cochrane—On the safe custody of documents? Yes. Something we try to point out to all departments is the importance of actually keeping any original documentation where the Commonwealth has sent it in, for the rights and obligations that need to be protected. When we first came up against this in the 1998 report, we made the recommendation that they should be looked after. So, from our point of view, we were just following up to see that they had been looked after. The fact that they cannot be found is a less desirable position.

Mrs Holmesby—Following that, there was a concerted effort on the part of the department to obtain certified copies of all documentation from AGS, and considerable effort was put in place to obtain that information. We understood we had obtained that information. On the question of whether or not we can assure you at this stage that they are all there, there is some degree of uncertainty as to whether it was all certified as such, but we understand that we do actually hold copies of documentation. Certainly considerable effort was put in place to ensure that we have that information.

Mr Dolan—On a certified basis.

Mrs Holmesby—But it is the certified basis we are not sure of.

CHAIR—I would like to move on to recommendation No. 4 wherein the ANAO recommended that DOTARS improve its management of the airport lease by developing and implementing reliable systems for the scheduling and conduct of annual lease review meetings and reporting on its performance in conducting these reviews. You agreed, with qualification. Perhaps the ANAO might comment on what the qualifications were before we seek a response from DOTARS.

Mr Boyd—Our understanding of the qualification was the extent to which the department was going to conduct them—annually as opposed to regularly.

CHAIR—Isn't it a condition of the lease that they be conducted annually?

Mr Boyd—No, it is not, but it was one of the undertakings made by the department back in 1998 when we did the sale audit.

CHAIR—DOTARS, do you wish to comment on the qualification?

Mr Dolan—The qualification had two points. The first was that, at the level of resources available to us, a risk management approach led us to the view that doing it on an annual basis was not necessarily the best way to manage it. With the availability of additional resources, that is no longer at issue. The second question was against the fact that we already had procedures in place, and our view was that, rather than developing and implementing reliable systems, we should be improving the systems we already had in place. So, while it is a matter of language, we were concerned that the impression might have been created by the recommendation, which I do not believe is supported by the text of the draft audit report, that we did not have any systems at all.

CHAIR—Does anyone have any questions on that recommendation? There being no questions, does anyone wish to ask any questions on recommendation No. 5?

Ms GRIERSON—When you review performances, I guess there is a problem in that information being shared. These are commercial arrangements. These leases last for 50 years, 99 years, and they would have been contested by people who missed out. One would hope that there would be some public accounting of the performance of these leases, but your review is all we have to judge whether our airports are fulfilling the lease requirements and therefore providing a good service on behalf of the Commonwealth to the people of Australia, yet that information is not shared with the public in any way except as the Audit Office would recommend, perhaps through your annual reports. Can you comment on how you think that information should be disseminated?

Mr Dolan—We agree with the recommendation of the Audit Office that the most appropriate focus for such reporting should be through our departmental annual report. We have been consulting with the airports to deal with the very questions you have been raising about the balance between transparency and commercial sensitivity, to find the right balance for reporting. So we accept the recommendation. It was only the process for arriving at the agreed set of the publicly reportable information that was at question.

Ms GRIERSON—Is the documentation given at the review—the feedback given and the response to it—well documented at this stage?

Mr Williams—Yes.

Ms GRIERSON—Do you use standard pro formas for every airport review? Is there a standard process?

Mr Williams—As Mr Dolan said, we did have systems and guidelines already in place. We have recently reviewed those in the light of the audit recommendation. I think we have made some improvements there. We developed a new set of guidelines, including checklists and templates for each of the stages of the review, including written responses to the lessees. We have undertaken some training internally as well for our staff. We will be using this new set of

guidelines for the next round of lease reviews, including one which will take place in a few weeks time.

Ms GRIERSON—If you were to notify an airport lessee that there was an area that they needed to respond to fairly quickly, would you be confident that, in your process, that would be picked up in some way as not having been done or as having been done?

Mr Williams—Absolutely. The guidelines go through each of the clauses of the lease and have specific questions that are asked for each clause, and confirmation is sought from each of the lessees.

CHAIR—Can I move on now to the area of letters of comfort. It is my understanding that government general policy is that the agency should not be providing letters of comfort because they can incur a long-term liability. How many have been issued? Have any more been sought in relation to the leases other than the 17 that you have reported into? Have you been providing letters of comfort to sublessees? What are you doing to keep a register of these so that we can have an understanding of where our liabilities are?

Mr Dolan—In accordance with the recommendation, the so-called letters of comfort have been recorded on the department's register of contingencies, and there are safe-custody arrangements in place for them. So there is a central holding of information, plus a copy in Mr Williams's work area. The key issue for us is that, while these documents are titled 'letters of comfort', the legal advice we have is that they do not constitute letters of comfort in the sense that is normally addressed by this committee, in that they actually do not enter into any binding commitments on the Commonwealth. Nevertheless, we understand that, given the title that is given to them, they should be appropriately disclosed on the register of contingencies.

CHAIR—How many have you issued?

Mr Williams—My understanding is five.

CHAIR—So there have been no more with any of the newer leases or sales of airports?

Mr Williams—There is only one recent one.

CHAIR—Is that included in the five, or is that No. 6?

Mr Williams—I believe that is in the five.

Mrs Holmesby—That is a new one.

Mr Williams—I am sorry; that makes it six.

CHAIR—So it was five; now it is six—is there a plan for No. 7 on the books?

Mr Williams—Not that I am aware of.

CHAIR—Did you have to seek ministerial approval before issuing letters of comfort?

Mr Williams—No.

CHAIR—Did you refer it to the minister?

Mr Williams—No, not in this case.

CHAIR—Why?

Mr Williams—I think, as Mr Dolan says, we do not regard them as and we have legal advice that they are not letters of comfort.

CHAIR—If the general direction on government policy is that they should be avoided, why wouldn't you have then referred it to the minister to get approval?

Mr Williams—I took a decision within the existing framework that we had been operating in.

Senator MOORE—Is that a delegation you have to make that decision?

Mr Williams—Yes.

Mrs Holmesby—To clarify, we have got very specific legal advice that these are not actually deemed letters of comfort and, as such, do not fall under the requirements in the FMA Act with regard to those. Because they do not actually commit the Commonwealth to anything at all, we do not deem them or see them as letters of comfort. They are effectively just correspondence to the airport lessee sublease holders. We also have legal advice that the terms of the letter are such that it does not fall within that criteria.

CHAIR—ANAO, do you have a comment on that?

Mr Boyd—With regard to what a letter of comfort is, as the departmental officers mentioned the legal advice I have is that these do not give rise to an actual liability. It has been a point of some discussion between us and the department as to what that therefore means. Our understanding, which we have quoted at paragraph 2.36 of the report, is that the definition of a letter of comfort is that they are designed not to give rise to legal liability and that these fit that, so our view is that they are a letter of comfort.

In terms of the other FMA Act obligations, since it does not actually involve entering into an existing commitment, those other FMA Act obligations do not come to rise. Certainly the legal advice we saw that was available at the time of the audit—and I do not know whether further advice has been obtained subsequently—was that, in legal effect, these do represent a letter of comfort although they do not give rise to an actual liability at this point in time. So there is a distinction, but nevertheless our understanding is that they are a letter of comfort. I think the department refers to them as a letter of general assurance.

Ms GRIERSON—As opposed to comfort.

CHAIR—If they have no legal or liability standing, what would be the point of having one of these letters?

Mr Dolan—It is useful to understand the context in which they are normally sought. Because the airports are on a leasehold basis, financiers and people who want to enter into long-term commitments with them are often nervous, not having dealt with leasehold arrangements and the security, or lack of it, that potentially goes with that. The letter from our point of view essentially describes the legal framework and, in describing it, gives some level of comfort in the broad sense as to what that framework does, which would enable someone intending to invest to come to a view about what they are entering into.

CHAIR—So in that letter there is no guarantee of ongoing sublease arrangements should the head lessee fall over?

Mr Dolan—Quite the opposite.

Senator MOORE—Who signs them, Mr Dolan?

Mr Dolan—Mr Williams.

Mr Williams—I signed a recent one. I can provide a copy if the committee wishes.

CHAIR—That would be good. It would help the committee to understand what you term to be a letter of comfort. You can send that in to the committee and they will then review it. Recommendation No. 6:

... recommends that DOTARS include in future Annual Reports comprehensive and accurate performance information on the timeliness and completeness of receipt of expenditure plans and audited reports on Development Commitment expenditure from relevant airport lessees.

Again, you ‘agreed with qualification’. I might start with the ANAO and their understanding of what the qualification is.

Mr Boyd—Our understanding of the qualification is that the department wished to consult with the lessees before including that information.

CHAIR—Because it is commercially sensitive?

Mr Boyd—I guess that must be what is at the heart of the concern.

CHAIR—Given that the lease is for 50 years, going out to 99 years with an option, for anyone seeking to put in a tender in either 50 or 99 years time that information might be slightly irrelevant, so I cannot understand. Given that we are talking about a public asset which has been leased, I think the public have a right to know details of commitment and expenditure, and the idea of commercial sensitivities might be a little outrageous in this situation.

Mr Boyd—I guess we will focus on the department’s performance in obtaining relevant information, not necessarily the substance of what was in that. Therefore from our perspective, whilst it may not be flattering for an airport lessee to be reported on saying, for example, that of the 10 reports this year, six were obtained on time—

Mr Cochrane—Simply put, we would not have made the recommendation if we did not think it was possible to answer it.

CHAIR—So if they are not necessarily containing a lot of detail and verse then what is there to hide if it is only a compliance measure?

Mr Boyd—Indeed. That is our perspective. This was a performance indicator in terms of the department obtaining the information it needs to do its job, not necessarily reporting on the fact that X airport intends to spend its money on this rather than that.

CHAIR—The Department of Transport and Regional Services might like to comment on those questions.

Mr Williams—As a bit of clarification: firstly, as part of the sale conditions the government imposed development obligations on 10 of the airports, so not all airports have development obligations. The obligations are split up into two five-year periods determining a total expenditure commitment over a 10-year period between period 1 and period 2. My understanding is that we provided some information in this year's annual report and that we are looking to provide further information in next year's annual report after discussion with the airports.

CHAIR—Why do you agree, with qualification, on the reporting measure of all this?

Mrs Holmesby—One of the issues we are confronted with effectively on a daily basis is the question of what we actually release in regard to any information provided by the airports. Obviously the fact is that they are commercial entities. Whilst we may consider the information is not something which would be an issue from the point of view of the airport, they do have some concerns from their shareholders and from the question of how it might impact on their business in the way in which it is reported, because it can be misconstrued. Therefore we want to be very careful in regard to how we actually provide further and more elaborate detail to ensure that they are comfortable with the release of the information, given that sensitivity.

CHAIR—But wouldn't you consider that, if they thought it was going to have an effect on the bottom line of their shareholders, that would actually kick their performance in a little bit better to make sure they comply and report?

Mr Dolan—I would agree.

Mrs Holmesby—That is one of the things we want to discuss with them: the fact that, rather than doing it midstream when they have not had a view about it, it is a question of ensuring that they are informed of what we intend to do so that they can actually lift their performance if that is what they need to do.

CHAIR—This question relates to the reviews each year. Was it that the department was not ready to conduct the reviews or was it that the lessee was not in a position to provide the information for reviews? I start off by asking the Audit Office what they found in relation to that.

Mr Boyd—We did not see any evidence of the lessees saying they were not ready to conduct the review.

CHAIR—The department?

Ms Mojica—As a comment, Mr Dolan pointed out that there were a number of external shocks going on at the time and that there was a matter of prioritising resources. But I think it is also important to note that the lease review meetings are not the only times we deal with airport lessees. On a continuing basis we have interactions with them on a number of issues across a number of other regulatory functions that we undertake. So, even during the years when no lease review was undertaken, there would have been some other interactions with the airport where I would think we would have reasonably assured that the airport was functioning as it should. This would be through other regulatory activities that we have where we have occasion to go to the airport to attend to some other regulatory requirements.

Ms GRIERSON—I accept what you say, but we would probably not know that that has happened, whereas under a review we would know very fully what had happened, what was looked at and what lease terms were reviewed properly. We understand that DOTARS is responsible for the operation and development of civil aviation, but that is a different matter.

CHAIR—You have agreed to recommendation No. 9, which is your reporting the achievements against period 1 development commitment for each airport in the next annual report. Again you have agreed to that ‘with qualifications’. Might you state what those qualifications are?

Mr Williams—Again, I think it relates to what Mrs Holmesby talked about before, in terms of the level and detail of information that we were to provide in the annual report. We wanted to discuss that with the airport lessee companies. So some information was provided on period 1 development commitment outcomes and was included in our 2003-04 annual report. But, as I said, we are now looking forward to next year’s annual report and to what level of information we provide in that.

CHAIR—On page 53 you confirm that six airport lessees had met their period 1 development obligations. There are 10 airport lessees in total, with six meeting the commitment and three granted extensions. Which airport lessee has not yet met its period 1 development commitment?

Mr Williams—Again, I have a table here which I could table for the committee. A number of airports have sought extension to their period 1 obligations, and they have been granted—

CHAIR—Yes, there are three of those. Six have met the commitment. That leaves one. Which is the one? Perhaps the Audit Office might have an answer on that for us.

Mr Cochrane—Coolangatta, wasn’t it?

Mr Boyd—Our understanding, at the time of our audit, was that five had claimed to have met it. There was Coolangatta, which was in an uncertain camp. One presumes that Coolangatta then becomes the sixth, which would leave Perth, Hobart, Alice Springs and Adelaide. But the department has yet to finalise its consideration.

CHAIR—Is that accurate? Coolangatta, was it?

Mr Boyd—Our understanding was that five claimed to have met it—Brisbane, Melbourne, Launceston, Canberra and Darwin. Coolangatta was at a very early stage. It was unclear. Presumably, Coolangatta is the sixth that has met it, which would leave as not meeting it Perth, which has an extension; Hobart, which had an extension but which we understood was likely to seek a further extension; Alice Springs, which had also obtained an extension; and Adelaide, which at the time of the audit had not obtained an extension but one presumes that it now has.

Mr Williams—Hobart is currently under consideration.

CHAIR—Is it the wish of the committee that the document ‘Airport Development Commitment Expenditure as required under Airport Sale Agreements’, presented by DOTARS, be accepted as evidence to the Auditor-General’s reports sectional committee review of fourth quarter 2003-04 reports of the Auditor-General and included in the committee’s records as an exhibit? There being no objection, it is so resolved.

Can I say to the Department of Transport and Regional Services that, as a member of this committee—and I am new to this committee, but I have been on quite a few—I really have a problem in that it seems that the ANAO are more across the brief of your report than you are, and you are the people who deal in this each and every day. When we ask questions we get roundhouse answers or we have to dig through, yet those who are reporting on what you are doing seem to be able to come up with the answers a lot more quickly and a lot more easily than you. I find that of great concern. I do not know what other members feel in relation to that.

Ms GRIERSON—I would like to ask another question, Chair.

CHAIR—Yes.

Ms GRIERSON—Given the airport that the chair and I both use regularly is not one of the Commonwealth’s airports, the observation is that growth is huge at the moment, so aviation is recovering, and recovering apace. Of course, there is a debate out there about infrastructure deficiencies across all sectors holding back economic growth in this economy. For me, the development commitments are very important so that we do keep pace with the demands and needs of aviation in Australia. Given that the Audit Office had some concerns about the timely meeting of those requirements or the correct reporting of expenditures under the right categories, can you assure us that development commitments are being met in such a way that the needs of aviation will be well served?

Mr Dolan—Ms Grierson, you have put your finger on the key matter: stability and growth have returned to the aviation industry, so the drivers that lead to infrastructure investment at airports are now back in place. You can see across the board at the airports we are dealing with that they all have capital plans that would enable them to meet the sorts of commitments we are talking about. They have been through a very difficult few years.

Ms GRIERSON—How extensive is the incorrect reporting of amounts of money—claiming that you are buying capital equipment while that capital equipment may not be contributing to

the development and infrastructure improvements? How extensive is that in reporting by airport lessees?

Mrs Holmesby—The issue really is not so much one of dishonesty; it is more one of understanding and appreciation of which amounts are able to be claimed for. It is important to note that the actual amount in total that has been spent by airports in regard to development obligations is far in excess of what was originally required under their agreements. The way in which the process works is that, with the five-year period, each year they are to report on what they have spent against that requirement. That, however, is only a reporting issue and the actual amount that they claim occurs in the final year. In some cases, for instance, they may well have had a major expenditure item that effectively meets the whole cost without having to come forward with individual smaller amounts that they may have previously spent. So the five-year reporting period is the one that really is of importance because that involves the actual amount that they are claiming. That is one of the reasons why we go through that in a great deal of detail. There will be the odd occasion when the airports have put forward items that are not claimable, and that is one of the reasons why we go through it in detail and provide them with advice regarding that matter. Our concern is really more with the fact that the total amount that is acquitted against that five-year period is legitimate expenditure in regard to what is required under the contract.

Ms GRIERSON—What time span does period 2 cover?

Mrs Holmesby—It is a further five-year period after the first five years. However, it may change, as the first period may be extended. The first period has been extended, as you may be aware, in regard to some airports.

Ms GRIERSON—Would you think that the period 2 development commitment, given the growth, is going to be adequate?

Mrs Holmesby—It is not a matter of adequacy; from our perspective it is more a question of what we are required to look at from the point of view of the contract, which is the actual amount that they committed to in that period.

Ms GRIERSON—What flexibility is there to keep progressively meeting the needs of aviation if it suddenly has spikes and peak periods?

Mr Dolan—The key basis for this is negotiations between airlines and airports about future needs. Most of the pricing negotiations that now happen between the major airports and their airline customers get to a five-year agreement on a price path, with assumptions made about infrastructure investment necessary to deal with that growth path. It is actually driven by an agreement between the airports and the airlines about likely futures and the investment required for it, including changes in technology or equipment such as the Airbus 380 and associated work required at major airports.

Ms GRIERSON—I am interested in freight demands but that is another issue. Thank you.

Senator MOORE—Ms Kelly from New South Wales had a particular question about staffing processes. It is a passion of mine, as I am an ex-public servant. As this particular process of

government policy started in 1997, I am interested in Mr Williams's section—the section that is handling this area—and the longevity of the staff, their corporate knowledge, whether there are people in the unit who have been around since the policy began and the general knowledge within the unit of the whole policy period.

Mr Williams—My understanding is that about a third of the current staff have been in the area over the last five years.

Senator MOORE—They have seen the policy from the start until now?

Mr Williams—Yes.

Senator MOORE—You said you had 45?

Mr Williams—35.

Senator MOORE—So about a third.

CHAIR—Is it the wish of the committee that the document entitled a 'letter of comfort', from the Department of Transport and Regional Services, provided to and presented by DOTARS be accepted as evidence to the Auditor-General reports sectional committee review of the fourth quarter 2003-04 reports of the Auditor-General and included in the committee's record as an exhibit? There being no objection, it is so resolved.

Ms GRIERSON—Is that one that has been subject to legal advice?

Mr Dolan—Yes.

Ms GRIERSON—Would it be possible to have the legal opinion on that?

Mr Williams—Yes.

CHAIR—Are you going to table that opinion now?

Mr Williams—I think I have it here, yes.

Senator MOORE—Is that a standard letter and standard legal advice?

Mr Williams—They gave us the standard words to follow.

Mr Dolan—We sought advice on the status of the document and the appropriate form of words to achieve our policy purpose.

Ms GRIERSON—You said earlier that you are intending to put some performance information in your annual report. Have you discussed that with your clients—the lessees? What was their reaction? Is it going to be sufficient to require them to be perhaps more cooperative?

Mr Dolan—We have annual meetings with the airport lessees. The next one is in May and it is at that point that we intend to raise it.

Ms GRIERSON—Is that when you bring them all together?

Mr Dolan—They are all together. We will raise the question with them then. It is more a matter of proposing to them what is going to happen and finding the best way of understanding what their concerns are, if any. It is not about saying we are not going to do this if the airports do not like it.

CHAIR—Can I go back to an earlier question, which was in relation to costs for these review meetings. On page 11 of the audit report, it states that very few administration costs have been recovered. How much has been recovered? What action do you intend to take over the outstanding costs? What reaction are you getting from the lessees on these costs?

Mr Dolan—If I could start with your last question first. The advice we are getting from the lessees, which is backed up by documentation available to them, is that in fact the sorts of costs that are envisaged in this report are not recoverable in terms of the lease. There are assurances in place, as a result of the sale process, to that effect. We are checking the reliability of that information and our view on it. That, I suppose—to work backwards—is the view of the airports as to what they were sold and the conditions of sale. As a result, in terms of the ongoing management of leases, we have not recovered any, on the basis that what we were recovering were specific costs related to particular work to change or to respond to something about the terms of the lease, not about the ongoing administration.

CHAIR—Their understanding is that there is no ongoing cost.

Mr Dolan—The costs of the day-to-day administration by the department of the leases are not something that is recoverable. That is their view, and that is something we have taken account of in the advice that we have taken to our audit committee but we have subjected to our own analysis.

CHAIR—What is the view of the Audit Office?

Mr Cochrane—You can always have a legal tussle over these things, but as we understood it the original arrangement was to allow reasonable costs to be recovered.

CHAIR—When do you expect to have legal opinion on this dispute?

Mr Dolan—We should have it already, shouldn't we?

Mrs Holmesby—We have not actually got the advice. We do not have actual legal advice yet, but we are expecting that shortly.

Ms GRIERSON—I would think that enforcing it would be very difficult—it may be even more costly than the costs you recover; is that a possibility?

Mr Williams—That is certainly the view of Acumen Alliance. For the amount of costs involved, \$242,000, to separate out the function within the overall branch administration would require time sheets and billing arrangements to be put in place. So there certainly would be costs involved.

Mr Cochrane—The background to this recommendation was really about the department determining how much needed to be done to properly administer the leases. Whether the figure involved was \$300,000, \$500,000 or \$100,000, we do not have a view about that. I suspect it would be more than \$300,000 if you were doing all the steps fully.

CHAIR—Are the costs recoverable for the insurance assessment or audit of the company?

Mr Williams—Yes.

CHAIR—Are those the costs that have been recovered to date?

Mr Williams—To date they have not been, no.

CHAIR—What processes do you have in place to recover those costs?

Mr Williams—As I said, we are taking a paper to our audit committee making certain recommendations on whether we should recover those costs or not.

CHAIR—I have received a document from DOTARS which is from the Australian Government Solicitor in relation to letters of comfort. Being mindful that this is on the advice not of the Lex Property Ltd, as the exhibit before was, but of Southern Cross Care, would it be safe to assume that the letters are very similar?

Mr Williams—There is a proposed wording at the back which is followed in relation to Lex Property Ltd.

Mr Dolan—That is the advice on which we have now based a standard form of words.

CHAIR—Is it the wish of the committee that the document entitled ‘Southern Cross Care letter of comfort’, from the Australian Government Solicitor, provided to DOTARS, be accepted as evidence to the Auditor General’s reports sectional committee review of the fourth quarter of 2003-04 reports of the Auditor-General and be included in the committee’s record as an exhibit? There being no objection, it is so resolved. Is there anything that the Audit Office would like to say in conclusion?

Mr Cochrane—No. I think we have covered everything.

CHAIR—Is there anything that the Department of Transport and Regional Services would like to say in conclusion?

Mr Dolan—No.

CHAIR—On behalf the committee, I would like to thank all witnesses who have given evidence at the public hearing today. Thank you for your attendance.

Resolved (on motion by **Senator Moore**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 12.43 p.m.