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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

JOINT COMMITTEE OF PUBLIC ACCOUNTS.

TWENTY-SECOND REPORT.

AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION.

PART II.

Presented pursuant to Statute; ordered to be printed, 27th October, 1955.

JOINT COMMITTEE OF PUBLIC ACCOUNTS.

(Re-appointed 11th August, 1954.)

The personnel of the Committee has not been changed since the presentation of the Twenty-first Report, Australian Aluminium Production Commission, Part I.

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JOINT COMMITTEE OF PUBLIC ACCOUNTS.

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CHAPTER I.—INTRODUCTION.

Your Committee indicated in Part I. of the Report on the Australian Aluminium Production Commission that certain matters were left over for further consideration and report to the Parliament. This part of the Report covers those matters and includes further comments on some questions that were raised but were not, because of pressure of time, fully developed in our first Report.

2. Chapters III. and IV. of this Report deal with the circumstances under which certain ships were bought by the Commission, and certain contracts entered into by it, that were the subject of criticism by the Auditor-General. Prior to drawing up our previous Report on the subject, we received the evidence on the ships and the contracts in question, but did not have time to deal with that evidence because we desired to present a Report to the Parliament on as much as we were able to commit to writing before the Session ended.

3. We have also given considerable thought to the application of the Audit Act to statutory corporations as well as to the general problems associated with the conduct and responsibility of the boards of statutory corporations. Other comments upon these matters will be found in Chapters V., VI. and VII.

CHAPTER II.—LOCAL PURCHASES AND "FOREIGN ORDERS".

(a) Local Purchase of Kneeboots.

4. The Auditor-General drew the attention of Your Committee to the purchase in November, 1951, of 78 pairs of men's rubber kneeboots from "Industrial Outfitters of Tasmania". It was suggested to the Committee that the purchases should not have been made from a suburban retail store; that the purchase price was higher than that paid by the Postmaster-General's Department for kneeboots from the Dunlop Rubber Company; and that certain procedures laid down for contracts entered into by the Commission were not closely adhered to. Your Committee have been to considerable trouble to follow up these criticisms, because we consider it important, once transactions with private firms are criticised in public, to ventilate and report upon all the relevant facts.

5. To obtain any information they were able to tender, we approached—

(a) the Director-General of the Postmaster-General's Department;

(b) a large Australian rubber manufacturing company;

(c) the suppliers of the kneeboots to Industrial Outfitters of Tasmania (the suppliers were English importers); and

(d) we were able to examine the relevant books and invoices of Industrial Outfitters of Tasmania.

As a result of these investigations, we find that a reasonable price was paid by the Commission; that because the supplies were procured from an English source, the comparison with the Australian suppliers' price was not necessarily reliable as a basis for criticism of the transaction; and that, because of the urgent need to procure the kneeboots, the purchase by the Commission from the Launceston retail store was justifiable. The total contract price for the kneeboots was £185 17s. 8d.

(b) "Foreign Orders".

6. In Part I. (*see* Conclusions 66 to 68), Your Committee reported upon allegations regarding the practice of executing "foreign orders" at Bell Bay. As indicated in Part I., we have found no warrant for the suggestion that such practices were widespread. The specific items we mentioned as illustrating the practice of "foreign orders" were made for the General Manager and comprised two frying pans, three firescreens, and some copper pots. The two frying pans and two of the three firescreens are on the inventory of the Commission's assets at Bell Bay; the third firescreen was bought by one of the Commissioners, and the copper pots were paid for by the General Manager, who, following a discussion with the Chief Accountant on the manner in which the job had been put in hand, decided not to take delivery of the pots. The pots were never completed.

7. In regard to the purchase by the General Manager of some glassware and napery for the Commission Guest House, and of a second-hand piano for the Staff Welfare Club of Bell Bay, both of which cost something more than £200, Your Committee found that the tendering procedure prescribed by the Treasury Regulations for contracts of over £200 had not been complied with. The purchase of the glassware and napery was, however, confirmed by the Contracts Committee and the piano was purchased on the approval of the Commission.

8. In the case of the piano, we found that a donation of £100 was given by one of the contractors, and that the balance of £161 came from funds of the Commission, which approved the purchase. The amount expended from the Commission's funds was therefore less than £200.

9. The purchase of glassware and napery for the Commission Guest House was made as a matter of urgency and in pursuance of a delegation to the General Manager to enter into financial commitments up to £10,000 without the prior approval of the Tasmanian Contracts Committee.

CHAPTER III.—THREE VESSELS PURCHASED BY THE COMMISSION.

10. The attention of Your Committee was drawn to the purchase by the Australian Aluminium Production Commission of three vessels—a motor vessel named *Banshee* and two barges, *Polperro* and *Fantome*. The *Banshee* was to be used for towing the two barges *Polperro* and *Fantome*.

(*a*) M.V. "Banshee".

11. When the Commission was considering the purchase of the barge *Polperro* towards the end of 1951, efforts were made to secure a motor vehicle capable of towing the barge. The M.V. *Banshee* was offered to the Commission and was inspected at Geelong, Victoria, in September, 1951. After considering reports on tests undergone by *Banshee*, the Commission's Chief Engineer recommended purchase of the vessel. The General Manager supported the recommendation, and the Tasmanian Contracts Committee authorized purchase for £3,500 on 18th January, 1952, having in mind that the vessel might also be of use in the Wessel Islands survey which was at that time being organized.

12. After purchase, *Banshee* was taken to Bell Bay, where modifications were completed at a cost of £1,259, raising the capital cost of the vessel, including movement to Bell Bay, to £5,132.

13. Your Committee were informed by the General Manager that because of swift tidal current, it was considered unsafe to use *Banshee* for towing *Polperro* from Beauty Point to Bell Bay; but that she is being used for conveying men and materials for various purposes of the Commission.

14. At our request, the Commission submitted a statement on the test of *Banshee* prior to her purchase. The statement revealed that the barge towed by *Banshee* was of a 60 to 70 ton capacity (the *Polperro* was of 200 ton capacity), and that the test was conducted on Corio Bay Inner Harbour in smooth water, whereas the waters in which *Banshee* was expected to work are subject to swift tidal currents.

15. Regarding the possible use of *Banshee* in the Wessel Islands survey, we mention that Mr. Watson described the vessel as "entirely unsuitable for the conveyance of personnel, stores and equipment in open waters around the Northern Territory".

16. The Auditor-General submitted a number of critical comments on the purchase, refit and use of *Banshee*. He pointed out that instead of tenders being called, shipbrokers were asked to locate a suitable vessel, and mentioned that it was not clear to him whether or not any Commonwealth shipping authority examined *Banshee* prior to purchase. No evidence of such an examination was presented to us and we consider that, as in the case of the *Illawarra* (reported fully in Part I.), the services of Commonwealth Departments should have been fully utilized whenever available. Further, the Auditor-General stated that alterations and new installations included the erection of a new top on the vessel, replacement of the original deck, which he understood to be in good order, and the installation of an ice-box. He considered that these alterations were unnecessarily elaborate for a work boat.

17. We were informed by the Commission that between 1st July, 1954, and 30th December, 1954, *Banshee* made only 29 trips between Bell Bay and Beauty Point, eight of which were undertaken for the conveyance of Commission employees and baggage. In view of the limited use to which *Banshee* has been put, we are of the opinion that the purchase and refit, which cost £5,132, were scarcely justified.

18. When questioned on the advisability of disposing of *Banshee*, Mr. Keast said on 22nd February, 1955—

> If it was not to be used as an amenity for the employees it could well have been dispensed with. In private enterprise it would be kept as an amenity.

Whether or not the vessel should be available as an amenity for the staff at Bell Bay is an aspect which might well have been submitted frankly to your Committee earlier in the course of its Inquiry.

19. The explanation given for the purchase and subsequent retention of *Banshee* are not convincing, and the circumstances described suggest that the decision to buy was, at least, insufficiently considered by the responsible officers who recommended the purchase to the Commission.

(*b*) The Barges "Polperro" and "Fantome".

20. Because the Commission's plant at Bell Bay is 25 miles from the nearest railway, river transport assumes considerable importance in the supply of raw materials.* Several types of vessel were considered for carrying limestone from Beauty Point to Bell Bay before the Commission decided in 1950 that the most effective method would be a combination of tug and barge. As it was then anticipated that production of aluminium would commence in 1952-53, the Commission began a search for a suitable vessel.

21. In July, 1951, a steel barge, *Polperro*, with a capacity of 200 tons, was offered to the Commission by Australian Newsprint Mills Ltd., at a cost of £6,000 in Brisbane. The Commission's Chief Engineer inspected the vessel and recommended purchase; but while inquiries were being made concerning towage costs to Bell Bay, *Polperro* was taken to Sydney, and the price was raised to £8,000. The Commission decided to purchase the vessel at this price and the transaction was effected in February, 1952. Although efforts were then made to have the vessel towed to Bell Bay, it was not until August, 1952, that satisfactory arrangements could be completed. In the meantime, *Polperro* was overhauled and structural alterations to improve seaworthiness were carried out by G. H. and J. A. Watson Pty. Ltd., who took over from the initial contractors, Harbour and Land Transport Pty. Ltd.

22. Regarding the preparations made for towing *Polperro* to Tasmania, the Auditor-General drew attention to the fact that work performed in Sydney was transferred from the original contractor, Harbour and Land Transport Pty. Ltd., to G. H. and J. A. Watson Pty. Ltd. The Chairman, Mr. Watson, stated that the original contracting company had requested the Commission to transfer the work elsewhere when it became

* *See* the map, at Appendix No. 14.

apparent that slipping, strengthening and a considerable amount of metal trade work was involved. The Secretary did not call tenders for the work, which involved structural alterations required by the Navigation Authorities to increase seaworthiness, but requested G. H. and J. A. Watson Pty. Ltd. to make the necessary arrangements quickly as he had located a possible towing agent. Mr. Watson submitted a private audit statement certifying that his company made a profit of only £9 16s. 4d. on the work performed on *Polperro*.

23. Our attention was also drawn to the costs of towage to Bell Bay, and to an audit examination which showed an overpayment of £72 to the contracting company. The cost of the tow was increased to some extent by the Commission's insistence on all safety precautions being taken, a sister barge having foundered during a tow. The terms of the towing contract state specifically, *inter alia*—

> . . . The tow will not endeavour to make the fastest possible time at the risk of damaging or losing the barge . . .

24. The tow from Sydney to Bell Bay was conducted by Harbour Services Pty. Ltd., their terms being £6 an hour for the return voyage, to a maximum of £1,750, plus £3 an hour for excess time caused by unavoidable delays, plus incidental costs. The final cost of the tow amounted to £2,325 1s. As payment was calculated on an hourly basis, and the towing ship's log shows that shelter was taken on several occasions, it is understandable that costs were higher than might have been expected in favourable circumstances.

25. After the audit query on the overpayment of £72, a check was made of the calculations and revealed an overpayment of 15s. In explanation of the apparent overpayment of £72, the Commission pointed out that the departure of the vessels from Sydney was postponed for one day on the advice of Harbour pilots, and that the Secretary informed the Bell Bay organization of the commencement of the voyage when the vessels cleared Sydney Heads. The Commission suggests that the calculation showing an overpayment of £72 was based on the Secretary's advice instead of on the towing ship's log, because 24 hours at £3 per hour would account for the difference.

26. *Polperro* reached Bell Bay on 5th September, 1952, and after some modifications were completed its cost was £13,486. *Polperro* was eventually sold by tender in October, 1953, at a net loss of £7,491.*

27. The Auditor-General noted that Australian Newsprint Mills Ltd. were interested in repurchasing *Polperro* after losing one of their barges *en route* from Sydney to Hobart, and suggested that the sale of *Polperro* might indicate a subordination of Commission interests to those of Australian Newsprint Mills Ltd.

28. Mr. Benjamin, a Member of the Commission and General Superintendent of Australian Newsprint Mills Ltd., refuted this suggestion and pointed out that, although, after losing their barge at sea in November, 1951, he had intimated to Mr. Keast that his company was desirous of repurchasing *Polperro* at its original cost, other arrangements had been made by early 1953. Mr. Benjamin added that at no time did his company have an option on the barge.

29. When tenders for purchase of *Polperro* were invited, Australian Newsprint Mills Ltd. did not tender. As a consequence, no tender was accepted and Mr. Keast inquired of the company whether or not it was interested in the barge. In the meantime tenders were called again and the Commission accepted an offer of £5,600 from the Launceston Marine Board, which had previously offered £5,500.

30. Meanwhile, Mr. Keast had reported to the new Commission on 27th April, 1953, that the hulk *Fantome* was available for purchase at a low price at Devonport, and could be put to service at Bell Bay for £2,500. He pointed out that *Fantome* had a greater carrying capacity than the more costly *Polperro* and stated that *Polperro* could be disposed of at its original cost. The Chairman (Mr. Brodribb) was empowered to authorize purchase if requirements of the Marine Board did not involve heavy expenditure. When it was found that necessary alterations were of a minor nature only, the Chairman authorized the purchase and his action was confirmed at the Commission meeting held on 25th May, 1953.

31. The purchase price of *Fantome* was £400 and the towage to Bell Bay wharf cost £759, making a total of £1,159. Plant and materials recovered from the vessel have been valued at £1,300, and it has been estimated that £1,500 was spent in fitting the vessel for carrying limestone.

32. In support of its decision to substitute *Fantome* for *Polperro* the Commission has submitted the following table showing comparative annual operating costs calculated on an estimated annual limestone requirement of 3,600 tons:—

	Fantome.	*Polperro.*
Capital cost of barge fitted for limestone transport (*less* equipment recovered) ..	£1,359	£15,486*
Barge capacity	600 tons	200 tons
Yearly trips	6	18

* Includes estimated £2,000 to complete refit of barge for limestone carrying if it had been retained. For actual outlay, *see* paragraph 26.

Operating Cost.	*Fantome.*	*Polperro.*
	£	£
Towage at £25 per trip	150	450
Maintenance	350	550
Depreciation (5 per cent. per annum)	93	774
Interest on capital	56	635
Interest on capital loss on *Polperro* ..	307	..
Annual operating cost	931	2,409

33. The Auditor-General questioned whether the Commission needed a barge at all on the grounds that estimated annual requirements of limestone were small —originally 3,000 tons, increased later to 3,600, and finally to 4,000 tons—and could have been handled adequately by road transport; furthermore, the Tasmanian Government was considering a vehicular ferry to ply between Beauty Point and Bell Bay. Mr. Keast explained to us that investigations revealed that road transport on a suitable scale would be more expensive than river transport and he was of the opinion that the cost of a vehicular ferry made it unlikely that it would be provided in the foreseeable future. In this connexion, Your Committee has been informed by the Tasmanian Premier that the ferry proposal has been abandoned in favour of a bridge across the Tamar. It is not known when construction of the bridge will be commenced.

34. The Auditor-General also submitted a number of comments on possible difficulties arising from the use of barges, in particular *Fantome*, for transporting limestone to Bell Bay, and suggested alternative methods. These, however, are matters of a technical nature which were duly considered by the Commission.

35. After considering the several transactions involved in the purchase and structural overhaul of the vessels, Your Committee record with some concern their findings that the senior officers of the Commission were not sufficiently acquainted with the purposes for which the vessels would be used and with the conditions under which they would have to operate.

* *See* paragraph 32, and Part I, paragraph 77.

CHAPTER IV.—THE CONTRACTING SYSTEM OF THE COMMISSION.

36. A number of irregularities in procedure associated with contracts entered into by the Commission for the performance of various services was brought to the notice of Your Committee by the Auditor-General and Mr. Conde. We inquired of the Commission what procedure was adopted by the Commission for entering into contracts and were informed that the normal practice was for public tenders to be called, the contract being given to the lowest satisfactory tenderer.

37. Until July, 1951, Mr. Debenham was Resident Engineer and was in that capacity responsible for engineering work conducted on the site.

38. Mr. Debenham stated—

The procedure up to July, 1951, with respect to contracts on construction matters was for specifications to be written and contracts called by the Bell Bay staff. Recommendations were submitted first to the General Superintendent and later to the Chief Engineer, who in turn sought approval from the Tasmanian Contracts Committee. The form of contract finally adopted depended upon circumstances. The Accountant was advised full particulars of service contracts which were referred by him to the Secretary in Sydney. Examples of the latter would be the Retail Store and Cafeteria contracts. Reference to the Commission's files will show that this procedure was observed meticulously.

The normal practice was for public tenders to be called. In some instances, however, where experience showed that no other potential tenders were available or where special equipment was required, quotations were called from available contractors and the quoted price was compared with carefully prepared estimates before proceeding. Sometimes it was advantageous to negotiate with the contractors who had equipment and skilled men already on the site.

39. Thus the procedure prescribed by the Treasury Regulations and Instructions was followed in normal cases, and a supervising authority was provided by requiring that the Tasmanian Contracts Committee of the Commission give its approval to contracts of any consequence. In addition, the General Manager had a delegation to enter into contracts of the nature described in the following paragraphs, up to £10,000, subject to the confirmation of the Tasmanian Contracts Committee.*

40. In view of the statement made by Mr. Conde that "for contracts let for services at Bell Bay, public tenders were not called and the contracts were negotiated directly between individual engineers of the Commission and the contractors concerned", we investigated thoroughly all instances where nonconformity with proper procedures was alleged: our conclusions are set out below.

(*a*) Service and Other Contracts entered into by the Commission.

41. The unsatisfactory features alleged in certain service and other contracts that were brought to our notice can be divided into three heads—

(i) some contracts were let without calling tenders or seeking quotations;

(ii) some contracts were let without the approval of the Tasmanian Contracts Committee; and

(iii) the contracts connected with the sawmill were not advertised or properly drawn up.

42. (i) *Contracts let without calling tenders or seeking quotations.*—Two contracts were here brought to our notice and in each case we find no reason to believe that the interests of the Commission were jeopardized, although in neither case was the formality of tendering observed.

(*a*) The first was a contract let to replace the engineers' and General Manager's offices burned out in a fire in 1951. We were informed that the contract was given to a local builder: that the fire had occurred at 6 a.m. on 3rd November, 1951, and that by 10 a.m. construction work had commenced "over the embers". Quotations were received after construction had commenced and the work was completed in ten days at a cost of £4,000. In this case, the mitigating features mentioned in explaining the omission to call tenders were the urgency of the reconstruction of the destroyed building, and the presence of the contractor on the site, engaged on other work for the Commission.

(*b*) The second contract let without calling tenders was for excavation for the Reduction Bay foundations. In this case, we were informed that other offers than the one accepted could not be obtained because of the specialized equipment required, except from a contractor whose equipment was on King Island, and that the contract was negotiated and a unit rate determined.

43. (ii) *Contracts let without the approval of the Tasmanian Contracts Committee.*—Five such contracts were brought to our notice; each was relatively minor in character and each related to the provision of some service on the site at Bell Bay. In each of them the General Manager approved the contract, but the contract was not submitted to the Tasmanian Contracts Committee for approval—

(*a*) Tenders were invited in 1951 for the operation of a barber's shop, a satisfactory tender was accepted, and the contract was signed by the General Manager in August, 1951. On 15th September, 1953, the contract was varied by the General Manager after negotiations had taken place between the contractor and the Commission's Contracts Officer. The effect of the variation was to charge the barber lower rental rates, "but reference to the Contracts Committee was overlooked".

(*b*) The Commission invited tenders for caretaking the Bachelor's Quarters at Bell Bay, and in each of the two contracts involved, the General Manager signed the contract.

(*c*) The Commission also invited tenders for a labour contract for camp cleaning, and the General Manager signed the contract. The Commission stated that "the arrangement resulted in a saving of administrative time and in wages paid to employees formerly engaged direct by day labour to look after the many matters" involved.

(*d*) Tenders were also invited in July, 1951, for a supply of firewood for the camp boiler house, and the contract was approved by the General Manager. The contract was extended in 1952 and in December further public tenders were called, the same contractor again receiving the contract. The contract was finally terminated in 1954. Evidence was submitted to the Committee indicating that the price paid for the firewood was considerably less than the price fixed from time to time for supplying consumers in Launceston.

(*e*) The Resident Engineer conducted negotiations with a laundry in George Town to provide the men in the camp with laundry facilities. A contract, drawn up by the Secretary and signed by the General Manager, was entered into with the laundry in August, 1951, and has since been let to different persons. The General Manager stated that the contract "has never been considered to be of sufficient importance to bring before the Contracts Committee". It also came to our notice that tenders were not invited before the first contract was entered into, but that for all subsequent contracts tenders were invited.

44. In all these cases, involving small on-site services, the General Manager assumed, as was within his power, responsibility for approving the contracts; but did not submit them later to the Tasmanian Contracts Committee for approval on the ground that they were small service contracts for which it was unnecessary to seek the Committee's approval.

45 (iii) *The contracts connected with the saw-mill.*—Because sawn timber was extremely difficult to procure, the Commission decided to install its own mill and ultimately procured a second-hand plant from Victoria. The mill began to operate in February, 1952, advertisements having produced a contractor to supply the mill with timber. Later in the year, tenders were called for saw-millers on contract rates, as it was clear that this would be cheaper than employing the Commission's own labour at the mill. Thus, we found no evidence that public tenders had not been sought in an appropriate manner for both logging and milling.

46. Mr. Conde suggested to the Committee that "the contract for the saw-mill was not prepared in proper form and the elements of the contract were not present in writing". The Commission advised us that—

The Commission's files contain a copy of a letter detailing the arrangement entered into with the contractor on 21st January, 1952 (to supply the mill with timber). The copy upon which the Contractor signed "I agree" has been mislaid, but the existence of the arrangement is acknowledged in the signed copy of the letter detailing the arrangements contained in the second contract of 6th May, 1952 (dealing with operation of the sawmill), and in any case, the Contractor has agreed, if necessary, to certify a copy of the first agreement from a certified copy in his possession.

As efficiency of operations increased, a stage was reached when the profits accruing became more than might be considered reasonable, due in the main to a change of timber lease giving easier logging and on 21st October, 1952, a new contract was negotiated at 25s. per 100 super. feet of sawn timber.

47. The Commission stated that Mr. Conde's suggestions that the contract was not clear, and that variations were made by verbal agreement from time to time, were incorrect. We note that operation of the mill ceased in June, 1953, when the demand for wood for construction was easing off, and that during the eighteen months of operation some 750,000 super. feet were produced at a cost of 65s. per 100 super. feet. Figures were submitted to us indicating that the cost to the Commission of the timber from its own mill compared favorably with the price paid for sawn timber from outside sources, and Mr. Keast said in evidence that "an analysis of the overall figures of the saw-mill showed that the timber we put through the mill was cheaper than any other timber we used at any time".

48. Questioned about the fate of the saw-mill now that the Commission's need for it had ceased, Mr. Keast said that it would, as with other construction equipment, "come up for sale when we hold our sale of all construction equipment".

49. As to the general advisability of obtaining the saw-mill, we received the following evidence:—

Committee Member.—Have you ever attempted to take out, in terms of money, the saving that you would have effected by milling your timber through that mill as against purchasing it at the average price, apart from the imponderables that you have mentioned?

Mr. Keast.—No, I have not, but it would be possible to do so. It would be a pretty tricky job because of buying from so many different places at the time. It could be done. I am quite sure that we came out of this whole deal on the right side of the ledger—well on the right side.

Committee Member.—Allowing a big portion for imponderables, or do you mean in money terms?

Mr. Keast.—I mean in total as a business proposition.

50. While the contract may not have been in a standard form, we were informed that the Tasmanian Contracts Committee approved the proposal to purchase the mill, and that advertisements seeking appropriate contracting services were inserted in the press. The evidence received by Your Committee has led us to the conclusion that in fact the Commission acted in this case with prudence and efficiency, and that all the necessary formalities were complied with.

(*b*) Bulldozing Contracts.

51. The Auditor-General suggested to Your Committee that we should examine certain features of the contracts let to Mr. D. Simons, a local contractor, for bulldozing work. The matters to which our attention was drawn relate to a failure to invite tenders for the bulldozing services, to the inadequacy of the control exercised over the bulldozing operations, to the charges made by the bulldozing contractor, Mr. D. Simons, and to certain of the claims made by him on the Commission.

52. We have given these matters our most careful consideration and received lengthy statements upon them from the General Manager and from the Field Engineer responsible for supervising the performance of the work.

53. The bulldozer was hired, after tenders had been called, from Mr. D. Simons, who was paid for gravel winning at hourly hired rates adjusted in accordance with the nature of the work. Repeated but unsuccessful attempts were made by the Commission, in view of the extent of the work, to obtain other persons, including the Public Works Department of Tasmania, to carry out bulldozing operations for the Commission; but the General Manager stated that, as time went on, the senior operators "became very familiar with it and skilled in it in consequence. It would have been most inadvisable, wasteful and costly to have attempted to use other contractors with less skilled operators".

54. We were informed that the rates charged by Simons were at least comparable with those charged by the Commonwealth Department of Works: for the heavy work entailed in gravel winning, the Department of Works would have charged 81s. 6d. an hour plus transport and extra maintenance costs, the Tasmanian Public Works Department would have charged 78s. 9d. an hour plus transport and maintenance, while Simons charged an inclusive charge of 80s. an hour for one operator, 90s. an hour for two, and for larger machines, with two operators, 100s. an hour. The General Manager concluded—

. . . taking into consideration the high rate of output achieved by reliable machines skilfully operated, the Commission is satisfied that it had this work done in the most efficient manner possible and on the best terms available. It is not agreed that there was any avoidable expenditure.

55. Audit comment was made on an adjustment of £432 made in June, 1953, for bulldozer hire in January, 1952, on paying another claim submitted by Mr. Simons. The adjustment was in respect of a period of some three weeks for which Mr. Simons had received payment twice, and was made when the error was detected by the Commission's staff.

56. We also noted that in some cases the procedures laid down by the Treasury Regulations and Instructions were not strictly adhered to. However, when the infringements were brought to the notice of those concerned, they were rectified. But we found no evidence

* The delegation to the General Manager to enter into contracts subject to confirmation by the Tasmanian Contracts Committee was reduced in March, 1955, to £5,000, with the completion of the construction phase.

whatever of any improper negotiations taking place between Mr. Simons and any member of the Commission's staff.

57. The contractor in question, Mr. Simons, appears to have performed the services required of him with all reasonable skill, and the Commission has indicated that it was well satisfied with his work. Your Committee see no reason to take the matter further.

58. We received evidence on certain other contracts entered into by the Commission, notably those concerning cartage for the Commission by Mr. Simons and others. The evidence submitted, however, has satisfied us that the facts are similar to those in the cases reviewed above and we recall our Conclusion in Part I. of our Report: "Having carefully investigated the possibility of fraudulent practices in connexion with the letting of contracts, the Committee found that the practice followed by the Commission of calling tenders before letting contracts was generally satisfactory, given the conditions prevailing at Bell Bay. The letter of the Audit Act and Treasury Regulations was not always adhered to, but the Committee is satisfied that the methods adopted were characterized by due care and prudence". (Conclusion No. 35.)

CHAPTER V.—FURTHER CONSIDERATION OF THE AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION AS A STATUTORY CORPORATION.

(a) Commission or Department: What the Statutory Corporation Means.

59. In Part I. of our Report we discussed some of the characteristics of the statutory corporation and mentioned types of public activities for which it had been used. We also mentioned that while Australia had long used the statutory corporation for managing different kinds of government activities, there was much less appreciation in Australia of the status of the statutory corporation than in the United Kingdom.

60. From statements made and questions asked in the Federal Parliament from time to time it is clear that there is a belief that a Minister should accept a similar responsibility for the affairs of a statutory corporation as he does for the activities of a government department such as Health, Commerce and Agriculture, or Territories. If this were so, there would be no point in creating a statutory corporation at all; indeed, such action would merely complicate the machinery of administration without affording any advantage.

61. We therefore feel it necessary to reiterate the views we expressed in Part I. (Chapter III., Section (a)) and to re-emphasize the opinion of your Committee that the status of the statutory corporation is very different from that of a conventional government department. Recourse to this kind of government agency carries with it a profound modification of the principle of Parliamentary control and of the doctrine of ministerial responsibility.

62. The traditional theory of democratic government is that there is always some representative of the people who can be held responsible for all the actions of government. Throughout the nineteenth century a system of parliamentary government evolved which ensured such answerability. The party for whom the electors express preference forms the government and remains in office as long as it retains the confidence of the electors. The functions of government are distributed between Departments, and Members of the Cabinet are assigned to those departments to direct their activities. The actual administration is committed to public servants who hold their positions permanently on the condition that they remain anonymous and keep aloof from party politics.

63. This comparatively simple system admirably fitted the restricted area of administration with which the nineteenth century political philosophy was satisfied. Now that governments are attempting to organize and direct most of the activities of society, it is common ground amongst critics of government that the doctrine of ministerial responsibility is wearing rather thin and parliamentary control is losing much of its substance.*

64. With the realization at the beginning of the twentieth century that public utilities could be used to influence the rate and direction of social progress, the movement towards public ownership accelerated, but it was quickly appreciated that if already overburdened Ministers were to assume a similar responsibility to Parliament for these activities as they did for the ordinary government department the machinery of democratic government would break down of its own weight.† Hence was created the statutory corporation.‡ When the Parliament enacted measures to put these public utilities, business undertakings, and many other types of activities to which we referred in our first Report under the management of statutory corporations, it was understood and generally accepted that the responsibility of Ministers would be restricted to broad aspects of general policy and not to the day-to-day administration of the corporations.

65. Since World War I. there has been a trend, perhaps more marked in Australia than elsewhere, away from the policy of giving statutory corporations autonomy in administration and finance, because of the desire to use them to give effect to the social and economic policy of the government of the day. Indeed there are some conventional Departments that manage Government undertakings and public utilities, and there are statutory corporations that have been brought completely under ministerial direction. In both cases the original conceptions have been departed from, and the distinction between the two forms of Government organization have become blurred.

66. In the United Kingdom, where giant strides have been taken in the creation of statutory corporations, the climate of public opinion has favoured the view that the Parliament intended to limit the responsibility of Ministers to general policy and Mr. Speaker in the House of Commons always disallows questions that seek to ignore such limits. In Australia, however, where people are vividly aware of the manner in which the activities of the various statutory corporations impinge upon their lives, there is often a vigorously expressed claim that Ministers must be responsible for the statutory corporation in a similar manner as they are for the ordinary government department.

67. We repeat our statement, to be found in paragraph 21 of Part I. of our Report, that unless the corporation is given a degree of managerial freedom, the burden upon the Minister will be intolerable and the objectives sought in creating the statutory corporation will not be attained. These objectives include continuity in policy, flexibility in organization, freedom in management and elasticity in finance—characteristics that are not necessarily found in the organization of ordinary government departments, where it is expected that both high policy and detailed administration will bend in the direction desired by the government of the day.*

68. In the following sections of our Report Your Committee examine at greater length and attempt to relate the principles underlying the statutory corporation to the specific problems of Bell Bay and other Governmental corporations.

69. Comments made upon Part I. of the Report have revealed some misapprehension as to the nature of the statutory corporation which we were discussing. We had in mind, when making our comments on statutory corporations, the kind of public corporation that is exemplified by the Australian Aluminium Production Commission: a corporation formed to conduct large-scale enterprises, and granted powers and functions similar to those conferred by their charters of incorporation upon other large-scale business enterprises in the productive and commercial field. We are aware of the different types of statutory corporations set up for other purpose—for instance, the independent regulatory type of corporation which became in the 1930's such a familiar part of the pattern of government agencies in the United States of America; the public utility corporation that has been used to provide such facilities as transport, power and water supply; and the corporation that is fitted into the scheme of the Executive government and is responsible directly to a Minister on most matters, such as housing and afforestation, or operates in the field of social services, as do hospitals.

70. Your Committee consider that the problems of the statutory corporations with which we dealt in Part I. may, in some cases, have been problems also of these other kinds of statutory corporations, but made their observations and recommendations having in mind the corporation producing goods for sale of which the Australian Aluminium Production Commission is an example.

71. Statutory corporations can be classified according to their functions, their structure, their financial autonomy and so on. It is interesting that D. N. Chester, in the 1948 edition of *Nationalised Industries: A Statutory Analysis*,† virtually refused to define a public corporation—

> Most people who are asked to define a public corporation would probably reply by giving an example—the B.B.C. or the Central Electricity Board or the National Coal Board, or even perhaps the Port of London Authority. This is probably a sound instinct, for though the creature is usually recognizable it is less easy to define. There is no single pattern or model. The elephant and the squirrel are animals, and the British Transport Commission and the Port of London Authority are public corporations and the differences are not without importance. True, there are certain common features; there is usually a board of management, appointed and not elected, with defined statutory duties and powers and with a revenue usually derived from the sale of its products or services. The board is usually a body corporate, with perpetual succession, a common seal, and power to hold land without a licence in mortmain. But each Corporation has its own peculiarities; it may for example, differ in the numbers and tenure of the members of the Board, or in the way it obtains its capital, or in its relations with the Minister.

72. In the second edition of his book,‡ Mr. Chester indicates that he has taken as the criterion of his survey of nationalized industries, whether the body does or does not manage industrial undertakings. Having made this the criterion, he divides the corporations he studies into four groups, according to the form of the "nationalization" Acts—

> As the form of organization and management adopted in these Acts was that of the public corporation the booklet is primarily an analysis of the public corporation in Great Britain. But I have excluded many bodies which might claim to be public corporations, e.g. the National Assistance Board and the Central Land Board, because they do not manage industrial undertakings included in the nationalization legislation.

73. On the other hand, Mr. L. C. Webb§ classified statutory corporations according to the disposition of executive and managerial functions—

> Broadly speaking, the organization of public corporations has two possible alternatives. In the first—the Australian Broadcasting Commission is an example—the administrative side of the organization comes to apex in a general manager, over whom there is a board or commission which decides policy issues in greater or less detail. The chairman of the board or commission usually gives his full time to the job; the ordinary members are usually part timers. The second pattern, which is less common, is represented by the Snowy Mountains Hydro-Electric Authority. The three members of this authority—the Commissioner and two associate commissioners are collectively a policy making body, but in addition each assumes responsibility for three of the nine divisions in which the staff is organized.

74. Our attention was drawn by Mr. Webb¶ to the Canadian attempt to differentiate, in actual legislation, between three types of public corporation. The object of the classification was to distinguish between public corporations for the purpose of the financial control exercised over them by the Government. The three classes are—

> (i) Departmental corporations, which have administrative, supervisory or regulative functions, closely akin to an ordinary department, and are financed by appropriations.
>
> (ii) Agency corporations, which undertake trading, service or procurement functions and usually have revolving funds.
>
> (iii) Proprietary corporations, which manage lending, financial, commercial or industrial operations and are expected to finance themselves from the sale of goods or services.

75. We are of the opinion that for the purpose of our discussion, the Australian Aluminium Production Commission might be classified with the "nationalized" type of corporation described by Mr. Chester and analysed in his book, or with the "proprietary corporation" which is the third class of Canadian corporation. As we observed in Part I. of our Report, many of the problems which the Australian Aluminium Production Commission had to face were a result of the lack of any clear statutory definition of the lines of authority on the Ministerial side. (Part I., paragraphs 28, 35, 58, 103, 127, 129, 130, 134, 137, 142; Conclusions Nos. 1, 4, 6, 10, 19, and 20; Chapters III. and IV.)

(b) The Existence of a Financial Interest in a Member of the Commission.

76. In Part I. Your Committee considered at some length (*see* paragraphs 99, 107, 121 and Appendix No. 7) the disqualifying conditions that are normally included in the constitutive Acts of corporations to deal with the case where a member of the board has some financial interest in a transaction with the corporation.

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* Cf. Article by Frank Green, "Changing Relations Between Parliament and the Executive"—*Public Administration (Sydney)*, Vol. XIII., No. 2 (New Series), June, 1954.

† Cf. *The Public Corporation in British Experience* by Sir Arthur Street, 1947, page 19.

‡ One "advantage which the Public Corporation has over Government operation . . . is an organizational advantage. . . . With the expanding field of Government activity, the pressure on Ministers and their advisers is intense and growing. To create more Ministers would not solve the problem because that would only transfer the pressure to the Cabinet itself heavily burdened. Thus, a delegation of responsibility to Public Corporations for matters of day-to-day industrial management is well worth while in itself. It divides up the work as it should be divided, with Ministers responsible for policy and a Board responsible for getting on with the managing job. It imparts a flexibility to the operations of the industry which they could not have if the industry were directly geared to the Government machine." Herbert Morrison's *Socialisation and Transport*.

* *The Public Corporation in British Experience*.

> "To-day, the Postmaster-General may be questioned on the absence of pen-nibs in the sub-office in little Twittering and a reply will probably be forthcoming at the expense of wasted time and labour on the part of a number of busy people". But note the comments made by the Chairman of the Australian Broadcasting Commission, quoted in Appendix No. 13, page 90.

† *The Nationalised Industries: A Statutory Analysis*, D. N. Chester, I.P.A., London, 1948. The Second Edition was published for the I.P.A. by George Allen & Unwin Ltd., London, 1954.

‡ *Public Administration* (Sydney), Vol. 13, No. 2, page 101. Leicester Webb: Broadcasting Commission. See also, John Rydon, "The Australian Broadcasting Commission," *Public Administration* (Sydney), Vol. XI., No. 1.

§ In a memorandum to the Committee on "Public Corporation," that is quoted at Appendix No. 16.

77. Your Committee were of the opinion that, in the cases of Mr. Watson and Mr. Bennett, no harm was done to the financial interests of the Commission by virtue of the financial interest these Commissioners had in certain transactions with the Commission. We observed also, that in the case of the Australian Aluminium Production Commission, the Members hold office during the pleasure of the Governor-General and therefore do not automatically disqualify themselves by having some financial interest in a transaction with the Commission.

78. We noted the Opinion of the Solicitor-General that because of the particular way in which the *Aluminium Industry Act* is framed, Members of the Commission are given no guide as to the course of conduct they should follow or the kinds of action that might bring about a termination of their commission. Your Committee are of the opinion that it is generally undesirable that Members of the Commission should have any pecuniary interest in transactions with the Commission; but, in any case, Members should not take part in any discussion by the Commission of matters in which their interests are involved. We found no evidence that any of the Commissioners wished to act otherwise than with complete propriety. Thus, Mr. Watson, who was at the time Chairman of the Commission, declared his interest in all relevant cases (though he did not in *all cases declare it to the* Minister) and took no part in the discussion of the Commission concerning the transactions in question. In this way he *acted in accordance with provisions laid* down in most Companies Acts for the declaration of a financial interest.

79. Your Committee have been informed that the stringent requirements of such acts as the *Australian National Airlines Act* 1945-1947 and of the *Coal Industry Act* 1946-1952 have made it difficult always to appoint suitable persons to the boards in question. Men of the calibre and experience required, acting with the scrupulousness that is properly demanded of people in such positions of public trust, have been unwilling to accept appointments to boards because of their difficulties in regard to the "financial interest" provision.

80. We note that the *Australian National Airlines Act* 1952 amends the disqualifying provision of the 1945-47 Act, so that it reads now as follows*:—

(1.) A Commissioner shall be deemed to have vacated his office—

(*f*) if he—

(i) becomes concerned or interested in any contract or agreement entered into by or on behalf of the Commission; or

(ii) participates, *or claims to participate*, in the profit of any such contract or agreement or in any benefit or emolution arising from the contract or agreement.

(2.) A Commissioner shall not be deemed—

(*a*) to become concerned or interested in a contract or agreement specified in paragraph (*f*) of the last preceding sub-section; or

(*b*) to participate, or claim to participate, in the profit of, or in any benefit or emolument arising from, such a contract or agreement,

by reason only—

(*c*) of his being a director of, and in receipt of director's fees as such from, a company *consisting of more* than twenty-five persons which has entered into a contract or agreement with the Commission, if, at a meeting of the Commission held prior to the entering into of the contract or agreement, the Commissioner has declared the nature of his interest in that company;

(*d*) of his being a member of a company *consisting of* more than twenty-five persons which has entered into a contract or agreement with the Commission; or

(*e*) of his entering into, or obtaining a benefit arising from, a contract or agreement between the Commission and himself for the transport by the Commission of himself or another person or of any goods.

* See also Appendix No. 17, where a memorandum from the Chairman of the Australian National Airlines Commission which deals with this point is quoted.

81. The purpose of this amendment of the Act is, we understand, to enable men who would otherwise have been unable to become Commissioners, to accept or retain an appointment to the Commission. We note, however, that the directorship or membership of a company *entering into a contract with the Commission* that is permitted by the Act relates to the provisions governing the formation of a public company under the *Victorian Companies Act*. In the two cases of Mr. Watson and Mr. Bennett, whose interests were in private companies, this amendment to the disqualifying provisions of the Australian National Airlines Act would have brought no relief. We mention this difficulty, and recommend that it be seriously considered before any further legislation for any of the statutory corporations is drawn up.

82. In the case of Mr. Watson we pointed out in Part 1 of our Report that his financial interests were not fully made known to the Minister until after he had ceased to be a Member of the Commission. Although he held office in terms of the Aluminium Industry Act under the "during pleasure" provision, his retirement from the Commission was not made under that provision.

83. Mr. Bennett is still a Member of the Commission, but the amounts involved in his financial transactions with the *Commission were very small*. Nevertheless, if the "financial interest" clause were interpreted strictly and had applied to Commissioners of the Australian *Aluminium Production* Commission, we take it that it would be necessary to terminate his appointment with the Commission.

84. We incline to the view that the most satisfactory provision is that contained in the Aluminium Industry Act, which reads—

5.—(4.) The Members of the Commission shall hold office on such terms and conditions as the Governor-General determines. . . .

The actual instrument of appointment, however, contains no limiting terms or conditions. (*Part 1*, paragraphs 101-103.)

85. *It may be desirable to* give some indication of the terms and conditions of appointment in broad outlines, such as providing that appointment might be terminated in the event of the Member's bankruptcy, insanity, or his engaging in financial transactions that are prejudicial to the interests of the Commission because of a conflict of interests or the improper personal profit accruing. If this be done, the discretion exercised by the Government in terminating an appointment can more readily be subjected to parliamentary scrutiny and criticism. We believe, however, that the disqualifying conditions should not be too tightly drawn, especially where a provision so tenuous as that in respect of "financial interest" is concerned.

86. The Solicitor-General (in his Opinion of 11th February, 1955, quoted fully in Appendix No. 7, Part 1 of our Report) drew the attention of Your Committee to Section 5 of the United Kingdom Atomic Energy Authority Act 1954, which is as follows:—

5.—(1.) A member of the Authority who is in any way directly or indirectly interested in a contract made or proposed to be made by the Authority shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at a meeting of the Authority.

(2.) Any disclosure made under sub-paragraph (1.) of this paragraph shall be recorded in the minutes of the Authority and the member—

(*a*) shall not take part after the disclosure of any deliberation or decision of the Authority with respect to that contract; and

(*b*) shall be disregarded for the purpose of constituting a quorum of the Authority for any such deliberation or decision.

87. The comment of the Solicitor-General is that "this provision is probably based on the rules applicable in ordinary companies. It does not, as you will note, deal expressly with what is to be the effect, if any, upon a contract where the requirements had not been complied with." Setting aside the question of the effect that non-observance of these requirements ought to have upon contracts entered into by the authority, we are of the opinion that there is much to be said for allowing boards the freedom to have as members persons who may have financial interests in some of the transactions of the statutory corporation concerned,* provided the usual safeguards, such as disclosures of interests, are observed.

88. We recommend that consideration be given to standardizing the provision for the disqualification of members of boards on account of financial interest. If some statutory provision is considered necessary, then a provision along the lines of the United Kingdom Atomic Energy Authority Act 1954, the most satisfactory of the statutory provisions brought to our notice, should be adopted for all boards.

89. In connexion with the question of "financial interest" as a disqualification for officers on governing boards, the broader question arises as to the form of the tenure to which the disqualifications are to apply. The alternative forms of appointment to governing boards are—

(*a*) tenure "during pleasure" of the Governor-General;

(*b*) tenure for specified terms, subject to particular disqualifying conditions (as in the Air-lines Act); or

(*c*) a combination of tenure "during pleasure", and tenure for a fixed term, subject to *particular disqualifying conditions*.

90. The form of tenure adopted in any particular instance will depend upon the reasons for the creation of the board; but we note that one of the more important considerations that will have to be taken into account is the extent of the service likely to be required of the members of the board. If, for instance, the obligation is merely to attend a monthly meeting, *as in the case of the Australian Aluminium Production* Commissioners, then it might be that less stringent disqualifying conditions should be prescribed than if the members of the board are expected to give their full-time services. It might even be that the qualifying conditions should be different for the part-time and the full-time members of the board.

91. We conclude, not by attempting to lay down any *specific rules, but by recommending that when any* existing legislation creating boards of statutory corporations is being amended or when any new legislation is promulgated setting up further boards, a clear decision should be made on these issues, based on consistent and comprehensive principles that take into account all the relevant conditions.

* We note with interest the decision of the New South Wales Local Government Department, reported in the *Glen Innes Examiner* (N.S.W.) dated Wednesday, 24th August, 1955, that two Aldermen of Glen Innes Municipal Council who had a financial interest in the Glen Innes Rural Co-operative Society Ltd. should resign their offices as Aldermen because of their interest in the Society. The Ordinance under which they were disqualified provides that no member of a Council may have "a direct or indirect pecuniary interest in any agreement or trading with Council". The interest of the two Aldermen in the Glen Innes Co-operative Society was extremely small.

(*c*) Over-commitments by the Commission.

92. In Part I. of our Report, we mentioned briefly the Opinion given by the then Acting Solicitor-General in 1953 that where, in the system of responsible government established under the Constitution, the Executive Government is empowered by statute or otherwise to enter into a particular contract, the fact that the contract involves the expenditure of public funds in excess of or in advance of Parliamentary appropriation will not of itself, as a matter of law, make the contract invalid. It appears that the Australian Aluminium Production Commission asked the Solicitor-General for advice on the application of this rule to the commitments entered into by the Commission.

93. Your Committee have been supplied with a copy of the advice given by the Solicitor-General in response to this request, and quote the advice in full in Appendix No. 18. The mere fact, the Solicitor-General states, that the Commission was at certain stages committed to expenditure in excess of the total amount provided by the Parliament cannot be regarded as involving any breach of law by the Commission, or as invalidating any of the Commission's contracts. It follows also that the Act cannot be regarded as having made it legally necessary for the Commission to obtain the Minister's approval for a contract which would involve the Commission in expenditure beyond the amounts provided by Parliament (unless of course the contract were in excess of £50,000).

94. The Solicitor-General points out that, under the administrative arrangements prescribed by the Act, the vital provision is the requirement that the Commission should keep the Minister fully informed of its operations. This requirement would enable the Minister (in concert with the State Government) to give to the Commission such direction (if any) as he might think necessary to ensure that the Commission would not commit itself beyond the funds available. Such a direction could be absolute; on the other hand the Minister could, if he thought fit, go no further than to forbid over-commitment by the Commission unless and until he had had an opportunity of assuring himself that any further necessary funds would in due course be available.

(*d*) The Obligation upon the Commission to Keep the Minister Continually Informed.

95. Your Committee discussed at some length in *Part I. (see paragraphs 35 to 37 and 41 to 54)* the nature of the obligation imposed upon the Commission by the Aluminium Industry Act to "keep the Minister *continually informed*", and the manner in which that obligation had been discharged by the Commission.

96. We wish to make two further observations upon the obligations imposed by the Aluminium Industry Act. In the first place, we regard the obligation to keep the Minister continually informed as the *minimum* that can be required assuming that the Parliament wishes to retain any degree of ministerial account*ability*. Because of the *implications inherent in the* idea of the statutory corporation, we consider that any provision in the constitutive Acts of statutory corpora*tions imposing duties upon the corporation* in respect of the Minister, additional to those of reporting, should be looked at carefully whenever these bodies are formed.

97. Where an ordinary Department of State is concerned, the responsibility of the Minister for all the actions of his Department is part of the texture of Parliamentary Government. Only occasionally does the question arise as to the extent of the respective powers and duties of Ministers and officials. In the practice of the United Kingdom Treasury, the Lords of the

Treasury have issued instructions, which provide that an Accounting Officer is to be responsible for each grant made by the Parliament*—

He signs the Appropriation Account, and thereby acknowledges his responsibility for its correctness. "This officer is the person whom Parliament and the Treasury regard as primarily responsible for the balance in the custody of the Department, although he himself may not hold one farthing of it. In respect of him, every person having charge of any portion of the money issued to, or received on behalf of, the Department is simply in the position of a sub-accounting officer.

"It cannot be too distinctly announced that responsibility for the proper conduct of financial business cannot be delegated to the subordinate officers who may be placed in charge of the Departmental Accounts. The signature appended to the Appropriation Account would be otherwise an idle form, calculated only to mislead Parliament.

" . . . Technical knowledge of accounts is not necessary to enable the Accounting Officer to discharge himself of the responsibility which his signature implies. . . . Accounting Officers must take precautions to secure the recovery and bringing into account at proper times of all extra or other receipts connected with the votes under their control; . . . and it is incumbent upon them, before making or allowing payments, to satisfy themselves, by means of statements duly certified by the officers entrusted with the detailed duties of the account, as to the correctness and propriety of the transaction.

"If they can show that they have not acted except on such statements, that they have not failed in a due exercise of their own common sense and administrative experience, and that in any case of serious doubt or difficulty they have consulted the officers deputed by the Treasury for the purpose they will be considered to have discharged themselves of their responsibility."

. . . . . .

The Accounting Officer is responsible both to Parliament through the Public Accounts Committee of the House of Commons and to the Ministerial Head of his department; but the dual responsibility is not inconsistent. The Public Accounts Committee (to whom he answers as to a judicial tribunal for what he has done may discharge him but takes no responsibility for his action and gives him no orders. If it does not wish to discharge him, it can only report, and the House itself can act on these reports only by action which must necessarily be directed to the executive Government, i.e., the Ministerial Head.

His responsibility to the Ministerial Head of his Department, on the other hand, is not judicial but administrative; he acts on behalf of and in the name of the Minister. His acts commit the Minister, and he must answer to him for what he has done in his behalf.

. . . . . .

"It is extremely rare for a Minister to override, without reference to the Treasury, the written protest of his Accounting Officer to the effect that the concurrence of the Treasury is necessary to action involving the expenditure of public funds. Without questioning that such action is within the power of the head of a Department, (My Lords) venture to question the expediency of such a course save in circumstances wholly exceptional."

98. This extract from the United Kingdom Treasury Manual indicates the relations between the Minister and the Accounting Officer in safeguarding the expenditure of public funds.

99. In the case of the statutory corporation which has been given some autonomy of operation by the Parliament, the relationship to the Minister and the Parliament must necessarily be different. Even if we accept the contention that nowadays the autonomy of the statutory corporation will be severely restricted, existing circumstances result in the operations of the statutory corporation being caught up between the opposing requirements of the degree of corporation autonomy and of ministerial control to be allowed. While Your Committee appreciate the logical force of these opposing requirements, we are not convinced that in actual administrative experience the dilemma is insoluble: the question that must be faced in the case of statutory corporations is whether, given that the objects and existence of the corporations have been decided upon, sufficient control is left with the Minister. At the same time, care must be taken to avoid making the corporation a mere facade behind which Ministerial control operates unrestrained.

100. We consider it appropriate that bodies like the Australian Aluminium Production Commission should be given substantial autonomy. The criterion for the adequacy of their administrative structure, so far as Ministerial control is concerned, is, therefore, whether the obligations imposed upon the corporation by its constitutive Acts do more than permit the necessary exercise of a defined Ministerial control. As we have already stated, the obligation to keep the Minister continually informed is fundamental. Other obligations imposed upon the Commission, such as under section 14D of the *Aluminium Industry Act* 1944-1954, which provides that the Commission is not, except with the approval of the Minister, to enter into a contract involving a payment by the Commission of an amount exceeding £50,000, must be judged according to whether they still leave in the Commission sufficient autonomy. On these grounds, as we indicated in Part I., the Aluminium Industry Act, which provides for annual report and audit, for Ministerial approval for sale or disposal of the undertaking for entering into large contracts, and for the provision of information for the Minister, is satisfactory. The difficulties of the Aluminium Industry Act are in rather the reverse direction; much of the ordinary administrative framework normally set down in constitutive acts is omitted from the Aluminium Industry Act (Part I., paragraph 103 and Conclusion No. 1.).

101. We invited the Chairmen of six statutory corporations created by the Commonwealth,† and also the Snowy Mountains Authority, to say what they did to keep the Minister continually informed of their activities, and how they viewed the suggestion that they might send the Minutes of their governing boards to the responsible Minister for this information. The replies provide an extremely valuable contribution to political theory and administrative practice.‡

102. The general conclusions to be drawn from the correspondence are—

(i) that each corporation is distinct from the others, and that provisions that may suit one corporation may well not suit another;

(ii) that while each corporation has devised its own methods for maintaining relationships with the Parliament through the Government of the day, each regards the problem of keeping the responsible Minister informed as of central importance.

103. Indeed, the corporations all realize that keeping the Minister informed is related directly to the problem of Ministerial accountability to the Parliament. None of the seven corporations approached for their views considered it a good idea to send the Minutes of the governing board to the Minister. Amongst the reasons given were—

(i) the Minister should not be troubled with day-to-day matters—his contact should come through the Chairman and such other contacts as might be decided upon, rather than from the Minutes;

(ii) the sending of Minutes could easily result in Ministerial interference in the day-to-day management of affairs; and

(iii) A Minister's knowledge of certain matters through perusal of the Minutes could lead to his being held directly responsible for those matters.

104. We do not wish at this stage to make any firm recommendations, for we realize that the circumstances of each corporation vary widely from one another, but we do wish to draw attention to the paucity of Australian text-books and official documents available about Ministerial accountability for the acts of statutory corporations, a matter that is vital to the satisfactory operation of these bodies in any system of responsible democratic government. Although we are aware that others have taken a different view, we support the attitude of resolute but responsible determination to maintain their existing status of substantial autonomy that was adopted by the governing boards of the seven statutory corporations we approached.

* Quoted from paragraph 93, concerning the responsibility of the Accounting Officer, of *Notes for the Use of Accounts Branches of Government Departments*, issued by the Treasury in August, 1939, and reprinted in 1952 : M.M.S.O. Accounts Gen. 18 (Agulde).

‡ The Atomic Energy Commission; The Australian Aluminium Production Commission, The Australian Broadcasting Commission; The Australian National Airlines Commission; The Joint Coal Board; The Overseas Telecommunications Commission.

‡ The replies are quoted as follows:—
The memorandum submitted by the Chairman of the Australian Broadcasting Commission is contained at Appendix No. 15; that submitted by the Chairman of the Australian National Airlines Commission at Appendix No. 17; and those by the remaining Authorities at Appendix No. 19.

CHAPTER VI.—THE APPLICATION OF THE AUDIT ACT TO STATUTORY CORPORATIONS.

(a) The Application of the Audit Act to the Commission.

105. Your Committee noted in Part I. (paragraph 75) that the Opinion of the Solicitor-General had been sought by the Treasury on whether the Audit Act and Treasury Regulations applied in all their detail to the accounts of the Commission. The period up to October, 1952, when the *Aluminium Industry Act* 1944 was amended, was in issue because, during that time, a Trust Account was opened for the transactions of the Commission. The period between October, 1952, and June, 1953, was in issue, because, during that time, the Trust Account remained open although the *Aluminium Industry Act* 1952 directed that the Commission should open and maintain a bank account.

106. We have now received, through the Treasury, a copy of the Opinion of the Solicitor-General, the full text of which may be found in Appendix No. 20. The upshot of the Opinion is that, while up to October, 1952, the Audit Act and Treasury Regulations applied in the strict sense to the accounts of the Australian Aluminium Production Commission, they have not thereafter done so. The result of Your Committee's Inquiry into the accounts of the Commission is that, during the period up to October, 1952, the standard of appropriate accounting procedures is that laid down by the Audit Act and Treasury Regulations. It was in terms of that standard that we did in fact make our examination of the accounts of the Commission for that period, and according to that standard that we made judgments; it is therefore not necessary for us to revise either our examination, or the criteria for our judgments, in the light of this recently received legal opinion.

107. The Solicitor-General advised that after June, 1953, the position was also clear; with the closing of the Trust Account in June, 1953, the Audit Act and Treasury Regulations ceased, for all practical purposes, to apply to the financial transactions of the Commission. (That is, except for the "basic requirements", that are noted in the next paragraph.) But in the period between October, 1952, and June, 1953, the period between the commencement of the operation of the 1952 amendment of the *Aluminium Industry Act* 1944 and the closing of the Trust Account, the position is not nearly so clear. This period, picturesquely termed by one witness a "shadow land", during which the extent of the application of the Audit Act to the financial affairs of the Commission was far from clear, caused the Solicitor-General some difficulty.

108. Although the strict legal position during this "shadow land" period does not concern us, we record the basic conclusions of the Solicitor-General concerning it because they illustrate so aptly the defects in the Audit Act to which we have in the past, and especially in Part I. of this Report, drawn attention. The Solicitor-General advised that it was necessary, in order to define with precision how the Audit Act applied to the Commission in this period, to draw a distinction between what he terms the "basic requirements" of the Audit Act and the remainder of its provisions, because only the "basic requirements" applied to payments from the bank account operated by the Commission at Bell Bay, in contrast to payments from the Trust Account, to which the full rigour of the provisions of the Act applied. The Solicitor-General defines the "basic requirements" of the Audit Act, i.e., requirements that apply to all payments out of a Trust Account (which is part of the Commonwealth Public Account), as follows:—

By the "basic requirements", I mean sections 32, 33 and 34 of the Act, and the related Regulations. The necessary warrant must have issued, and the certification and authorization of the payment must occur; the certifying officer must comply with regulation 45; payment must be by cheque (regulation 68).

109. These "basic requirements", then, apply to payments from a Trust Account, or from any part of the Commonwealth Public Account, but did not apply, in his view, to payments that might subsequently have been made during the period in question from the Bank Account established by the Commission at Bell Bay. He continues—

The reason why the Audit Act applied to accounts of the Commission was that section 12 established a Trust Account. The 1952 Act repealed section 12. It is clear from section 9 (2) of the 1952 Act, which gave authority for the disposition of the balance in the Trust Account at the date of the commencement of the Act, that the repeal of the section which established the Trust Account was intended to bring operations on the Trust Account to an end. Since the existence of the Trust Account, and the statutory requirement that the expenses of the Commission were to be met out of that account, were the only reasons why the provisions of the Audit Act (other than the basic requirements) applied to the accounts of the Commission, it seems clear that Parliament intended that the accounts would not be subject to that Act after the commencement of the 1952 Act. Other provisions of the 1952 Act are consistent with this view—including the provisions that a bank account was to be opened, that accounts were to be kept in a form approved by the Treasurer and that the Auditor-General was to inspect and audit the accounts.

There would seem to be little room for doubt, therefore, that under the 1952 Act, Parliament intended that the detailed expenditure of the Commission should not be from the Commonwealth Public Account, but that the Commission's own distinct accounts should be maintained; these accounts were to be subject to proper commercial safeguards, and were to be audited by the Auditor-General, but were not to be subject to the limitations placed by the Audit Act on operations on the Commonwealth Public Account. It follows, therefore, as stated in the short answer given above, that there was, after 2 October, 1952, no legal authority for paying into the Trust Account large sums out of the special appropriation made by the 1952 Act, and for continuing to operate the Trust Account to make payments on behalf of the Commission.

110. Without going into further detail, it is clear from his Opinion that there was no legal authority for the continued operation of the Trust Account between October, 1952, and June, 1953. We do not propose to inquire what are the effects of that action by the Treasury without legal authority, but we record the fact as an indication of one of the difficulties met with by the Treasury in administering the Trust Account and the result as an example of the complex situation that may arise from a failure to comply with the strict requirements of the law.

111. We invite the attention of those who wish to consider at greater length the difficulties in which such action places those who come after, to the later sections of the Solicitor-General's Opinion that are devoted to this problem and particularly to paragraphs 20-26. (The Opinion is quoted in full in Appendix No. 20.)

112. Another matter that arises from the Opinion of the Solicitor-General is the lack of certainty attending the application of the Audit Act and Treasury Regulations to a Trust Account set up for the purposes of a statutory corporation. The Solicitor-General points out that in practice it has been assumed that operations on a Trust Account are governed by the Audit Act and Treasury Regulations in all respects—

> This conclusion is, in my view, a natural one. Potent arguments are needed to overthrow, even in part, a presumption that the entire provisions of the Act and Regulations, for example, apply to all aspects of the incurring of a liability, and the making of the consequent payment, when the payment is to be of public moneys out of a part of the Commonwealth Public Account.

113. But when an independent statutory corporation is set up by the Parliament, it is natural to assume that perhaps the full application of the Audit Act is not intended—

> The substantial question, as I see it, is whether the 1944 Act intended that the extensive powers conferred on the Commission should be exercised subject, in all respects, to the Audit Act and Treasury Regulations of the Commonwealth, so that, for example, every requisition for supplies should be approved by *the Minister* or an *officer* appointed by the Minister.
>
> . . . . . .
>
> I consider that it is impossible to reconcile completely the provisions of the two Statutes; hence it is impossible to say with any certainty the extent to which the Audit Act applied to the accounts of the Commission, before 2 October, 1952. In coming to a conclusion, I have been influenced by the matters mentioned (quoted in part in paragraph 44): the moneys provided for the purposes of the Commission remained "public moneys": the provisions of the Audit Act and Treasury Regulations are established to protect public moneys both in the matter of incurring of liabilities and in the matter of making payments. I cannot find, either in the Audit Act or in the *Aluminium Industry Act* 1944, a sufficiently clear expression of a legislative intention that any part of those provisions should not apply to the incurring of liabilities by, or the making of payments in respect of the Aluminium Commission. For these reasons, not without doubt, I advise—
>
> (*a*) that the "basic requirements" of the Audit Act and Treasury Regulations, as defined above, clearly applied, and
>
> (*b*) that, although it is probable that Parliament intended the Commission to have considerable freedom in the conduct of its business arrangements, and although the application of whole of the Audit Act and Treasury Regulations presented some difficulties of construction, the better view probably is that the requirement that the Commission's operations were to be through a Trust Account attracted all the provisions of the Audit Act and Treasury Regulations.

114. The last question to which Your Committee draws attention in this connexion arises from the lack of precision in the application of the Audit Act to statutory corporations. For the "Audit Act" itself is not a consistent body of rules. It has become extremely difficult to apply it in any full or satisfactory way and we quote a pertinent section of the Solicitor-General's Opinion—

> The main scope of the Audit Act is defined by the references to the Commonwealth Public Account and to public moneys. The intention would seem clearly to be that the whole Act should apply to any dealing with "public moneys". It is interesting, however, to see that there are some references to "Departments" and this word is defined as including "such authorities of the Commonwealth as are prescribed". The *Aluminium Production Commission has not been prescribed.* The specific references to Departments in the Act are, however, few. This is, in fact, one example of a difficulty often met in construing the Audit Act. Important amendments, adding new concepts, have from time to time been made and experience has shown that the new concepts have not been completely integrated with the general scheme of the Act. The result is that the Act as a whole does not now represent a completely integrated system; it really requires a complete restatement. I understand that your Department is at present engaged on that task.

115. In view of this Opinion, Your Committee point to the necessity for prompt revision of the Audit Act.

(*b*) The Obligation upon the Auditor-General to Report to the Minister.

116. The *Aluminium Industry Act* 1944 made the books and accounts of the Commission subject to inspection and audit by the Auditor-General, but no provision was made concerning the authority to whom he was to report or the time within which his inspection and audit should be made. By the 1952 amendment to the 1944 Act, the Auditor-General was obliged to report to the Minister the result of each inspection and audit made by him and in addition (as described in Part I., at paragraphs 71 and 72) it is necessary for the Auditor-General to make his report to the Minister on the Commission's statement of accounts within three months of the end of the financial year. This latter duty arises from the obligation on the Commission to report to the Minister upon its operations during the previous financial year, not later than the 30th day of September in each year, and to furnish him, at the same time, with a statement of its accounts, accompanied by the report of the Auditor-General on that statement.

117. We draw attention to the fact that the Auditor-General has been unable to comply with this obligation (imposed upon him by the 1952 Act), because the Commission's accounts have not been presented to him in final form for inspection, audit and certification since the year 1950-51. Quite apart from the default of the Commission, we regard the provision as unfortunate because it imposes upon the Auditor-General an obligation that it is impossible for him to perform. Even had it been possible for him to have examined the accounts of the Commission and to have made a report upon them before 30th September in any year, we consider that the imposition of a period so short is unreal. We recommend that this point be borne in mind when any revision of the *Aluminium Industry Act* 1944-1954 is being made.

118. We consider that the provision regarding audit in the *Australian National Airlines Act* 1945-1952 is preferable to the one contained in the *Aluminium Industry Act* 1944-1954. The provision is similar to that contained in the constitutive Acts of other Commonwealth Statutory Corporations, and reads as follows:—

> 36.—(1.) The Accounts of the Commission shall be subject to inspection and audit, at least once yearly, by the Auditor-General for the Commonwealth.
>
> (2.) The Auditor-General shall report to the Minister the result of each inspection and audit.

(*c*) The Audit Act and Statutory Corporations.

119. In considering the accounts of the Australian Aluminium Production Commission, Your Committee were inevitably forced to consider, also, the whole question of the strict application of the requirements of the Audit Act and Treasury Regulations to the accounts of statutory corporations.

120. We received from the Treasury a statement, which indicates that the provisions of the Audit Act apply to only three of the long list of Commonwealth statutory corporations that they gave us, and that even to those three the provisions apply only in part*. The partial application is, in fact, similar to the application of the Audit Act to the Australian Aluminium Production Commission during the period October, 1952, to June, 1953, in respect of its Bank Account at Bell Bay.

* *See* Appendix No. 21.

(*See* paragraphs 107 to 111 above.) These three authorities receive grants to a Trust Account, from which money is paid to a bank account and thence used for the purposes of the authorities. The three authorities to which the Audit Act applies in part are the Australian Atomic Energy Commission, the Australian Broadcasting Commission and the Australian Broadcasting Control Board.

121. The Treasury informed us that the principal reason for the exclusion of the transactions of a corporation from the detailed provisions of the Audit Act and Treasury Regulations is to enable the corporation itself, within the terms of its statutory directions, to exercise immediate control over its own revenue and expenditure. The Treasury also observed that the corporation would thus be responsible for adopting such accounting procedures and instructions as would ensure the maximum safeguard of the funds under its control.

122. The Audit Act itself contains no authority by which the Treasurer can apply its provisions in whole or in part to the accounts of statutory corporations and the Auditor-General is therefore left with the problem of what principle he should follow in auditing the accounts of these bodies. We consider that this matter should be followed up in connexion with the review of the Audit Act which, we understand, is at present taking place.

123. We have already raised (in section (*a*) above) the question of the applicability of the provisions of the Audit Act and Treasury Regulations to statutory corporations. We draw attention to the Auditor-General's Report to the Parliament on the Treasurer's Statement for 1954-55, in which the Auditor-General offered for the consideration of the Parliament some detailed comments on this subject. (*See* the Annual Report of the Auditor-General upon the Treasurer's Statement of Receipts and Expenditure for 1954-55 paragraph 126, pages 82 to 87.)

124. In his Report, the Auditor-General considers the problem of laying down appropriate accounting procedures for Commonwealth Authorities. He mentions Your Committee's recommendations, made in our Twenty-first Report (Australian Aluminium Production Commission, Part I.) for a review of the position and continues—

> To give effect to these recommendations of the Committee in the direction of providing adequate financial control of Commonwealth Authorities and of eliminating present weaknesses in their accounting procedures, consideration should be given to the implementation of control legislation either as a separate Act or as a separate Part of the proposed amending audit legislation.

125. The Auditor-General draws attention to his lack of power to impose sanctions for irregularities and points out that there is no indication of what action an authority is to take following a refusal by the Auditor-General to certify its accounts:—

> Where irregularities of a serious nature are revealed two courses are open to the Auditor-General in addition to those of reporting to the Treasurer, the Minister or the Parliament—
>
> (1) in the case of a Department or an Authority operating within the Commonwealth Public Account, he is required by the Audit Act to surcharge the accounting officer responsible for the irregularity;
>
> (2) in the case of any other Authority, he is given no such power by legislation but of his own volition he may refuse to affirm that the balance-sheet of the Authority presents a true and fair view of the accounts.
>
> In the case of surcharge, the punitive action to be taken is prescribed by the Audit Act and the onus is placed by that Act on the Treasurer to pursue ultimate determination of the consequential penalty.

There is, however, no statutory provision to define the action which should follow on the refusal of the Auditor-General to give the necessary affirmation in regard to the accounts of a Commonwealth Authority. The Auditor-General should be given by statute the same power of surcharge over an Authority as he now has over an accounting officer of a Department and formerly had, from 1901 to 1920, over the Treasurer. The statute could also provide that the Auditor-General shall report the surcharge to the Minister who shall take such action as the case may require.

126. We set out below some of the more important of the provisions that the Auditor-General suggests should be included in any legislation drawn up to meet *the present defective condition of the Audit Act and* Treasury Regulations in respect of their application to Commonwealth Authorities—

(1) that the Authority should prepare estimates, *in such form as the Minister concerned directs*, of its receipts and expenditure for each year and should submit those estimates to the Minister;

(2) that, where proposed expenditure has to be provided by the Parliament, no money should be expended by the Authority except *in accordance with* those estimates of expenditure set out in an Appropriation Act;

(3) that the Authority should submit promptly to the Treasurer for his approval accounts in a form which it proposes to adopt to cover moneys and stores and shall not depart in principle from that form without Treasury consent;*

(4) that, where an Authority operates outside the control of the Audit Act as applied to Commonwealth Departments, it should open and *maintain, with the Commonwealth Trading* Bank of Australia or such other bank or banks as the Treasurer approves, an account or accounts to receive all moneys appropriated by the Parliament for the purposes of the Authority and all other moneys;

(5) that the Authority should have power to borrow on overdraft from the Commonwealth Bank of Australia upon the guarantee of the Treasurer, but no power otherwise to borrow;

(6) *that the financial statements, receipts,* accounts and vouchers relating to moneys and stores should bear evidence that they have been completely checked, examined and certified as correct in every respect and that they have been allowed and passed by officers appointed by the Authority for the purpose;

(7) that the power to write off losses of money and stores should be vested in the Minister or his delegate;

(8) *that the financial statements, receipts,* accounts and vouchers should, as and when required by the Auditor-General, be sent or made available to him or his delegate by the Authority;

(9) that those statements receipts, accounts and vouchers should be subject to audit by the Auditor-General in such detail as he may deem necessary;

(10) that the Auditor-General should report to the Minister all irregularities discovered by *him which in the opinion of the Auditor-*General, are of sufficient importance to be reported;

* But note that at paragraph No. 130 we have recommended that the responsible Minister should be the person who, subject to a final veto by the Treasurer, approves the form of the accounts of the body.

(11) that every Authority should be required to furnish annual financial statements to the Auditor-General for examination and report;

(12) that, where losses or irregularities occur or where the Auditor-General refuses, on account of losses or irregularities, to affirm that the balance-sheet of an Authority presents a true and fair view of the accounts, he may surcharge the Authority;

(13) that the Auditor-General should report to the Parliament such information as he thinks desirable in relation to any audit of the accounts of an Authority, and may in such report recommend any plans and suggestions to improve the mode of keeping the accounts and of accounting for stores.

CHAPTER VII.—THE FORM OF THE ACCOUNTS OF THE COMMISSION.

(a) The Minister, the Treasurer, the Auditor-General and the Accounts.

127. In Chapter VI. of this Report, we discussed the application of the Audit Act to statutory corporations. We there mentioned that the strict provisions of the Audit Act and Treasury Regulations do not apply to bodies created by the Parliament with some measure of autonomy. We noted that the Audit Act made no specific mention of statutory corporations and that therefore the Auditor-General was left to decide in what manner he would audit the accounts of these bodies.

128. Closely related to the question of the application of the Audit Act and Treasury Regulations to statutory corporations is the question of who is responsible for prescribing the form in accordance with which the corporation has to keep its accounts. We would expect the responsible Minister, the Treasurer, and possibly the Auditor-General each to have some obligations in respect of these accounts and, therefore, to have some interest in the form in which they should be kept.

129. In the 1952 amendment of the *Aluminium Industry Act* 1944 there is a direction, similar to that made for many other statutory corporations created by the Commonwealth, that "the Commission shall keep accounts in a form approved by the Treasurer" and that these accounts are to be subject to inspection and audit by the Auditor-General. We sought advice from the Solicitor-General concerning the meaning of the obligation upon the Commission to keep the accounts in a form approved by the Treasurer, and we quoted his Opinion in full in Appendix No. 5 of Part I. of our Report (paragraph 69 and footnote, Appendix No. 5 and Conclusion No. 16). It is the view of the Solicitor-General that it is not possible to read section 14A of the Aluminium Industry Act, relating to the Commission's obligation to keep accounts in a form approved by the Treasurer, as meaning that only the final accounts—the Balance-sheet and Profit and Loss Account—are to be approved by the Treasurer. He indicated that he could not accept the suggestion that the obligation to keep the accounts in a form approved by the Treasurer could be discharged merely by an approval of the final form of the accounts—

> As I understand the suggestion, it is that this is sufficient; a requirement that, for example, assets be treated in a certain way in a balance-sheet in itself would necessitate certain action in the ordinary accounts to ensure that the necessary information would be available for inclusion in the balance-sheet. It is also suggested that any greater requirement would be out of keeping with the principle of setting up a statutory corporation. With the latter approach, I am, myself, in sympathy. It arrives at a compromise which is so much in line with the general principles outlined by me above that I would agree that it is an interpretation which should be adopted if the words used in the Act permit. In my view, however, they do not.

130. He concluded, from the fact that the obligational word in respect of the Commission's accounts is "keep", that the accounts that are kept from day to day must be the accounts referred to, because the appropriate word to refer to the financial accounts that appear only at the end of each financial year is "present". Furthermore, he points out that it is not a "form of the accounts" that is to be approved by the Treasurer, but that the accounts are to be kept "in a form" approved by the Treasurer; this form relates to the way in which the Commission is to keep its accounts throughout the year.

131. The Opinion of the Solicitor-General just quoted involves the Treasurer in considerably heavier responsibilities in respect of the accounts of statutory corporations whose constitutive Acts contain such a provision, than had ever been expected or discharged by him. At this point, we find it necessary to question whether this heavy and specific obligation in respect of the final presentation is what was originally conceived as the appropriate responsibility of the Treasurer. His concern, after all, is most directly with the kind of statement of account that he needs to include in the financial papers presented by him to the Parliament.

132. We discuss below and in the next section of this Chapter the functions that should be performed respectively by the responsible Minister and the Treasurer in connexion with the accounts of the Commission. Leaving aside for the moment whether the Treasurer should have the final responsibility for the accounts, or whether that responsibility should be shared with the Minister otherwise responsible for the corporation in question, we are of the opinion that he should be consulted by the responsible Minister, and must be given the powers necessary to obtain for presentation to the Parliament the kind of statement he wants to submit to the Parliament and that the Parliament wants to receive from him. We have on other occasions urged that the accounts of the commercial undertakings of the Commonwealth should be presented to the Parliament in clear and reasonably standard form, and we say now that we certainly look for this kind of presentation by them.

133. We now turn to the problem whether it is appropriate that the Treasurer, and not a responsible Minister, should be charged with approving the form in which the accounts of the Commission are kept. We believe that the principles of ministerial responsibility would be more effectively observed if the Minister, after consultation with the Treasurer, approved the form of accounts for the statutory corporation in question. In the event of any failure to prescribe the form of the accounts, the Treasurer should have power to determine the form in which the accounts of the body are kept as well as the manner in which they are presented to the Parliament.

134. Assuming the Minister to be responsible for the general operations of the corporation, it follows that he should also be responsible for approving the form in which the accounts of the body are kept; we doubt whether the Aluminium Industry Act and some of the other constitutive acts make the position sufficiently clear. Considerations of uniformity make it desirable that the Treasurer be consulted on such matters, while instances of departmental neglect in regard to the keeping of accounts have moved Your Committee to suggest that, in such cases, the Treasurer be invested with some over-riding responsibility. Nevertheless, we

regard the Treasurer's proper responsibilities as lying rather in an overall supervision of the accounts than in the manner of their presentation: his should be a power to prompt and constrain, not to prescribe and present.

135. We are impressed by the view of the Auditor-General that he, as the auditing authority, should have no responsibility for laying down accounting systems for statutory corporations. It is difficult for him to exercise the appropriate critical scrutiny of accounting procedures, if he is in the first place expected to lay down those procedures in detail. We therefore agree with the views he expressed that his responsibility lies in the audit of the accounts, in making the appropriate reports to the Parliament and the Minister, and in reporting on non-compliance with proper procedures, but not in instituting them (Part I., paragraphs 91 to 93). We have already noted the special provision made in the United Kingdom and the United States of America for the audit of the accounts of statutory corporations (Part I., paragraphs 94 to 97 and see also page 85 of the Auditor-General's Report to the Parliament on the 1954/55 accounts).

136. By the same token, we take the view that the Treasurer, responsible for the overall supervision of the financial affairs of the Commonwealth, should not be too intimately concerned with the details of the accounting arrangements made by quasi-autonomous authorities. It should be sufficient that the Treasurer has control over the public moneys made available to the authorities and that the responsible Ministers are under a duty to consult the Treasurer before he approves of the form in which the accounts are to be kept. This point leads us to a consideration of the relationship between the Treasurer and Treasury and these authorities created by statute, and this we do in section (c) of this Chapter.

(b) The Responsibility to the Parliament for the Financial Affairs of the Commission.

137. In the light of the issues raised in the previous section concerning the several responsibilities of the Minister, the Treasurer and the Auditor-General in respect of the accounts of the Australian Aluminium Production Commission, we have given some consideration to the underlying principles that should be observed in arranging the financial affairs of the Commission.

138. We sought from the Solicitor-General, in connexion with our Inquiry into "The Form and Content of the Financial Documents presented to the Parliament", a statement regarding the accountability to the Parliament of bodies other than Government Departments. For the financial affairs of Government Departments, the Solicitor-General points out that a Minister is clearly responsible in the sense of being answerable to the Parliament; but in cases where the body is not a department but is a more or less autonomous authority of the Commonwealth, the position is not so clear.

139. The Solicitor-General, whose Opinion is quoted in full in Appendix No. 22, stated in the course of that Opinion—

> In relation to (a department), the Minister is answerable for all the details of the expenditure because these details are, in general, under his control; in relation to (a more or less autonomous authority of the Commonwealth), the authority may have been given statutory powers to act independently of the Minister and the Minister is not answerable in the same way for all the details of the expenditure of the authority.
>
> Even in the case of an authority which is quite independent of Ministerial control, some Minister must take the responsibility of recommending an appropriation of public funds; if the authority makes an annual report, it is the duty of the Minister to lay the report on the table of the House and, if necessary, to defend the report. His answer to the House may take something of this form: "Under the Act, I cannot control the actions of the Board in this regard; but the Board speaks to Parliament through me, and this is what it says . . . . . ". Again, in the case of a special appropriation it is the duty of the Minister to consider whether any alteration should be recommended to Parliament from time to time. From the general constitutional point of view, I would myself attach much importance to these aspects of the responsibility of a Minister, but this is scarcely the place to enter upon a discussion at large of the relation of Ministers to statutory authorities.

Consideration of this aspect leads me to the particular reference made by your Secretary to the votes for certain Commonwealth authorities. It follows from what I have already said that, in my view, it is desirable that all amounts voted in the annual Appropriation Act should be shown in relation to some Minister who will be answerable, in the appropriate degree, to Parliament for the expenditure. This is so even where the payment may be made out of the Public Account to the authority in a lump sum, the authority being vested with the necessary statutory power to expend the money so paid to it.

In the case of the six authorities mentioned by your Secretary, the suggestion is made that they may be responsible directly to Parliament for their expenditure. It follows from what I have said about that that the train of responsibility must always be through a Minister. There is, however, in some cases, a distinction between the expenditure of an authority for which the Minister only takes the kind of indirect responsibility mentioned in paragraph 4 above (the second paragraph of this quotation), and expenditure for which the Minister has the same direct responsibility as in the case of the expenditure of his own Department.

140. In the light of our discussion of the responsibilities of the Minister, the Treasurer and the Auditor-General for the accounts of the Commission, we consider that this Opinion lends further weight to our view that the Minister made responsible by the Act for all the affairs of the Commission except the keeping of its financial records, should also be responsible for the manner in which its financial records are kept. The obligation imposed on the Treasurer by the constitutive Acts in respect of the accounts should therefore be subsidiary rather than direct, as appears at present to be the case, and related to his responsibilities to the Parliament for the financial affairs of the Commonwealth.

(c) Departmental Officials Appointed to Boards.

141. In Part I., Your Committee considered at some length the appointment of a Treasury official to the Australian Aluminium Production Commission. We noted the view of the United Kingdom Treasury that it is only in respect of those organizations for whose grants the Treasury itself is accountable that the Treasury would regard itself as called upon to consider the appointment of a specifically Treasury representative, we understand also that it is not a general practice to appoint civil servants to the governing boards of independent authorities. We quote with approval the relevant section of the Treasury Minute—

> Where the primary responsibility lies with another Department, My Lords would consider it wrong in principle, and likely to lead to confusion in practice, to install Treasury nominees with direct and independent responsibility to the Treasury rather than to the parent Department.

(*See* Part I., paragraph 62.)

142. We reported in Part I. that in the middle of 1952 Mr. J. E. S. Stevens,* Secretary to the Department of Supply, was appointed by the Minister to the Commission with specific instructions to report on the affairs of the Commission. Because a Treasury official was appointed as a regular Member of both the old and the reconstituted Commission, and because the Minister subsequently appointed an officer of his Department to the Commission, we have been led to consider not only the position of a Treasury official on the Commission but also the position of a departmental representative.

* Now Sir Jack Stevens, K.B.E., C.B., D.S.C., E.D., Chairman of the Australian Atomic Energy Commission.

143. In Part I., we described fully the position of a Treasury official on the Commission and concluded that it is not at all clear that any useful purpose is served by appointing such an official to the governing board of statutory corporations. We consider that there are two exceptions to this general principle. The first is where the Treasurer is the Minister responsible for the body; in those cases it may be appropriate, as suggested by the United Kingdom Treasury, to have a Treasury nominee on the governing board, but that is a special case and that situation did not arise during the present Inquiry. The second is where the Treasury official in question has special qualifications that, in the opinion of the Minister, would be useful in the service of the corporation in question. In such a case, of course, there is a clear advantage in appointing the Treasury official—but equally clearly, the person is then appointed not because he is a Treasury official (though that will no doubt be one of his qualifications) but because of his special abilities. The same would go for any official, to whatever department he belonged, who was appointed because of his special qualifications.

144. We therefore conclude that in most cases it is not necessary, and may even be inexpedient, to appoint a Treasury official to a board, and we point out that whatever his position, he may often be faced with the difficult problem of a conflict of loyalties. A Treasury official is more likely to experience this problem than would be his colleagues in other departments, because of the particular functions performed by the Treasury. On this aspect we have reported more fully in section (*f*) of Chapter III. of Part I. of our Report.

145. In this context, we wish to add one further comment. We note that in the United Kingdom a full-time member whose particular responsibility lies in the financial field has in some cases been appointed to the governing boards of statutory corporations. This finance member is charged with over-seeing in some detail the finances of the corporation, and although his responsibility is to the board and not the Treasury, there is a natural tendency for him to develop consultative relationships with the relevant Treasury officials.

146. Even here, however, we understand that the finance member rarely has formal dealings directly with the Treasury. Contact with the Treasury comes through dealings with the officers of the "responsible Department". Treasury officers would, as a general rule, only see a board member along with the relevant officer of the "responsible Department" and when it was considered that the Treasury should be consulted upon the matter under discussion.

147. On the other hand, informal relationships will inevitably develop between those members of a board most closely concerned with its finances, and the relevant Treasury officials. We consider that the less formal pattern of relationships that will develop in this way—and in the United Kingdom is developing—between the finance member of the board and the appropriate Treasury official is more nearly consonant with the best canons of procedure and practice than is the kind of relationship when the Treasury official is a full member of the board. It is far easier, in circumstances where the finance member and the responsible Treasury official are different persons, to avoid the difficult conflicts of loyalty to which we have earlier referred; and there is no question of who, on the board, is specifically responsible for the efficient conduct of the financial affairs of the corporation.

148. Thus, we regard this form of Treasury control and oversight as more satisfactory than the practice of direct representation on governing boards. Some of the reasons we have already mentioned. We also observe that senior Treasury officials are invariably heavily burdened by the normal functions of their office, and the obligation to take regular time away from those duties in order to discharge their responsibilities as members of boards is one that should not lightly be imposed upon them. We do not suggest that Treasury officials should never be appointed to the governing boards of statutory corporations, for there are cases where they might appropriately be members of boards; e.g., in the case of the Commonwealth Bank Board, where a Treasury official can keep the Board informed of the monetary policy desired by the government; but it is our opinion that the reasons for their appointment should be cogent.

149. The appointment of Mr. J. E. S. Stevens* to the Commission in mid-1952 raises a slightly different problem, because he was quite clearly a Member responsible directly to the Minister. He was in a position analogous to that of a Treasury nominee in respect of a board for which the Treasurer is primarily responsible, and for that kind of situation we are not prepared at this stage to suggest a general rule, for we realize the difficulties that such an appointment can create. If, in the discretion of the Minister, it is desirable that a person who is, in effect, his representative on the board should be appointed to a board, then the Minister has the power to make that appointment; but we consider that in the ordinary run of events, such an appointment gives rise to more problems than it solves. In particular, problems arise in that, whereas the normal relationship of a board to the responsible Minister is through its Chairman, the appointment of a person who is in effect a departmental nominee may tangle and even sever that normal and proper line of communication with the Minister. As in the case of the Treasury official, we consider that the appointment of a departmental representative from the "responsible Department" would have to be capable of clear justification in the light of the manifest objections that could be raised to it.

150. We have thus, in general terms, queried the wisdom of appointing departmental representatives to the governing boards of statutory corporations in a number of instances, especially when they are from the Treasury or from the department responsible for the affairs of the body in question. We believe that this is in line with the most advanced thinking of to-day on these matters both here and overseas.

* *See* footnote to paragraph 142.

CHAPTER VIII.—THE BALANCE-SHEET OF THE COMMISSION.

151. In Part I. of our Report, Your Committee mentioned the refusal of the Auditor-General to certify any balance-sheet of the Commission subsequent to the financial year 1949-1950.† We reported the chaotic condition of the accounts of the Commission that prevailed during 1951 and 1952 and described in detail the measures taken by the Commission to put its accounts into working order‡: we also mentioned the controversy that developed over whether any balance-sheet could ever be certified without a fresh valuation of the assets of the Commission by an accountant and a quantity surveyor.§

152. In two Chapters in Part I. devoted to the subject (Chapters IX. and X.), we discussed the problems that had arisen in connexion with the £1,176,343 of expenditure incurred up to 30th June,

† *See* especially Part I., paragraphs 76-79 and Conclusions Nos. 11-15.
‡ *See* Chapter VII. of Part I. and Conclusions Nos. 24-25 and 27-30.
§ *See* Chapter XI. of Part I. and Conclusions Nos. 72-76.

1952, that Mr. Storey said had been wrongly allocated to cost heads. We arrived at no final conclusion on the question of determining asset values for the Commission, considering it to be a matter that must be determined only after consultation, if necessary at a government level.

153. In the months that have elapsed since we presented our first Report, the firm of chartered accountants appointed by the Commission, Edwin V. Nixon and Partners, continued its work and has been able to prepare a full Report, balance-sheet and supporting Statements.* (The Accountants had been requested by the Commission to review the bases upon which the Commission's expenditure prior to 30th June, 1952, was allocated to cost heads, and to recommend any changes in the basis of allocation in order to enable a reasonably accurate statement of account to be prepared.)

154. The Accountants' most recent Report, dated 23rd June, 1955, is a comprehensive document setting out in detail what has been done by them in order to produce the balance-sheet of the Commission as at 30th June, 1954. We quote below a section of the Report to indicate the steps that have been taken by the Commission and its agents to correct the position that in the past gave rise to so much disquiet. We understand that the Commission's balance-sheet as at 30th June, 1954, prepared with the advice of the consulting accountants, is at present with the Auditor-General for his examination.†

155. Edwin V. Nixon and Partners now state that in their opinion the Commission "can with confidence adopt the balance-sheet" submitted with their Report as "a fair and reasonable statement of the affairs of the Commission as at 30th June, 1954".

156. The Report continues—

> Our work in connexion with the Accounts covering the period 1st July, 1950, to 30th June, 1954, can be summarized as under—
>
> (*a*) *Period 1st July, 1950, to 30th June, 1952*—
>
> We investigated expenditure during this period and found many accounting errors. We did not find any evidence of fraud or misappropriation. Our reports of 18th February and 17th March, 1955, give details of the work done by us and particulars of entries to be passed to adjust errors discovered. It was known there were errors in Sundry Creditors Account, and also in the Accounts of Haunstrup & Co. Ltd. and Johns & Waygood Ltd. and it was left to the Commission's Officers to investigate and reconcile these particular Accounts. This work was duly completed.
>
> (*b*) *Period 1st July, 1952, to 30th June, 1954*—
>
> It was realized it was impracticable because of the volume of entries for us to make the same detailed investigation for this period as we had done for the two preceding years.
>
> Further from November, 1952, onwards there had been a progressive improvement in the Accounting Records and the same detailed examination was not necessary. So far as the period from July to November, 1952, was concerned, the entries in this period had been subject to extensive checking by the Commission's Officers and errors found had been adjusted.
>
> It was also on record that the Auditor General had raised only minor queries in connexion with the Accounts for the period 1st November, 1952, to 30th June, 1954.
>
> Again the Internal Auditor had made many tests in relation to the expenditure of this period, as had other Commission Officers; particularly in relation to preparation of Plant Records. Naturally any errors of allocation, &c., found during such tests were corrected.

We therefore were of the opinion that if what might be termed a "Balance Sheet Audit Procedure" was carried out this would, having regard to the foregoing, ensure the substantial accuracy of the balance-sheet as at 30th June, 1954.

Therefore, in our report of 17th March, we detailed procedure to be followed by the Commission's officers, referring particularly to certain accounts, such as Sundry Creditors which were known to contain errors. We also referred certain matters of principle for consideration and decision by the Commission.

We are pleased to report that the Commission adopted our various recommendations and the Accounting Officers did excellent work in clearing up all queries and submitting necessary schedules and certificates in verification of Assets and Liabilities.

Naturally during the process of clearing up queries, preparing schedules, &c., errors were discovered which have been adjusted.

157. After dealing generally with the verification of the items in the balance-sheet, the Consulting Accountants' Report reveals expenditure on Establishment and on Design, Advisory and Consulting Services totalling £1,074,844—

> In our report to you of 17th March, 1955, we referred at some length to Establishment Expenses, with which we included Design, Advisory and Consulting Services to 30th June, 1954—£1,074,844—(which) had been distributed as Overhead to various Asset Accounts. The basis of the distribution was laid down by the Commission. In our opinion it was doubtful whether some of the bases adopted were correct in principle and in any event it was doubtful whether the bases laid down by the Commission had been followed by the Accounts Department. Accordingly, we recommended that the charge of £1,074,844 be reversed, the various Asset Accounts being credited and Establishment Account and Design, Advisory and Consulting Services debited. This recommendation was adopted. We feel that when the main construction programme has been completed the question of the distribution of Establishment expenses can be dealt with with greater accuracy than while construction is in progress.

158. The Report concludes—

> We re-affirm that in our opinion the attached Balance-sheet is a fair and reasonable statement of the affairs of the Commission as at 30th June, 1954 and one which the Commission can with confidence adopt.

159. Thus the total cost to date of establishing the Commission has been determined, and the major remaining problem appears to be that of the distribution of the amount of £1,074,844, at present posted to Establishment Expenses and Design, Advisory and Consulting Services. We consider this is a problem that should be decided by the Commission after consultation with the Treasury and the responsible Minister.

160. As Your Committee reported earlier, none but minor audit queries have been raised during the financial year 1954-55, and we therefore understand that, if the balance-sheet now before him is accepted by the Auditor-General, the Commission will be able in the future to submit annual statements of accounts to the Minister in accordance with the provisions of the *Aluminium Industry Act* 1944-1954.

* *See* Part I. paragraphs 279-280; for our observations on the appointment of Edwin V. Nixon and Partners and an outline account of their work to that time.
† We have, since writing this section of our Report, been informed that a balance-sheet as at 30th June, 1955, has just been submitted to the Auditor-General.

CHAPTER IX.—CONCLUSIONS.

161. Your Committee desire these Conclusions to be read in conjunction with those contained in Part I. of our Report, because in that way an overall picture of our Conclusions concerning the inquiry into the Australian Aluminium Production Commission can be obtained. The Conclusions set out below amplify but do not alter the Conclusions of Part I. e.g. "Foreign Orders", Contracts entered into by the Commission, and the Relationship of the Commission to the Minister.

LOCAL PURCHASES AND "FOREIGN ORDERS".

1. We find that the purchase of 78 pairs of knee-boots in November, 1951, was, bearing all the circumstances in mind, justifiable, and that the price paid to the suppliers was reasonable. (Paragraph 4-5.)

2. As reported in Part I., we found no evidence that the practice of "foreign orders" was widespread. (Paragraph 6.)

3. Of the items we mentioned in Part I. as illustrating the practice of "foreign orders", the two frying pans and two of the three firescreens are on the inventory of the Commission. The third firescreen was bought by one of the Commissioners. (Paragraph 6.)

   The copper pots were paid for by the General Manager, but were never completed and he never took delivery of them. *See* also Part I., Conclusions Nos. 66 and 70-71. (Paragraph 6.)

4. The purchase of a piano and some glassware and napery received Commission approval. The provisions of the Audit Act and Treasury Regulations were not observed when purchasing the glassware and napery because of the urgency with which they were required: the General Manager arranged for their purchase in pursuance of the authority delegated to him by the Commission. *See* Part I., Conclusions Nos. 67-68 and 70-71. (Paragraphs 7-9.)

SHIPS.

5. We reported on the purchase of M.V. *Illawarra* in Part I. of our Report. (*See* Conclusions Nos. 44-49.)

6. The M.V. *Banshee* was purchased by the Commission for £5,132, but we found that it was not possible to use her, as originally intended, for towing the barge *Polperro* because she was not suited to conditions at Bell Bay. (Paragraphs 12-13.)

7. Although *Banshee* is being used for various purposes, we are of the opinion that such little use is made of the vessel that the cost of purchase and refit was scarcely justified. (Paragraph 17.)

8. We consider that the decision to purchase and refit *Banshee* was insufficiently considered by the responsible officers who recommended the purchase to the Commission. (Paragraph 19.)

9. The steel barge *Polperro* was purchased in February, 1952, for £8,000 in order to convey limestone from Beauty Point to Bell Bay. The circumstances surrounding the purchase and fitting and the lack of use of *Polperro*, lead us to conclude that the senior officers of the Commission were not sufficiently acquainted with the purposes for which *Polperro* was to be used. (Paragraphs 26, 35.)

10. The capital cost of the hulk *Fantome* (£1,359) was far less than that of *Polperro* (£15,486), and the vessel appears to be suitable for transporting limestone to Bell Bay. (Paragraphs 30-32.)

CONTRACTS.

11. In general, the contracting procedures of the Commission are well defined and have been adhered to. (Paragraphs 36-39.)

12. The contracts for various camp services were on occasion let without calling tenders or seeking quotations, or without the prescribed approval of the Tasmanian Contracts Committee. The reason given for not conforming with the prescribed procedures was that the General Manager assumed responsibility for what were small on-site services, considering that it was unnecessary to call for tenders or to seek the approval of the Contracts Committee. *See* also Part I., Conclusion No. 35. (Paragraphs 41, 44.)

13. It was suggested to us by Mr. Conde that the contracts connected with the operation of the Commission's saw-mill were unsatisfactory. We conclude that the Commission acted in all these contracts in the best interests of the undertaking and that all essential formalities were complied with. (Paragraphs 46, 50.)

14. We found that the bulldozing contracts were carried out satisfactorily for the Commission by Mr. D. Simons, and that, with the exception of the accounting errors that have since been rectified, the bulldozing requirements of the Commission were adequately met. (Paragraphs 55-56 and 52-54.)

THE STATUTORY CORPORATION.

15. There has been a trend away from the autonomy of statutory corporations, especially marked in Australia since World War I., because of a desire to insist upon Ministerial responsibility. *See* also Part I., Conclusions Nos. 6 to 8. (Paragraphs 59-67.)

16. We consider that statutory corporations should, with whatever modifications may be required by the particular circumstances of the corporation, enjoy a degree of autonomy, and we support the desire on the part of the seven major statutory corporations created by the Commonwealth and consulted by us to retain such a status. (Paragraphs 67, 101, 104.)

17. There is insufficient understanding of the nature and purpose of statutory corporations in Australia and this has resulted in a failure to draw clear statutory lines of authority between the corporation and the Minister.

   This is particularly the case with regard to the Australian Aluminium Production Commission and the Minister. (Paragraphs 69-75.)

18. *See* also Conclusion No. 36 below.

FINANCIAL TRANSACTIONS OF MEMBERS.

19. (*a*) Your Committee are of the opinion that, generally, it is undesirable that Members of Commissions should have any pecuniary interest in transactions with their corporations. *See* also Part I., Conclusion No. 18.

   (*b*) Nevertheless, the prohibition of such transactions may prevent the appointment of Commissioners capable of rendering special service to a corporation. (Paragraphs 79-81.)

20. (*a*) Where provisions are enacted for disqualification from office on the ground of pecuniary interest, the method of appointment "during pleasure" is most calculated to evoke Parliamentary scrutiny. (Paragraph 85.)

   (*b*) When considering the enactment of general provisions for disqualification from office, regard will naturally be had to the terms of appointment of, and the duties to be performed by Commissioners. (Paragraphs 89-90.)

   (*c*) If the "during pleasure" principle is rejected as a method of terminating employment because of pecuniary interest, then we recommend that the provision contained in the United Kingdom Atomic Energy Authority Act 1954 might be used as a standard. (Paragraphs 84, 86, 88.)

21. We draw attention to Conclusions Nos. 17 and 18 in Part I.

OVER-COMMITMENTS.

22. We have been advised that the commitment of the Commission to expenditure in excess of the total amount provided by the Parliament cannot be regarded as involving any breach of law by the Commission, or as invalidating any of the Commission's contracts.

   One safeguard against over-commitment is in the provision obliging the Commission to keep the Minister continually informed of its activities. *See* Part I., Conclusion No. 59. (Paragraphs 92-94.)

INFORMING THE MINISTER.

23. We regard the obligation to keep the Minister informed as fundamental to the principle of ministerial accountability to the Parliament and are fortified in our conclusion by the views of the seven statutory corporations created by the Commonwealth that were consulted by us. *See* also Part I., Conclusion No. 58. (Paragraph 96.)

24. We note that none of the statutory corporations referred to favours the practice of sending the Minutes of the governing board to the Minister as a means of keeping him informed. (Paragraph 103.)

THE AUDIT ACT AND THE COMMISSION.

25. We have been advised by the Solicitor-General—

   (*a*) that until October, 1952, the Trust Account was open for the transactions of the Commission and was properly used under the authority of the *Aluminium Industry Act* 1944; (Paragraph 106.)

   (*b*) that between October, 1952, and June, 1953, the *Aluminium Industry Act* 1944-1952 gave no authority for the continued operation of the Trust Account; (Paragraphs 107-110) and

   (*c*) that after June, 1953, only the "basic requirements" of the Audit Act have applied. (Paragraphs 107-108.)

26. Having regard to the legal doubts about the powers and duties of the Auditor-General in relation to the Australian Aluminium Production Commission, as well as to the accounting considerations raised, it is clear that a revision of the Audit Act is necessary. (Paragraphs 114-115.)

27. Because of the inability of the Auditor-General to comply with the requirements of the *Aluminium Industry Act* 1944-1954, we recommend that the provisions of the Act regarding audit should be amended when a revision of the Act is made. (Paragraph 117.)

   We consider that the provisions regarding audit contained in the *Australian National Airlines Act* 1945-1952 might well serve as a model. (Paragraph 118.)

28. In his report on the Treasurer's Statement of Receipts and Expenditure for 1954-55, the Auditor-General mentions his lack of power to surcharge an Accounting Officer of an Authority in the same way as he can an Accounting Officer of a Department. He suggests some provisions that might be included when legislation is being drawn to remedy the present defects of the Audit Act and Treasury Regulations in respect of their application to Commonwealth Authorities.

   We intend to examine these matters when the revised Audit Act is placed before us for consideration. (Paragraphs 123, 124-126.)

THE FORM OF THE ACCOUNTS.

29. We find that the Aluminium Industry Act imposed upon the Treasurer an obligation to approve the form of the accounts to be kept by the Commission.

   This obligation appears from the Opinion of the Solicitor-General to be unexpectedly onerous, and one that in fact was not discharged by the Treasurer. (Paragraph 131.)

30. We are of the opinion that this burden is inappropriate and recommend that the determination of the form of the accounts should be the duty of the responsible Minister.

   The responsible Minister should consult with the Treasurer when determining the form of the accounts. If the Minister fails to act, the Treasurer should be invested with an overriding power to prescribe the form of the accounts of an Authority, and he might also exercise that power as the interests of uniformity demand. (Paragraphs 131, 134, 140.)

31. We look, in any event, for a presentation to the Parliament of the accounts of the commercial undertakings of the Commonwealth in a clear and reasonably standard form. (Paragraph 132.)

32. We agree with the view of the Auditor-General that his prime responsibility is to examine and report upon, not to institute proper accounting procedures for, an Authority whose accounts he subsequently audits. (Paragraph 135.)

33. We draw attention to Conclusion No. 16 in Part I.

DEPARTMENTAL OFFICIALS.

34. We doubt the wisdom of appointing public servants as departmental representatives to the governing boards of statutory corporations, especially when they are from the Treasury or the Department of the responsible Minister. (Paragraph 150.)

ASSET VALUES.

35. Since the presentation of Part I. of our Report, we have been shown a copy of the Commission's balance-sheet as at 30th June, 1954, and of the accompanying report by Edwin V. Nixon and Partners. (Paragraphs 152-153.)

   We understand that if the balance-sheet now before the Auditor-General is accepted by him, the Commission will be in a position to fix the value of its assets, and will be able in future to submit annual statements of accounts to the Minister in accordance with the provisions of the *Aluminium Industry Act* 1944-1954.

36. We draw attention to Conclusions Nos. 72-75 in Part I.

RATIONALE.

37. We have thought it wise to devote a very great deal of attention to the nature, character and purposes of the statutory corporation, because of the confused thinking on these matters that seems to be widespread to-day. Unless the status and function of the statutory corporation are properly appreciated, the misunderstandings that exist are likely to give rise to much embarrassment, not only to the statutory corporations themselves, but also to the Parliament and the public.

FUTURE INQUIRIES.

38. In submitting this part of our Report upon the operations of the Australian Aluminium Production Commission, Your Committee draw the attention of the Parliament to the extremely onerous examination that was involved in this inquiry.

The task was made the more difficult because of the infusion of personal differences and ambitions. The evidence will indicate the degree of bitterness that was exposed, and this feeling necessitated our following up allegations of dishonesty and of improper practices that we would not normally have to investigate.

The nature and extent of the Inquiry have severely interfered with the carrying out by Your Committee of investigations of important matters raised in the Auditor-General's Reports of recent years.

For the observations we have already made on the special problems to which this Inquiry gave rise, we refer to our discussion in Chapter XI of Part I.

On behalf of the Committee,

F. A. BLAND, Chairman.

PETER H. BAILEY,
Secretary,
Parliament House,
Canberra, A.C.T.
5th October, 1955.

APPENDICES.

APPENDIX No. 1—REPORT PARA. No. 4.

WITNESSES.

Being a list of persons who appeared before the Committee and of those who submitted statements for the Committee's consideration.

—	Number of Appearances before the Committee.	Number of Statements Submitted.
OFFICERS OF THE COMMONWEALTH PUBLIC SERVICE.		
Department of the Treasury—		
Mr. D. J. Hibberd, First Assistant Secretary and Member of Reconstituted Commission	3	1
Attorney-General's Department—		
Professor K. H. Bailey, Solicitor-General	1	4
Commonwealth Investigation Service—		
Mr. R. W. Whitrod, Director, Commonwealth Investigation Service, Canberra	1	..
Mr. P. J. S. Fife, Deputy Director, C.I.S., Hobart	1	..
Mr. H. E. Shaw, Investigator, C.I.S., Hobart	1	..
Commonwealth Audit Office—		
Mr. J. Brophy, Auditor-General, Canberra	3	5
Mr. F. A. Johnson, Senior Audit Inspector, Canberra	2	..
Mr. R. E. Baker, Chief Auditor, Hobart	1	..
Mr. G. V. Davey, Audit Inspector, Hobart	4	..
MEMBERS OF THE AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION.		
Members since Reconstitution of Commission in April, 1953.		
Commonwealth—		
Mr. N. K. S. Brodribb, Chairman	3	45
Mr. L. R. Benjamin, Vice-Chairman (Tasmanian Member before reconstitution of Commission)	1	2
Mr. A. M. Mawby	..	1 (AAPC. 108A)
Tasmania—		
Mr. H. B. Bennett	1	2
Members of Former Commission.		
Commonwealth—		
Mr. G. H. Watson, Chairman	1	1
Mr. W. Scott, Management Consultant	..	1
Mr. P. W. Nette, Treasury Representative	..	2
STAFF OF THE AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION.		
Present Staff—		
Mr. A. J. Keast, General Manager	3	84
Mr. J. W. Debenham, Acting Works Manager	2	2 (AAPC. 33)
Mr. J. G. Badman, Business Manager	1	1 (AAPC. 133)
Mr. R. W. J. Ward, Superintendent of Accounts	1	2 (AAPC. 19, 127)
Mr. B. H. M. Maxwell, Secretarial Superintendent	1	..
Mr. E. C. Viret, Senior Finance Inspector	1	1 (AAPC. 128)
Mr. I. A. MacGregor, Mechanical Construction Engineer	1	1 (AAPC. 92)
Mr. R. G. Pride, Assistant Mechanical Engineer (Workshop)	..	1 (AAPC. 97)
Former Staff—		
Mr. H. A. Dodd, Secretary	1	1
Mr. H. T. Matterson, Accountant	1	1
Mr. W. F. Wilmshurst, Chief Accountant	1	1
Mr. P. A. Conde, Chief Accountant	2	4
Mr. G. W. Lockey, Chief Engineer	1	3
Mr. H. J. Storey, Acting Chief Engineer	4	5
Mr. J. S. Wood McDowell, Field Engineer	1	1
Mr. R. H. Green, Stores Superintendent	1	1
Mr. K. F. Carmichael, Technical Superintendent	..	2
OTHERS.		
Mr. D. McLeish Ferguson, Partner, Edwin V. Nixon & Partners, Chartered Accountants, Melbourne	1	..
OFFICIAL OBSERVERS.*		
Department of the Treasury—		
Mr. C. L. S. Hewitt, Acting First Assistant Secretary	..	2
Mr. F. H. Cox, Chief Finance Officer	..	..
Mr. T. Lowe, Finance Officer	..	..
Attorney-General's Department—		
Mr. E. J. Hook, Chief Assistant, Advisings, Canberra	..	..
Mr. T. Bennett, Deputy Crown Solicitor, Sydney	..	..

* Present at appropriate stages throughout the hearings.

Appendix No. 2—Report Para. No. 4.

STATEMENTS RECEIVED FROM THE AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION.

Number of Statement.	Prepared by—	Topic.
1	Chairman	Functions of the Commission
2	Chairman	Organization and Staff
2A	Chairman	*Salary Classifications*
3	Chairman	History of Membership of Commission
4	Chairman	Senior Staff changes
5	Chairman	Financial statements
6	Chairman	Cost of Project
7	*Chairman*	Location of Head Office
8	Chairman	Auditor-General's comments
9	Chairman	Remedial action after Audit criticism prior to November, 1952
10	Chairman	Remedial action after November, 1952
11	Chairman	The Costing Problem
12	General Manager	Main events in Commission accounting prior to November, 1952
13	General Manager	Stores accounting
14	General Manager	*Polperro* and *Fardome*
15	General Manager	M.V. *Banshee*
16	General Manager	M.V. *Illawarra*
17	General Manager	"Unit" Crane
18	General Manager	Erection of residence by Commission Officer and glass screens for laboratory
19	Superintendent of Accounts	Expenditure between 1st July, 1940, and 17th November, 1954
20	General Manager	Purchase of gum boots
21	General Manager	*Customs matters*
22	General Manager	M.V. *Banshee*
23	General Manager	Balance-sheet **as at 30th June, 1954.** (Reserves and Provisions)
24	General Manager	Balance-sheet **as at 30th June, 1954.** (Creditors £107,909 0s. 9d.)
25	General Manager	Balance-sheet **as at 30th June, 1954.** (Provision for depreciation)
26	General Manager	*Balance-sheet as at 30th June, 1954.* (*Illawarra* transaction)
27	General Manager	Detailed Working Account 1953–54. (Details of Accident Insurance)
28	General Manager	Working Account 1953–54. (Consultants, Analysis and Audit fees £54,993 10s. 5d.)
29	General Manager	Working Account 1953–54. (Authorized write-offs £18,793 0s. 5d.)
30	General Manager	Working Account 1953–54. (Rent received £2,770 14s. 1d.)
31	*General Manager*	Working Account 1953–54. (Adjustment to 1952–53 Sales figure)
32	General Manager	Slow moving stores
33	Works Manager	Questions raised by the Committee
34	General Manager	Commitments and Expenditure
35	General Manager	The Costing Problem (allocation of £1.2m.)
36	General Manager	Purchase of "Unit" Crane
37	General Manager	Towage of barge *Polperro*
38	General Manager	Agent for vendor of M.V. *Illawarra*
39	General Manager	Test footage sunk on Marchinbar Island
40	General Manager	Bonus paid to miners on Marchinbar Island
41	General Manager	Deliveries of steel
42	General Manager	Possible use of small, self-propelled barges
43	General Manager	Receipts procedure at Head Office prior to May, 1952
44	General Manager	Orders placed with G. H. and J. A. Watson—Minute 925
45	General Manager	Purchase of "Unit" Crane
46	General Manager	Reaction of Department of Works to abandonment of bulldozer on Marchinbar Island
47	General Manager	Saucepans, frying pans, &c.
48	General Manager	Purchase of green hardwood timber
49	General Manager	Action taken on Audit report of 27th July, 1951
50	General Manager	*Retail Store*
51	General Manager	Reports on M.V. *Banshee*
52	General Manager	Timber Mill contract
53	General Manager	The Haunstrup contract
54	Chairman	Cost of Project; Increase from £7.25m. to £10.5m.
55	*General Manager*	Erection of staff houses
56	General Manager	Comments on statement by Mr. Storey
57	General Manager	Proposed Tamar Bridge
57A	General Manager	Proposed Tamar Bridge (Supplementary)
58	General Manager	Departures from original designs
59	*Chairman*	Transport for General Manager
60	General Manager	Australian Aluminium Production Commission: Account No. 2
61	General Manager	Delays in provision of designs
62	General Manager	Written accounting and Stores Instructions
63	Chairman	Capacity and cost of Project
64	General Manager	Purchase and refit of *Illawarra*
65	General Manager	Hire of bulldozers
66	General Manager	Transport
67	General Manager	Cartage of stone and gravel
68	Chairman	Rewards for *discovery of bauxite deposits*
69	Chairman	Balance-sheet 30th June, 1954. (Cash Balance £229,947)
70	General Manager	Cost of Project—Effect of conversion from "ingot" only and increases in capacity
71	General Manager	Contracts let without approval
72	General Manager	Contract for supply of crushed rock
73	Chairman	*Use of bauxite deposits on Marchinbar Island*
74	General Manager	Missing and duplicated Stores Dockets
75	General Manager	Expenditure on air travel
76	General Manager	Engagement of G. H. and J. A. Watson Pty. Ltd., as purchasing and inspecting agents
77	Chairman	Ministerial approval of Commitments
78	*Chairman*	Information given to Minister on operation of Commission
79	General Manager	Unacquitted expenditure—Admission under Section 46 of Audit Act
80	Chairman	Comments on Mr. Debenham's statement
81	General Manager	References to stores accounting control
82	General Manager	Comments on Auditor-General's statement
83	General Manager	General Comments on Statement made by Mr. P. A. Conde
84	Chairman	Contracts schedule appended to Statement No. 33
85	Chairman	The Costing Problem—Report by Edwin V. Nixon and Partners

Number of Statement.	Prepared by—	Topic.
86	General Manager	Tip-Top Paint
87	General Manager	Comments on Statement by Mr. Watson
88	General Manager	Firewood contracts (reference Mr. Conde's comments—Evidence pp. 215–219)
89	Chairman	Admission of Wessel Islands expenditure
90	Chairman	Valuation of assets
91	Chairman	Decision to leave bulldozer on Marchinbar Island
92	Mr. McGregor	"Unit" Crane
93	General Manager	Duplication of orders
94	General Manager	Sundry Debtors' accounts at 30th June, 1952
95	General Manager	Charters of aircraft and ships
96	General Manager	"Unit" Crane (letter to G. H. and J. A. Watson, 30th April, 1953)
97	Mr. R. Pride	*Frying pans, saucepans, &c.*
98	General Manager	Review of Mr. Lockey's statement 2nd February, 1955 and evidence 22nd February, 1955
99	General Manager	Haunstrup contract—Comparison of costs with estimates
100	Chairman	Mr. Storey's dismissal
101	Chairman	"Vetting" of statements
102	General Manager	Comments on Mr. Green's statement
103	General Manager	Comment on Mr. Story's oral evidence (General), 23rd February, 1955
104	General Manager	Comment on Mr. Storey's oral evidence—Certificates
105	Chairman	Comments on Mr. Storey's written statement
106	Chairman	*Interview with Mr. Storey on costing*—Melbourne, November, 1954
107	General Manager	Mr. Storey's dismissal
108	Chairman	Comments on Mr. Storey's evidence, 23rd February, 1955
108A	Mr. Mawby	Comments on Mr. Storey's evidence
109	General Manager	Delays in provision of designs
110	General Manager	Relationships of Senior Staff and Executive control
111	General Manager	"Vetting" of Mr. Storey's statement
112	Chairman	Memorandum from Secretary to Chairman, 12th February, 1953—*Illawarra* engine
113	Chairman	Estimates 1951–52
114	Chairman	Order from Wessel Islands survey with *Australasian Civil Engineering Pty. Ltd.*
115	Chairman	Correspondence between Messrs. Dodd and Watson—July, 1952 (Wessel Islands survey)
116	Chairman	Letter to Commission from G. H. and J. A. Watson *re Illawarra* (Supplementary to Statement No. 64)
117	Chairman	No knowledge of written request for Minister's approval to purchase *Illawarra*
118	Chairman	*Monthly statements of receipts and payments*
119	Chairman	Strategic planning in relation to aluminium
120	Chairman	Letter—Mr. Watson to Rt. Hon. R. G. Casey, 28th February, 1950
121	Chairman	Ministerial approval for contracts over £50,000
122	Chairman	Discussion with Minister, October, 1951—Estimates
123	*General Manager*	*Replies to Committee questions* concerning—1. Stores Records of Wessel Island survey; 2. Use of Plant Ledger Cards by Mr. Storey; 3. Value of equipment mentioned in Statement No. 93; 4. Unit Crane
124	General Manager	Significance of the amount of £1,176,000
125	Chairman	Copies of Documents mentioned by Mr. Cornelsen
126	General Manager	Comments on Mr. Storey's statement of 1st March, 1955
127	R. W. J. Ward	Personal statement
128	E. C. Yeo	Personal statement
129	General Manager	Inquiries between December, 1953 and March, 1954, *re* wrong allocations
130	General Manager	Amounts paid to contractors to 30th June, 1952
131	General Manager	Items queried by Mr. Storey
132	Chairman	Comments on Mr. Storey's experience
133	Business Manager	Commission payable on Wessel Islands Survey
134	Chairman	Terms of reference for Commonwealth Investigation Service inquiries

Appendix No. 3.—Report Para. No. 24.

THE ALUMINIUM INDUSTRY ACTS.

No. 44 of 1944.

An Act to approve and give effect to an Agreement made between the Commonwealth and the State of Tasmania with respect to the Production, for the purposes of Defence, of Ingot Aluminium, and for other purposes.

[Assented to 7th December, 1944.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Aluminium Industry Act 1944*.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

3. In this Act, unless the contrary intention appears—

"the Agreement" means the Agreement a copy of which is set out in the Schedule to this Act;

"the Chairman" means the Chairman of the Commission;

"the Commission" means the Australian Aluminium Production Commission;

"the Vice-Chairman" means the Vice-Chairman of the Commission.

4. The agreement is hereby approved.

5.—(1.) For the purposes of this Act, there shall be a Commission to be known as the Australian Aluminium Production Commission.

(2.) The Commission shall be a body corporate with perpetual succession and a common seal, and may acquire, hold and dispose of real and personal property and shall be capable of suing and being sued.

(3.) All Courts, judges and persons acting judicially shall take judicial notice of the seal of the Commission affixed to any document or notice and shall deem that it was duly affixed.

6.—(1.) The Commission shall consist of—
(a) two members representative of the Commonwealth, one of whom shall be the Chairman; and
(b) two members representative of the State of Tasmania, one of whom shall be the Vice-Chairman.

(2.) The members of the Commission shall be appointed by the Governor-General, those members representative of the State of Tasmania being nominated by the Governor-in-Council of the State.

(3.) The members of the Commission and their deputies shall hold office on such terms and conditions as the Governor-General determines, but subject, in the case of the members representative of the State of Tasmania and their deputies, to the concurrence of the Governor-in-Council of the State.

(4.) Meetings of the Commission shall be summoned by the Chairman, or, in the absence of the Chairman, by the Vice-Chairman.

(5.) The Chairman shall preside at any meeting at which he is present.

(6.) In the absence of the Chairman from any meeting, the Vice-Chairman shall preside, and in the absence of both the Chairman and Vice-Chairman from any meeting the members present may elect one of their number to preside.

(7.) At any meeting of the Commission at which the Chairman presides, he shall have a deliberative vote, and, in the event of an equality of voting, a second or casting vote.

(8.) All questions before the Commission shall be decided by a majority of votes.

(9.) At any meeting of the Commission, three members shall form a quorum.

(10.) All meetings of the Board shall, so far as practicable, be held in Tasmania.

(11.) Notwithstanding the provisions of sub-section (1.) of this section, where there is a vacancy in the office of a member of the Commission, the Commission shall, for the purposes of this Act, be deemed to be constituted by the remaining members.

(12.) The Governor-General may appoint any person to be the deputy of a member of the Commission representative of the Commonwealth, and may appoint any person nominated by the Governor-in-Council of the State of Tasmania to be the deputy of a member of the Commission representative of the State, and any person so appointed shall, in the event of the member of whom he is the deputy being absent, for any reason, from any meeting of the Commission, be deemed to be a member of the Commission for the purposes of that meeting.

7. Subject to the provisions of this Act and of the Agreement, it shall be the duty of the Commission, with all possible expedition, in order to promote the naval, military and air defence of the Commonwealth and its territories, to do all such acts and things as are necessary for the production of ingot aluminium, and for that purpose it shall have and may exercise the powers and functions, and shall perform the duties and obligations, of the Commission set out in the Agreement.

8. The Governor-General may make arrangements with the Governor-in-Council of a State with respect to the supply from that State of bauxite, alumina and other materials for the purposes of the Commission.

9. The sale or disposition of the whole or any part of the undertaking of the Commission shall not be effected unless approved by resolution passed by both Houses of the Parliament of the Commonwealth and by resolution passed by both Houses of the Parliament of the State of Tasmania.

10. There shall be payable out of the Consolidated Revenue Fund or out of the proceeds of any loan raised under the authority of any Act, the sum of One million five hundred thousand pounds for the purposes of the Commission, and that Fund and those proceeds are hereby appropriated accordingly.

11.—(1.) Persons appointed or employed by the Commission under this Act shall not be subject to the *Commonwealth Public Service Act* 1922-1943, but shall be appointed or employed upon such terms and conditions as the Commission determines.

(2.) If an officer of the Public Service of the Commonwealth is so appointed, his service as an officer under this Act shall, for the purpose of determining his existing and accruing rights, be taken into account as if it were service in the Public Service of the Commonwealth and the *Officers' Rights Declaration Act* 1928-1940 shall apply as if this Act and section had been specified in the Schedule to that Act.

(3.) An officer of the Public Service of a State who is appointed under this Act shall have the same rights as if he had been an officer of a Department transferred to the Commonwealth and had been retained in the service of the Commonwealth.

12.—(1.) For the purposes of this Act there shall be a Trust Account which shall be known as the Aluminium Production Trust Account and shall be a Trust Account for the purposes of section sixty-two A of the *Audit Act* 1901-1934.

(2.) There shall be paid to the credit of the Account—
(a) moneys appropriated by the Parliament for the purposes of the Commission;
(b) moneys contributed under the Agreement by the State of Tasmania;
(c) moneys received by the Commission from the operations of any undertaking carried on by it; and
(d) interest received from the investment of any moneys standing to the credit of the Account.

(3.) The moneys standing to the credit of the Account shall be applied—
(a) firstly in meeting the expenses of the Commission under this Act, including the remuneration and allowances payable to members of the Commission and officers appointed and persons employed under this Act; and
(b) secondly in making any payment provided for in paragraph (h) of clause three of the Agreement.

13. The books and accounts of the Commission shall be subject to inspection and audit by the Auditor-General who shall supply to the Premier of the State of Tasmania such information in the possession of the Auditor-General by reason of the inspection and audit as the Premier requires.

14.—(1.) The Commission shall keep the Minister continually informed of its operations under this Act, and shall, not later than the month of September in every financial year, make to the Minister a report upon the operations of the Commission during the preceding financial year.

(2.) The Minister shall cause a copy of the report of the Commission to be laid before each House of the Parliament within fifteen sitting days of that House after he receives the report, and shall also cause a copy to be furnished forthwith to the Premier of the State of Tasmania.

15. The Governor-General may make regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

THE SCHEDULE.

AGREEMENT made this eighteenth day of April One thousand nine hundred and forty-four between the Commonwealth of Australia (hereinafter referred to as "the Commonwealth") of the one part and the State of Tasmania (hereinafter referred to as "the State") of the other part:

WHEREAS in the interests of the naval, military and air defence of the Commonwealth and its territories it is necessary to make provision for the production in Australia of ingot aluminium:

AND WHEREAS the Commonwealth and the State consider it desirable that provision should be made for the production in Tasmania of ingot aluminium and that the Commonwealth and the State should co-operate in the establishment of an industry for that purpose:

NOW it is hereby agreed as follows:—

1. This Agreement is subject to approval by the Parliaments of the Commonwealth and of the State and shall come into effect when so approved, but, in anticipation of that approval, the Commonwealth and the State shall each, so far as may be necessary on its part, do all such acts and things as may reasonably be done to expedite and facilitate the establishment of the Australian Aluminium Production Commission and the commencement of its operations as soon as practicable.

2. The Commonwealth and the State shall each so far as may be necessary on its part provide for or secure the execution and enforcement of the provisions of this Agreement and any Acts approving the same.

3. The Commonwealth shall take all the necessary steps to establish a Commission to be known as the Australian Aluminium Production Commission (hereinafter referred to as "the Commission") subject to the following conditions:—
(a) Half of the members of the Commission shall be nominated by and represent the Commonwealth and half shall be nominated by and represent the State;
(b) One of the members representative of the Commonwealth shall be the Chairman of the Commission;
(c) The Chairman of the Commission shall on any question arising for decision by the Commission have a deliberative vote and in the event of the members equally divided in opinion shall also have a second or casting vote;
(d) One of the members representative of the State shall be the Vice-Chairman of the Commission;
(e) All meetings of the Commission shall so far as practicable be held in Tasmania;
(f) The State shall contribute for the purposes of the Commission one pound for every pound contributed by the Commonwealth for those purposes;
(g) The Commission shall debit its accounts with interest on the amounts so contributed by the Commonwealth and the State at such rate as the Treasurer of the Commonwealth may determine from time to time;
(h) Any profits derived from the operations of the Commission shall be applied firstly in payment to the Commonwealth and the State in equal proportions of the interest debited in accordance with the last preceding paragraph, secondly, in so far as they are not required for the development of the undertaking of the Commission, in repayment in equal proportions of the amounts contributed by the Commonwealth and the State for the purposes of the Commission, and thereafter as the Commonwealth and the State may agree;

(i) No action question or decision relating to or affecting—
(i) the policy of the Commonwealth in connexion with the naval, military and air defence of the Commonwealth and its territories or with external affairs;
(ii) any proposed sale or disposition of the whole or any part of the undertaking of the Commission;
(iii) any proposed sale of products of the Commission to aliens or for export from the Commonwealth; or
(iv) any proposed sale of such products under contracts of such duration or under such circumstances as might endanger the ability of the Commission to meet the defence requirements of the Commonwealth,
shall be taken determined or made without the consent of the Commonwealth as expressed through its representatives on the Commission:
(j) The Commission shall not enter into or be in any way concerned in or a party to or act in concert with any commercial trust or combine but shall always be and remain an independent Australian undertaking; and
(k) Other things being equal the Commission shall give preference to goods manufactured in the Commonwealth or its territories when purchasing machinery plant and supplies.

4. Subject to any directions given on behalf of the Commonwealth and the State by the Minister of State for the Commonwealth administering the Act passed by the Parliament of the Commonwealth to approve this Agreement, and subject to this Agreement, the Commission shall with all possible expedition in order to promote the naval, military and air defence of the Commonwealth and its territories do all such acts and things as are necessary for the production by the Commission of ingot aluminium and in particular, for the purposes of that production, shall have power—
(a) to acquire land, buildings, plant and equipment;
(b) to obtain supplies of electricity;
(c) to obtain supplies of bauxite, alumina and other materials;
(d) to encourage and assist the production and manufacture in the Commonwealth or its territories of all materials required for the production of ingot aluminium;
(e) to determine the processes to be employed for the production of ingot aluminium;
(f) to make such arrangements as it considers appropriate for the construction and maintenance of works;
(g) to conduct scientific research;
(h) to engage such experts as it thinks fit;
(i) to appoint such officers and employ such persons as it thinks necessary;
(j) to dispose of ingot aluminium and other products produced by, and other property of, the Commission;
(k) to enter into contracts and agreements; and
(l) to do such other acts necessary or incidental to or expedient for the functions and powers specified in the preceding paragraphs as shall be approved by the Commonwealth and the State.

5. The Commission shall not, in the exercise of any of its powers and functions, without obtaining the prior approval of the Minister of State for the Commonwealth administering the Act passed by the Parliament of the Commonwealth to approve this Agreement (who before giving such approval shall consult with and take into consideration the views of the Premier of the State), proceed with any single project involving an expenditure of more than Fifty thousand pounds.

6. The works of the Commission for the production of ingot aluminium from alumina shall be established in Tasmania.

7. Supplies of electricity required by the Commission for the production in Tasmania of ingot aluminium and of materials required for the production of ingot aluminium shall be obtained from the Hydro-Electric Commission of Tasmania and for that purpose the State shall make such provision as it thinks necessary to enable the Hydro Electric Commission to provide those supplies of electricity at a rate satisfactory to the Australian Aluminium Production Commission.

8. The Commonwealth and the State will each on its part exercise its legislative and administrative powers in such manner as is calculated to ensure the full success and development of the aluminium industry in accordance with this Agreement.

9. The books and accounts of the Commission shall be subject to inspection and audit by the Auditor-General of the Commonwealth who shall supply to the Premier of the State such information in his possession by reason of the inspection and audit as the Premier requires.

10. The Commission shall furnish to the Minister of State for the Commonwealth administering the Act passed by the Parliament of the Commonwealth to approve this Agreement, not later than the month of September in each year a report on its operations for the preceding financial year and that Minister shall forthwith cause a copy of that report to be furnished to the Premier of the State.

In witness whereof the parties hereto have executed these presents the day and year first above-mentioned.

Signed sealed and delivered by the Right Honourable HERBERT VERE EVATT Acting Minister of State for Supply and Shipping for and on behalf of the said Commonwealth in the presence of—
A. V. SMITH.
} H. V. EVATT

Signed sealed and delivered by ROBERT COSGROVE the Premier of the State of Tasmania for and on behalf of the said State in the presence of—
R. G. OSBORNE.
} ROBERT COSGROVE

No. 16 of 1952.

An Act to amend the *Aluminium Industry Act* 1944.

[Assented to 30th May, 1952.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Aluminium Industry Act* 1952.

(2.) The *Aluminium Industry Act* 1944* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Aluminium Industry Act* 1944-1952.

2. This Act shall come into operation on a date to be fixed by Proclamation.

3. Section three of the Principal Act is amended—
(a) by inserting in the definition of "the Agreement", before the word "Schedule", the word "First"; and
(b) by inserting after the definition of "the Commission" the following definition:—
"'the Supplementary Agreement' means the Agreement a copy of which is set out in the Second Schedule to this Act;".

4. Section four of the Principal Act is amended by adding at the end thereof the following sub-section:—
"(2.) The Supplementary Agreement is hereby approved.".

5.—(1.) Section six of the Principal Act is repealed and the following section inserted in its stead:—
"6.—(1.) The Commission shall consist of five members appointed by the Governor-General, of whom four shall represent the Commonwealth and one shall represent the State of Tasmania.
"(2.) The member representing the State of Tasmania shall be appointed on the nomination of the Governor-in-Council of the State.
"(3.) The Governor-General shall appoint one of the members representing the Commonwealth to be the Chairman of the Commission and one of the members of the Commission to be the Vice-Chairman of the Commission.
"(4.) The members of the Commission shall hold office on such terms and conditions as the Governor General determines, subject, in the case of the member representing the State of Tasmania, to the concurrence of the Governor-in-Council of the State.
"(5.) The Commission shall meet at such times and places as are directed—
(a) by the Chairman; or
(b) by the Vice-Chairman, with the approval of two other members.
"(6.) The Chairman shall preside at all meetings of the Commission at which he is present, and in the absence of the Chairman the Vice-Chairman shall preside.
"(7.) In the absence of the Chairman and the Vice-Chairman from a meeting of the Commission, the members present shall elect one of their number to preside.
"(8.) All questions arising at a meeting of the Commission shall be decided by a majority of the votes of the members present.
"(9.) The Chairman or other member presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
"(10.) At a meeting of the Commission, three members form a quorum.
"(11.) A vacancy in the membership of the Commission does not invalidate the proceedings of the Commission.".
(2.) Until the first appointment of the members of the Commission as constituted under the Principal Act as amended by this Act, the Commission shall continue to be constituted and to function as if this section had not been enacted.

6. Section seven of the Principal Act is amended—
(a) by inserting after the word "Agreement" (wherever occurring) the words ", as amended by the Supplementary Agreement"; and
(b) by omitting the words "ingot aluminium" and inserting in their stead the words "aluminium in primary form, including aluminium in the form of ingots, rolling and extrusion billets and wire bar".

7. Section nine of the Principal Act is repealed and the following section inserted in its stead:—
"9. A sale or disposal of the undertaking of the Commission, or of an interest in that undertaking, shall not be effected except with the approval of the Parliament.".

* Act No. 44, 1944.

8. Section ten of the Principal Act is amended by adding at the end thereof the following sub-section:—

"(2.) The further sum of Four million two hundred and fifty thousand pounds shall be payable as provided in the last preceding sub-section, and the appropriation made by that sub-section extends to that further sum.".

9.—(1.) Sections twelve, thirteen and fourteen of the Principal Act are repealed and the following sections inserted in their stead:—

"12.—(1.) *The Commission has power to borrow money* on overdraft from the Commonwealth Bank of Australia upon the guarantee of the Treasurer.

"(2.) Except with the consent of the Treasurer, the Commission has no power to borrow otherwise than in accordance with this section.

"13.—(1.) The Commission shall open and maintain an account or accounts with the Commonwealth Bank of Australia or such other bank or banks as the Treasurer approves.

"(2.) All moneys received by the Commission shall be paid into an account referred to in the last preceding sub-section.

"14.—(1.) The moneys of the Commission shall be applied for the purposes of, and in accordance with, the Agreement and the Supplementary Agreement.

"(2.) *Moneys of the Commission not immediately required* for the purposes of the Commission may be invested on fixed deposit with the Commonwealth Bank of Australia or in securities of, or guaranteed by, the Government of the Commonwealth.

"14A.—(1.) The Commission shall keep accounts in a form approved by the Treasurer.

"(2.) The accounts of the Commission are subject to inspection and audit by the Auditor-General for the Commonwealth.

"(3.) The Auditor-General shall report to the Minister the result of each inspection and audit, and shall, so long as the State of Tasmania retains a financial interest in the affairs of the Commission, supply to the Premier of that State such information in his possession by reason of the inspection and *audit as the Premier requires.*

"14B. The income, property and operations of the Commission are subject to taxation (other than income tax) under the laws of the Commonwealth but are not subject to taxation under any law of a State to which the Commonwealth is not subject.

"14C.—(1.) The Commission shall keep the Minister continually informed of its operations and shall, after the thirtieth day of June and not later than the thirtieth day of September in each year, prepare and furnish to the Minister a report on the operations of the Commission during the financial year ended on that thirtieth day of June, together with a statement of its accounts for that financial year.

"(2.) Before furnishing the statement of its accounts to *the Minister, the Commission shall submit them to the Auditor-*General for the Commonwealth for a report as to their correctness or otherwise, and the Commission shall furnish to the Minister, with the statement, the report of the Auditor-General.

"(3.) A copy of the report and statement of accounts of the Commission, together with the report of the Auditor-General as to those accounts, shall be laid before each House of the Parliament within fifteen sitting days of that House after their receipt by the Minister.

"(4.) The Minister shall, forthwith after he receives a statement and reports under this section, furnish a copy of the statement and reports to the Premier of the State of Tasmania.

"14D. The Commission shall not, except with the approval of the Minister, enter into a contract involving the payment by the Commission of an amount exceeding Fifty thousand pounds.".

(2.) Moneys standing to the credit of the Trust Account established under section twelve of the Principal Act at the date of commencement of this Act may be paid to the Commission, and any moneys so paid shall be paid by the Commission into a bank account of the Commission.

10. The heading to the Schedule to the Principal Act is omitted and the following headings are inserted in its stead:—

"THE SCHEDULES.

FIRST SCHEDULE.".

11. The Principal Act is amended by adding at the end thereof the following Schedule:—

SECOND SCHEDULE.

AGREEMENT made this twenty-sixth day of April One thousand nine hundred and fifty-two between THE COMMONWEALTH OF AUSTRALIA (hereinafter referred to as "the Commonwealth") of the one part and the STATE OF TASMANIA (hereinafter referred to as "the State") of the other part:

WHEREAS the Commonwealth and the State consider it desirable that the Agreement made on the eighteenth day of April One thousand nine hundred and forty-four between the Commonwealth and the State relating to the production in Australia of ingot aluminium (in this Agreement referred to as "the Principal Agreement") should be amended:

NOW IT IS HEREBY AGREED as follows:—

1. This Agreement is subject to approval by the Parliaments of the Commonwealth and the State and shall come into effect when so approved.

2. Clause 3 of the Principal Agreement is amended—

(*a*) by omitting the words "subject to the following conditions:—" and inserting in their stead the words "The following provisions shall apply with respect to the Commission:—";

(*b*) by omitting paragraphs (*a*) to (*f*) (inclusive) and inserting in their stead the following paragraphs:—

"(*a*) the Commission shall consist of five members (including a Chairman and a Vice-Chairman) appointed in accordance with an Act of the Parliament of the Commonwealth, four of whom shall represent the Commonwealth, and one of whom shall be nominated by, and shall represent, the State;

"(*b*) the remuneration and allowances of the members of the Commission shall be paid by the Commission;

"(*c*) the Chairman shall preside at all meetings of the Commission at which he is present and, in the absence of the Chairman from a meeting, the Vice-Chairman shall preside;

"(*d*) in the absence of the Chairman and the Vice-Chairman from a meeting of the Commission, the members present shall elect one of their number to preside;

"(*e*) at a meeting of the Commission three members shall form a quorum, and all questions arising shall be decided by a majority of the votes of the members present;

"(*f*) the Chairman or other member presiding at a meeting of the Commission shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote;

"(*fa*) the State shall contribute for the purposes of the Commission the amount by which the total of the sums so contributed by the State before this paragraph came into operation was less than One million five hundred thousand pounds;

"(*fb*) the Commonwealth shall contribute for the purposes of the Commission any further moneys required for those purposes up to an amount (inclusive of sums contributed by the Commonwealth before the commencement of this paragraph) of Five million seven hundred and fifty thousand pounds, and may, if it thinks fit, contribute moneys beyond that amount;"; and

(*c*) by omitting paragraph (*h*) and inserting in its stead the following paragraphs:—

"(*h*) any profits derived from the operations of the Commission shall be applied—

(i) firstly, in payment, or in reduction ratably, of the amounts owing to the Commonwealth and the State respectively for interest debited in accordance with the last preceding paragraph;

(ii) secondly, in repayment ratably of the amounts contributed by the Commonwealth and the State respectively *for the purposes of the* Commission; and

(iii) thirdly, unless otherwise agreed between the Commonwealth and the State, in making payments to the Commonwealth and the State in proportion to the totals of the amounts which were contributed by the Commonwealth and the State respectively for the purposes of the Commission;

"(*ha*) the powers, duties and procedure of the Commission with respect to borrowing money, banking and keeping accounts shall be subject to regulation by the Parliament of the Commonwealth;".

3. After clause 3 of the Principal Agreement the following clause is inserted:—

"3A.—(1.) A sale or disposal of the undertaking of the Commission, or of an interest in that undertaking, shall not be made unless not less than three months' notice of the proposed sale or disposal has been given by the Commonwealth to the State.

"(2.) If, after a notice has been given to the State under the last preceding sub-clause and before the sale or disposal takes place, the State notifies the Commonwealth that it objects to the proposed sale or disposal—

(*a*) the sale or disposal shall not be made unless the Commonwealth has paid to the State the moneys contributed by the State for the purposes of the Commission and not previously repaid, together with any interest outstanding on those moneys; and

(*b*) the State shall accept a payment offered by the Commonwealth for the purposes of the last preceding paragraph, and shall then have no further interest in the assets of the Commission or in the proceeds of the sale or disposal, *and shall cease to be entitled to be represented* on the Commission or to have any other rights under this agreement.

"(3.) In the event of a sale or disposal of the whole of the undertaking of the Commission as existing at the date of the sale or disposal, not being a sale or disposal to which the State has objected under the last preceding sub-clause, any moneys remaining in the hands of the Commission after discharging all its liabilities (other than any liability for interest payable under this agreement) shall be applied firstly in payment ratably of interest payable under this agreement to the Commonwealth and the State and secondly in making payments to the Commonwealth and the State in proportion to the totals of the amounts which were contributed by the Commonwealth and the State respectively for the purposes of the Commission.".

4. Clause 4 of the Principal Agreement is amended—

(*a*) by omitting paragraph (*a*) and inserting in its stead the following paragraph:—

"(*a*) to produce or obtain supplies of all materials required for the production of aluminium;"; and

(*b*) by omitting paragraph (*f*) and inserting in its stead the following paragraph:—

"(*f*) to do all other acts incidental to, or necessary or expedient for, the exercise of the powers specified in the preceding paragraphs."

5. Clause 5 of the Principal Agreement is omitted.

6.—(1.) *After clause 10 of the Principal Agreement the following* clause is inserted:—

"11. In this Agreement, 'aluminium' means aluminium in primary form, including aluminium in the form of ingots, rolling and extrusion billets and wire bar.".

(2.) The Principal Agreement is amended by omitting the word "ingot" (wherever occurring).

7. In all other respects the Principal Agreement is confirmed.

IN WITNESS whereof the parties hereto have executed these presents the day and year first abovementioned.

SIGNED SEALED and DELIVERED by the Honourable HOWARD BEALE Minister of State for Supply for and on behalf of the Commonwealth in the presence of:
F. C. HINSHELWOOD
} HOWARD BEALE. L.S.

SIGNED SEALED and DELIVERED by ROBERT COSGROVE the Premier of Tasmania for and on behalf of the State in the presence of:
C. G. GORDON
} ROBERT COSGROVE. L.S.

No. 10 of 1954.

An Act to amend the *Aluminium Industry Act* 1944-1952.

[Assented to 20th April, 1954.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, for the purpose of appropriating the grant originated in the House of Representative, as follows:—

1.—(1.) This Act may be cited as the *Aluminium Industry Act* 1954.

(2.) The *Aluminium Industry Act* 1944-1952,* as amended by this Act, may be cited as the *Aluminium Industry Act* 1944-1954.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

3. Section ten of the *Aluminium Industry Act* 1944-1952 is amended by adding at the end thereof the following sub-section:—

"(3.) In addition to the sums specified in the last two preceding sub-sections and the sum of One million one hundred and forty-seven thousand four hundred pounds appropriated for the purposes of the Commission by the *Supplementary Appropriation* (*Works and Services*) *Act* 1951-52, the further sum of Two million one hundred and two thousand six hundred pounds *shall be payable as provided in sub-section* (2.) of this section, and the appropriation made by that sub-section extends to that further sum.".

* Act No. 44, 1944, as amended by No. 10, 1952.

APPENDIX No. 4—REPORT PARA. No. 33.

OPINION OF THE SOLICITOR-GENERAL.

(30th November, 1954.)

ALUMINIUM INDUSTRY ACT 1944-1954: AREAS OF RESPONSIBILITY OF THE MINISTER, COMMISSION AND MEMBERS.

In a memorandum dated 15th November, 1954, the Secretary of your Committee requested me to outline briefly those features of the *Aluminium Industry Act* 1944-1954, which define the areas of responsibility of the Minister, the Australian Aluminium Production Commission and the members of the Commission, both past and present.

The Minister and the Commission.

2. The relevant provisions of the Act are relatively few and specific. But the mutual relations of the Minister and the Commission cannot be ascertained from the terms of the law *alone.* Resort must also be had to the pattern or system of constitutional conventions, understandings or practices within which the statutory provisions are intended to operate. The constitutional conventions in this field, however, are by no means clearly established, and leave room for much diversity of opinion.

3. The respective legal powers and duties of the Minister and the Commission are delimited or indicated, in the *Aluminium Industry Act* 1944-1954, as follows:—

(i) The Commission is a body corporate, whose members are appointed by the Governor-General; four of them "*represent*" the Commonwealth, and one (nominated by the State) "*represents*" the State: see ss. 5 and 6 of the Act, *as amended by Act* No. 16 of 1952, and cl. 3 of the Agreement, as amended by s. 11 of the 1952 Act.

(ii) Section 7 of the Act, as amended by s. 6 of the 1952 Act, states as follows the general duties, powers and functions of the Commission:—

"7. Subject to the provisions of this Act and of the Agreement, as amended by the Supplementary Agreement, it shall be the duty of the Commission, with all possible expedition, in order to promote the naval, military and air defence of the Commonwealth and its territories, to do all such acts and things as are necessary for the production of aluminium in primary form, including aluminium in the form of ingots, rolling and extrusion billets and wire bar, and for that purpose it shall have and may exercise the powers and functions, and shall perform the duties and obligations, of the Commission set out in the Agreement, as amended by the Supplementary Agreement."

This section, it will be noted, is in itself, incomplete. It is "subject to" the other provisions of the Act. Furthermore, to ascertain the powers, duties and functions for which it provides reference must be made to the Agreement.

(iii) Other provisions of the Act reserve to a Commonwealth Minister certain specific powers of control over the Commission. Thus—

(*a*) the Commission must keep its accounts in a form approved by the Treasurer: s. 14A, as inserted by 1952 Act;

(*b*) the Commission cannot, without the Treasurer's approval, borrow money except on overdraft from the Commonwealth Bank: s. 12, as inserted by 1952 Act;

(*c*) the Commission may not, without the Minister's approval, enter into a contract involving payment by the Commonwealth of more than £50,000: s. 14D, as inserted by 1952 Act.

(iv) The Commission cannot sell or dispose of its undertaking or an interest therein, except with the approval of the Commonwealth Parliament: s. 9, as amended by 1952 Act.

(v) The Agreement prohibits the Commission from taking any action relating to the policy of the Commonwealth in connexion with defence or external affairs, or certain other matters, without the consent of the Commonwealth, *as expressed through its representatives on the Commission:* Agreement, cl. 3 (1).

(vi) The Agreement (by cl. 4) spells out in some detail *the powers which the Commission is to have for* the purpose of producing aluminium. This list of powers is expressly stated to be "subject to any directions given on behalf of the Commonwealth and the State by the Minister of State for the Commonwealth".

(vii) The Auditor-General is required to audit the Commission's accounts, and to report to the Minister the result of each inspection and audit: s. 14A (2) and (3), as amended by the 1952 Act.

(viii) The Commission is required to "keep the Minister continually informed of its operations", and to present to him annually a report on its operations for the preceding financial year, together with a statement of its accounts: s. 14C (1), as amended by the 1952 Act.

(ix) The Commission has power to appoint or employ persons on such terms and conditions as it determines, and not under the Public Service Act: Agreement, cl. 4 (i); Act, s. 11.

4. Though the 1952 Act greatly enlarged the representation of the Commonwealth on the Commission, and the Commonwealth's financial stake in its operations, and gave to the Treasurer the specific powers set out in para. 3 (iii) (*a*) and (*b*) above, the legal powers and responsibilities of the Minister for Supply have not been substantially changed since 1944.

5. These legal arrangements may be summed up as follows:—

(i) the Commission is not an ordinary Department of State, and the ordinary day-to-day administration of its business undertaking is vested in it, though there are some few important business steps which it may not take without the approval either of the Minister or of the Treasurer;

(ii) on the other hand, the Minister is entitled to receive, from the Auditor-General and from the Commission itself, much information about the affairs of the Commission, and (apart altogether from the specific cases where the Commission cannot act without his approval) the Commission is subject generally to any directions he may give on behalf of the Commonwealth and the State;

(iii) in addition, four out of the five members of the Commission are appointed not as so many individuals chosen to conduct a business enterprise but as "representatives of the Commonwealth", and as such undoubtedly subject to instruction from the Minister on behalf of the Government.

6. In the result, it is I think clear, if one looks at the legal position alone, that the Minister is in a position to make himself just as fully responsible for the operations of the Commission, if he so wished, as he is for the affairs of his Department. But the question is whether, as so often in our constitutional system, the Minister's legal powers are intended to be exercised in full, or whether the Minister should in practice be guided by special conventions or understandings, and if so what they are. In my opinion, constitutional practice does not require the Minister to assume, and would not justify him in assuming, the same degree of detailed responsibility for the Commission as he does and should for his Department. The sections and clauses reserving specific matters for Ministerial approval or direction seem to me radically inconsistent with any assumption that detailed Ministerial control will be the rule.

7. The Commission belongs, clearly enough, to the now familiar category of the "public corporation", created to conduct a business undertaking which none but Governments could establish. The participation in the scheme of the State of Tasmania (more prominent under the 1944 Act than since the 1952 amendment) gives the Commission a special character as a joint Commonwealth-and-State enterprise, but does not in my opinion destroy the relevance of the growing body of accepted principles which may fairly be regarded as now applicable to public corporations in general.

8. Each statutory corporation must be considered in relation to its own individual Act. Where the Act expressly requires Ministerial approval, the Minister must of course be responsible either for giving or withholding his approval to what the Commission proposes. As to the role of the Minister in matters not expressly reserved, however, differing views have been expressed by writers of standard works on the subject. Nevertheless, I think constitutional practice may with fair confidence be summed up in the following propositions:—

(i) that the establishment by Parliament of a public corporation rather than a Department of State as the chosen instrument for the conduct of a business undertaking implies an intention that the corporation should enjoy a substantial measure of freedom from political direction and control;

(ii) that Ministerial control over the public corporation should be restricted to matters of general policy and principle, and should not extend to the details of management;

(iii) that in order to promote business efficiency and flexibility it is necessary to accept some derogation from the complete measure of Ministerial accountability to Parliament which is insisted on, in the constitutional systems of the British Commonwealth, in relation to the Departments of State.

9. The literature in this field is voluminous. Special reference however, is made to—

(a) *Government and Parliament*, by Herbert Morrison: pp. 255-285, esp. 264-5, 282-3.

(b) *The Public Corporation*, edited by W. Friedmann: pp. 570-593.

(c) *State Socialism in Victoria*, by Sir Frederick Eggleston: pp. 41-56.

(d) *Ministerial Control and Parliamentary Responsibility of Nationalised Industries*, by Ernest Davies M.P., (1950) 21 Political Quarterly 150.

Responsibility of Members of the Commission.

10. In relation to the position of members (past and present) of the Commission, I am not altogether confident of having directed my mind to the points contemplated by the Committee. The Aluminium Industry Act does not deal specifically with this matter, but by inference some hints may perhaps be gathered. The Committee will be able to elucidate by oral questions any further points on which advice is desired.

11. The Act and the Agreement, as stated in para. 3 (i) above, designate the members of the Commission as "representatives" of the Commonwealth or the State, as the case may be. The choice of this word is I think significant. A representative, in ordinary usage, is something more than a mere servant or agent. The Agreement does indeed expressly contemplate that the views of the Commonwealth will be made known to the Commission, on certain major points such as matters affecting defence and external affairs, through its "representatives". But the specific mention of this matter seems to me to suggest that in ordinary day to day administration the members of the Commission will not be subjected to Government control. The relation to the Minister, therefore, of the individual members of the Commission seems to me to be affected by very much the same constitutional understandings as apply to the Commission itself.

12. If a member of the Commission were to disregard the views or instructions of the Government which he represents, his appointment would no doubt be terminated. The terms and conditions of appointment are fixed by the Governor-General. I understand that members are not in practice appointed for specified periods. They must, therefore, I think be regarded as holding office during the Governor-General's pleasure.

13. So far as concerns the accountability in the ordinary Courts of members of a public corporation such as the Commission, the established rules are that—

(a) a member of the Commission is not personally liable for any act of the Commission or for any act done by him as a member of the Commission;

(b) a member who actively participates in an act which is beyond the powers of the Commission to perform is, to the extent of his participation, liable personally for the consequences.

14. The question might arise whether the Commonwealth has any administrative remedies against individual members of the Commission. But advice on such a matter seems scarcely required for present purposes.

Appendix No. 5—Report Para. No. 69.

OPINION OF THE SOLICITOR-GENERAL.

(14th February, 1955.)

Aluminium Industry Act 1944-1954, Section 14A: Form of Accounts: Responsibility of Treasurer and Auditor-General.

I refer to your memorandum dated 11th January, 1955, regarding the above matters. The questions you ask are as follows:—

(a) the meaning and scope of the term "form of accounts" as used in the legislation referred to;

(b) the responsibilities of the Treasurer in regard thereto; and

(c) the nature and scope of the Auditor-General's responsibility under the provisions of such legislation.

2. None of your questions admits of a completely accurate short answer. Briefly, it seems to me that section 14A (1.) refers not only to the final accounts but also to all the ledger accounts; it covers the form of the final accounts, the form and subject matter of the ledger accounts and the cash book. It is the responsibility of the Treasurer to consider whether the forms submitted for approval are suitable, and to approve of the forms submitted, after amendment to make them suitable, if this is necessary. Thereafter, the responsibility for seeing that the forms are adopted is, in my view, the Minister's. The Auditor-General's responsibility is to report to the Minister if no forms have been approved; if forms have been approved, he should report if the forms are not being observed or if there are, in his view, any deficiencies in the forms. In this memorandum I have used the words "the Minister" to indicate the Minister administering the Act. The short answers are elaborated below.

3. Though, as a matter of a law, the meaning of the section seems to me beyond doubt, I am aware that quite different views were entertained and acted on in practice by those who were concerned with the actual administration of the Act. It is only at this stage that legal advice has been sought.

General:

4. Before proceeding to consider the individual questions, I think I should make some general comments. In the first place, this memorandum concerns only the position of the accounts of the Aluminium Commission after the 1952 Act came into operation. All of your questions are directed to the form of the accounts mentioned in section 14A, which was inserted by the 1952 Act. I have, therefore, not covered at all the position before the 1952 Act, although I understand that the Public Accounts Committee is concerned with that period.

5. My second comment affects the approach to all three questions. I mentioned in my memorandum of 30th November, 1954, to the Chairman of the Public Accounts Committee that, in considering the position under the Act, one must have regard not only to the legal position but also to the "pattern or system of constitutional conventions, understandings or practices within which the statutory provisions are intended to operate", in other words, to the growing body of accepted principles regarding the operation of public corporations. Regard must be had, of course, to the statutory injunctions in each case, but it is assumed that the Minister will exercise his statutory powers in such a way as to leave a substantial measure of independence to the corporation.

6. In my evidence before the Committee, I suggested that this general approach could affect the interpretation of section 14A(1.). It did not follow that the Parliament desired to put the Commission in the position of having no responsibility for the form of its own accounts, but the purpose of paragraph (*ha*) of clause 3 of the Agreement, and of section 14A(1.), was, in part, to make it clear that any decision at governmental levels on the form of the accounts was to be, finally, the function of the Commonwealth Government.

Question (a): The meaning and scope of the term "form of accounts".

7. It has been suggested, I understand, that section 14A(1.) refers only to the final accounts, that is, the balance sheet and profit and loss account ("working account"). As I understand the suggestion, it is that this is sufficient; a requirement that, for example, assets be treated in a certain way in a balance sheet in itself would necessitate certain action in the ordinary accounts to ensure that the necessary information would be available for inclusion in the balance sheet. It is also suggested that any greater requirement would be out of keeping with the principle of setting up a statutory corporation. With this latter approach, I am, myself, in sympathy. It arrives at a compromise which is so much in line with the general principles outlined by me above that I would agree that it is an interpretation which should be adopted if the words used in the Act permit. In my view, however, they do not.

8. As a matter of law, it seems clear that section 14A(1.) refers to something more than the final accounts. At the outset, I think I should draw attention to the fact that your question uses a phrase, "form of accounts", which does not appear in the sub-section. This provides that the "Commission shall keep accounts in a form approved by the Treasurer". The distinction is not without significance. It is not the "form of accounts" which is to be approved but the form in which the Commission shall keep its accounts. In that context, the word "form" could include not only the set up of the accounts, but also some reference to the manner of keeping the accounts. Again, the word "keep" seems to me to be most significant. One "keeps" the ordinary accounts during a year, and "presents" the final accounts. If section 14A(1.) were intended to relate only to the final accounts, I would not expect the use of the word "keep". This conclusion is reinforced when one looks at paragraph (*ha*) of clause 3 of the Agreement. This reference is permissible as the Agreement is in the Schedule to the Act. Paragraph (*ha*) reads as follows:—

"(*ha*) the powers, duties and procedure of the Commission with respect to borrowing money, banking and keeping accounts shall be subject to regulation by the Parliament of the Commonwealth;"

9. Further support is obtained for this view when one looks at the remainder of section 14A and at section 14C. By section 14A(2.) the accounts are made subject to inspection and audit by the Auditor-General. I appreciate that an audit of final accounts involves inspection and audit of the ordinary accounts and, indeed, of the supporting vouchers and documents. In some circumstances, a series of "audit inspections" during a financial year might be regarded as steps in the auditing of the final accounts to be prepared at the end of the year. In the present context, however, it is clear that the Auditor-General has two functions: to report on the "statement of accounts" under section 14C(2.), and to inspect and audit the accounts under section 14A(2.). In my view, there can be little doubt that the "accounts" mentioned in section 14A(2.) are the ordinary books of account. Sub-section (3.) shows that these must include the ledger accounts and cash book. Section 14A, taken as a whole, shows that the "accounts" which the Auditor-General is to audit under sub-section (2.) are the same "accounts" as are covered by sub-section (1.).

10. Section 14C also leads to the same conclusion. In this section, there are four clear references to the final accounts. On three occasions the words used are "statement of its accounts" and on the fourth occasion the reference is to "the statement". I think it must be assumed that the "accounts" referred to in section 14A(1.) are something different from the "statement of accounts" referred to in section 14C.

11. It is, I think, for the Treasurer to decide how far to go in approving the accounts. The general principles should exclude too great an interference with the affairs of the Commission. I do not believe that the Treasurer was intended to be clothed with a power to approve of such matters as systems and forms in relation to stores, or purchases journals, or forms of requisitions, or restrictions on purchases. The Treasurer might well not desire, moreover, to approve a specimen ledger page, but could content himself with approval of a statement of the ledger accounts it was proposed to keep. His function, I would think, is only to satisfy himself that the accounts are being kept in a form which will conform to proper public standards of accounting and enable the Commission to supply information to meet the exigencies of Parliamentary discussion.

Question (b): The responsibility of the Treasurer.

12. In regard to the relationship between the Minister and the Treasurer, it seems clear that the authors of the arrangements had in mind working arrangements the exact scope of which is not set out in the Act. The Minister is responsible for the general working of the Commission; I have discussed the nature of his responsibility in my memorandum to the Chairman of the Public Accounts Committee referred to above. On the other hand, certain sections, 12, 13 and 14A, give functions to the Treasurer.

13. It is clearly the function of the Treasurer under Section 14A to consider the forms submitted, to suggest any necessary amendments and to approve of the forms when they are satisfactory. There, it seems to me, the responsibility of the Treasurer ends. The Act ends. A copy of the approved forms should be transmitted to the Minister by the Commission and the Commission should report to the Minister when it had adopted the forms. Doubtless, the Minister would, either through his own officers or through the Treasurer, look to the officers of the Treasury for some assistance in any further action he considered necessary. But the legal position seems clear; once the forms are approved, it is the responsibility of the Commission to see that they are implemented and the Minister has the same kind of supervisory responsibility in this as in other matters.

Question (c): The responsibility of the Auditor-General.

14. The responsibility of the Auditor-General is to inspect, audit, and report. It is in general no part of the duty of the Auditor-General to advise on the establishment of a set of accounts; indeed, it might be inadvisable for the Auditor-General or his officers to identify themselves too closely with the planning of a scheme which it will thereafter be their duty to view impartially. On the other hand, I presume that this does not mean that all comments should be destructive and doubtless constructive criticism is made from time to time.

15. In the present context, the Auditor-General should mention in his report the fact, if it be the fact, that no forms have, or no complete set of forms has, been approved. He should report if the forms are not being observed, and if any deficiencies in the forms have been disclosed in practice. In this regard, it would not be the function of the Auditor-General to substitute his view on policy matters for that of the Commission or of the Minister, but only to draw attention to matters which revealed defects in the accounting for the finances involved.

16. Under the 1952 Act, the Auditor-General is not auditing part of the Public Account when he audits the accounts of the Commission. A reference to the accounts of the Commission in the Auditor-General's report to Parliament could be made under section 51A of the Audit Act. But the primary responsibility of the Auditor-General under the 1952 Act is—

(a) to report to the Minister the result of each inspection and audit (s. 14A (3.)); and

(b) to furnish a report, presumably to the Commission, on the correctness or otherwise of the statement of accounts for a financial year (s. 140 (2.)).

17. It seems clear that the reports mentioned in section 14A (3.) are in addition to the reports mentioned in section 14C (2.). The reports required by section 14A (3.) follow each inspection and audit; the Act does not require a continuous audit, but it does imply inspections at more frequent intervals than a financial year. The Auditor-General's responsibility to report to the Minister any of the matters mentioned in paragraph 15 above would arise on any of these inspections if they disclosed the facts there mentioned.

Appendix No. 6—Report Para. No. 87.
STATEMENT SUBMITTED BY THE AUDITOR-GENERAL.

(6th December, 1954.)

Experience of other Statutory Corporations in Respect of Accounts and Stores Control and Costing During the Establishment Periods and the Measures Adopted to Achieve the Results.

Australian Whaling Commission.

1. The Whaling Commission was established by Act No. 33 of 1949 and has presented annual accounts and balance-sheet as at June 30 for the five years 1950-54.

2. No serious difficulties of a nature affecting certification of the balance-sheet have been met with in the Commission's accounting since its inception.

Australian National Airlines Commission.

3. The Australian National Airlines Commission (Trans Australia Airlines) was established by the *Australian National Airlines Act* 1945 and experienced considerable difficulty in its early years in the proper recording of plant and stock.

4. Its initial problems were principally associated with Stock Control and Accounting, lack of adequate storage space and facilities militating against efficient control.

5. Stores records and stocktaking procedures were also unsatisfactory due, to a large extent, to the inexperience of many of the staff. When the Commission was advised of the position by Audit, it took prompt remedial action. Audit was regularly informed of the progress made. Marked improvement was noticeable each year and the earlier problems were gradually resolved.

6. From the outset, the general accounting was on a sound basis, the form of accounts well designed, and orthodox methods followed in the presentation of the annual accounts. Balance sheets covering each completed year of the Commission's activity to June 30, 1954, have been certified by the Auditor-General.

7. Although the Commission was not obliged to observe Treasury Regulations, the principles therein were frequently followed when the advantages and safeguards were brought to the notice of the Administration. A suitable system of accounting, subject to continual review, was established and this was supplemented by an active internal Audit organization.

8. The closest liaison at all times existed between the Audit Office and the Commission and suggestions for improvement received the fullest consideration. Conferences between senior officers of the Audit Office and the Commission were also held from time to time.

9. No major problems arose in the matter of establishing an effective costs system.

10. From the inception, the accounts were subject to continuous Internal Audit and although there were at times certain features that were not entirely satisfactory these were invariably adjusted to the satisfaction of the Auditor-General.

Snowy Mountains Hydro-electric Authority.

11. The Authority was constituted under the *Snowy Mountains Hydro-electric Power Act* 1949.

12. In the establishment period, the Authority experienced difficulty in providing adequate storage facilities in the Area, to meet the heavy build-up of material associated with the construction of work centres, townships, &c. The condition of the market also necessitated forward buying of some material, and this factor aggravated the situation. Stowage, preservation and custody of stores was unsatisfactory and deterioration of some stocks resulted.

13. The inability to recruit sufficient experienced staff for Cooma and the regions was the main factor contributing to inefficient accounting and costing in the early period of the Authority's operations.

14. By September, 1951, the following aspects had been the subject of criticism:—

Payment of claims—up to 760 claims were awaiting payment and suppliers of Foodstuffs were refusing further supplies until accounts were settled;

Messes—There were many instances of failure to collect messing fees by deductions from wages and the messes were incurring heavy losses;

Sundry Debtors—the raising of debits and follow-up of outstanding debts was inefficient;

Costing—Work was in arrears in respect of overhead accounts and working accounts and distribution of costs were inaccurate.

15. The establishment of the Finance Inspection Branch in Cooma and the introduction of mechanized accounting enabled the Authority to improve its accounting procedures and the situation is now generally satisfactory.

16. Balance-sheets of the Authority for the years to June 30, 1951, 1952, 1953 and 1954, have been certified by the Auditor-General.

Appendix No. 7.—Report Para. No. 98.
OPINION OF THE SOLICITOR-GENERAL.

(11th February, 1955.)

Aluminium Industry Act 1944-1954: Whether a Member of the Australian Aluminium Production Commission is Prohibited from Having a Pecuniary Interest in Transactions with the Commission.

In accordance with the arrangements made at the conclusion of my evidence on 7th December, 1954, the Secretary to your Committee has informed me that the Committee desires to have my views on whether there is any legal or ethical prohibition on a member of the Australian Aluminium Production Commission having a pecuniary interest, either personally or through a company in which he is the major shareholder, in transactions with the Commission. The particular matters in relation to which it is desired that I should consider this question are the Wessel Island Survey, the purchase of the "Illawarra" and the purchase of the "Unit" crane.

2. Strictly from the lawyer's point of view, to ask whether a person is "prohibited from entering into" certain transactions is perhaps to state the issue too compendiously. The lawyer would wish to ask, for example, whether the person entering into such a transaction committed an offence by doing so; or whether the transaction itself was prohibited by law, and therefore illegal and void; or whether by entering into such a transaction a person rendered his office vacant, or became subject to some other civil disqualification. I have not been able to find any legal authority which is directly in point. Close inquiry however has confirmed the view which I expressed provisionally in the course of giving evidence in December last, that there is no legal prohibition, in any relevant sense, against such a transaction.

3. I approach with the utmost diffidence the further question whether there is any prohibition, as a matter of ethics, against transactions of this kind. This is a field in which the lawyer, as such, clearly has no claim to expertise. In the field of ordinary commercial company practice, the duties of a director in relation to contracts with the company are usually covered by strict legal rule, in which a duty to make full disclosure of interest and to abstain from participation in the decision seem to be the main elements. In the absence of specific legal provision as to the members of a public corporation, I would myself be disposed to treat the company rules as affording general guidance on the ethical duties of a Commissioner. Thus I would think a Commissioner is under some moral obligation not to participate knowingly in a transaction by the Commission in which he has a direct or indirect financial interest, or at least to disclose fully the fact that he has such an interest. But these matters of conscience and propriety are highly personal in character, and I claim no authority for the view I have expressed.

4. It is not necessary to set out in any detail the facts of the three matters mentioned. As I understand the facts, it is clear that, in the first two matters, the Commission entered into contractual relations with a company in which its then Chairman, Mr. Watson, had a pecuniary interest. With respect to these transactions, Mr. Watson declared his interest to the other members of the Commission and refrained from taking part both in the subsequent discussions and in the voting. In the third (the "Unit" crane) matter, a company in which Mr. Watson had a pecuniary interest was appointed to act on behalf of the Commission, but at a time when Mr. Watson was not a member of the Commission. For present purposes, therefore, the purchase of the "Unit" crane appears to require no further consideration.

5. There is little law on the subject of a statutory or public corporation contracting with a member of the corporation. In the case of public corporations established for the purposes of conducting commercial undertakings, it is not uncommon for the Acts under which they are established to provide that a member shall be deemed to have vacated his office in the event of his becoming interested in a contract with the corporation. Examples may be found in the *Australian National Airlines Act* 1945-1952, section 14, sub-sections (1) (*f*) and (2), and the *Broadcasting Act* 1942-1954, section 15 (*f*). There is no provision to this effect in the Aluminium Industry Act. It is important to note, however, that the Act does not provide for the appointment of members for fixed terms, and that a member of the Commission who is guilty of any conduct judged improper could readily be removed from office at the Minister's discretion.

6. In default of express statutory provision, one naturally turns to consider the rules of common law and equity. Here again, there is no rule expressly dealing with the position of members of a public corporation. Equity, however, has developed a substantial body of rules to regulate the conduct of those who stand in a fiduciary relation to others. These rules have been applied to the position of a director of an ordinary public company incorporated under the Companies Acts, in connexion with contracts with his company.

7. Under the Companies Acts there is no doubt that a director stands in a fiduciary relation to the company—that is to say, in effect, to the shareholders. The matter is usually dealt with expressly by the Articles of Association. The fiduciary position of a director was stated, in some of the earlier cases, in such far-reaching terms as to suggest that, in the absence of express authorization in the Articles, a contract between a director and his company would be void. On that view, such a contract could properly be said to be "prohibited". This, however, can no longer be regarded as the law. In *George A. Bond & Co. Ltd.* v. *Bond* (1930) 30 S.R. (N.S.W.) 16, Sir John Harvey, whose authority in matters of equity stands high, held that such a contract was not void, but only voidable at the option of the company. Further, Sir John Harvey went on to hold that, even in the absence of any express provision in the Articles, a director could always make a valid contract with his company upon due notice to a general meeting, and upon full disclosure of his interest.

8. I should perhaps add that a director who does not disclose to his fellow-directors an interest he has in a proposed contract with the company is guilty of an offence under the Companies Acts. This statutory rule, however, does not extend to the members of a public corporation.

9. Nor do I myself think that the equitable rules which govern the relation of a director to his company can be said to extend also by analogy, as a matter of law, to the member of a public corporation, in his relations with the corporation itself. The fiduciary position of a director under the Companies Acts springs from his subordination to the shareholders, by whom the directors are usually elected and with whom in general meeting lies commonly the ultimate authority in the company. There is no real parallel in the case of the public corporation, for while the members (Commissioners or as the case may be) actually constitute the public corporation, it is the shareholders and not the directors who constitute the ordinary company. I do not find it hard to accept the proposition that a member of a statutory public corporation has fiduciary duties. But they are, I think, owed to the Crown, or in personal terms to the Minister, not to the corporation of which he himself is a part.

10. In a real sense, the shareholders in an ordinary commercial enterprise are the company. But the Crown, or the Minister, stands outside the public corporation. The corporation could hardly be allowed to escape its liabilities under a contract in which one of its members had an interest, merely by reason of the fact that in making the contract the member had acted in breach of his fiduciary duties to the Crown. But on the other hand the Crown would have no liabilities under such a contract, so there would be nothing which the Crown could set aside. In other words, there is no strict analogy between the position of the company director and that of the member of a public corporation. If the company rules, or something like them, are to be applied to a statutory corporation it must in my opinion be done by the Legislature.

11. The view expressed above, that the rules developed by the courts in relation to the directors of companies under the Companies Acts do not in terms apply to the position of members of a public corporation, is supported by Professor Friedmann in his recent book "Law and Social Change in Contemporary Britain", p. 204:

> "Again a particular member of the board may have been extravagant or fraudulent in transactions entered into on behalf of the board. Does the analogy of company law apply? For the reasons given above, it is submitted that it does not. Public corporations are special public authorities, not commercial companies, and the remedy of Parliament and Government must be political, administrative and disciplinary. The Minister cannot be compared to a minority shareholder."

12. Even if these views are wrong, and a court of law in Australia would apply to the member of a public corporation the equitable rules relating to the directors of companies under the Companies Acts, I do not think that, in the facts and circumstances disclosed in paragraph 4 above, any breach of these rules would be held to have taken place. There was full disclosure and non-participation and, even if the contracts concerned still remained executory (i.e. unperformed), I do not think a court would allow the Commission to set them aside.

13. Probably it is because there are no relevant rules of common law or equity directly applicable to the position of members of a public corporation that express statutory provision for the vacation of office is so often included in statutes setting up public corporations. Where fixed terms of office are established, some such protection of the interest of the Crown would seem desirable in most cases. It may not be considered so necessary in a case where, as here, members hold office during pleasure and where, moreover, the Minister is to be kept fully informed of the actions of the corporation.

14. It might perhaps be considered that a member has an ethical duty to bring his conflicting interest expressly to the notice of the Minister rather than to rely on the Minister obtaining the information from a reference in the minutes; but that matter is outside the realms of law.

15. What I have said above will indicate that in my view a member of the Australian Aluminium Production Commission who had a pecuniary interest, either personally or through a company in which he was the major shareholder, in a transaction with the Commission did not thereby commit an offence, nor was the transaction itself illegal or void, nor did the entering into the transaction render vacant the office held by the member. The remedy of the Minister, if not satisfied with the actions of the member, is to recommend the termination of his appointment. Where, as here, the member is no longer in office, no further action at law would seem to be called for, or, indeed, to be possible.

16. You will I think be interested to see the manner in which this problem was expressly dealt with last year in the Act constituting the United Kingdom Atomic Energy Authority, a public corporation subject to the direction of the Lord President of the Council. Section 5 in the First Schedule to the *Atomic Energy Authority Act* 1954, is as follows:—

> "5.—(1.) A member of the Authority who is in any way directly or indirectly interested in a contract made or proposed to be made by the Authority shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at a meeting of the Authority.
>
> "(2.) Any disclosure made under sub-paragraph (1) of this paragraph shall be recorded in the minutes of the Authority and the member—
>
> (*a*) shall not take part after the disclosure in any deliberation or decision of the Authority with respect to that contract; and
>
> (*b*) shall be disregarded for the purpose of constituting a quorum of the authority for any such deliberation or decision."

This provision is probably based on the rules applicable in ordinary commercial companies. It does not, as you will note, deal expressly with what is to be the effect, if any, upon a contract where the requirements had not been complied with.

Appendix No. 8—Report Para. No. 108.
REPORT OF THE BOARD OF ENQUIRY APPOINTED BY THE PRIME MINISTER TO INVESTIGATE CERTAIN STATEMENTS AFFECTING CIVIL SERVANTS.

Presented to Parliament by Command of His Majesty. February, 1928 (Cmd. 3037).

[Extract from pages 20-22, paragraphs 54-59.]

We think in conclusion that we shall not be travelling outside our terms of reference if, as three Civil Servants of some experience and jealous for the honour and traditions of the Service, we indicate what we conceive to be the principles which should regulate the conduct of Civil Servants—whether engaged in Home Departments or on diplomatic missions—in their relation to the public.

His Majesty's Civil Service, unlike other great professions, is not and cannot in the nature of things be an autonomous profession. In common with the Royal Navy, the Army, and the Royal Air Force, it must always be subject to the rules and regulations laid down for its guidance by His Majesty's

Government. This written code is, in the case of the Civil Service, to be found not only in the Statutes but also in Orders in Council, Treasury Circulars and other directions which may from time to time be promulgated; but over and above these the Civil Service, like every other profession, has its unwritten code of ethics and conduct for which the most effective sanction lies in the public opinion of the Service itself, and it is upon the maintenance of a sound and healthy public opinion within the Service that its value and efficiency chiefly depend.

The first duty of a Civil Servant is to give his undivided allegiance to the State at all times and on all occasions when the State has a claim upon his services. With his private activities the State is in general not concerned, so long as his conduct therein is not such as to bring discredit upon the Service of which he is a member. But to say that he is not to subordinate his duty to his private interests, nor to make use of his official position to further those interests, is to say no more than that he must behave with common honesty. The Service exacts from itself a higher standard, because it recognizes that the State is entitled to demand that its servants shall not only be honest in fact, but beyond the reach of suspicion of dishonesty. It was laid down by one of His Majesty's Judges in a case some few years ago that it was not merely of some importance but of fundamental importance that in a *Court of Law justice should not only be* done, but should manifestly and undoubtedly be seen to be done; which we take to mean that public confidence in the administration of justice would be shaken if the least suspicion, however ill-founded, were allowed to arise that the course of legal proceedings could in any way be influenced by improper motives. We apply without hesitation an analogous rule to other branches of the public service. A Civil Servant is not to subordinate his duty to his private interests; but neither is he to put himself in a position where his duty and his interests conflict. He is not to make use of his official position to further those interests; but neither is he so to order his private affairs as to allow the suspicion to arise that a trust has been abused or a confidence betrayed. These obligations are, we do not doubt, universally recognized throughout the whole of the Service; if it were otherwise, its public credit would be diminished and its usefulness to the State impaired.

It follows that there are spheres of activity legitimately open to the ordinary citizen in which the Civil Servant can play no part, or only a limited part. He is not to indulge in political or party controversy, lest by so doing he should appear no longer the disinterested adviser of Ministers or able impartially to execute their policy. He is bound to maintain a proper reticence in discussing public affairs and more particularly those with which his own Department is concerned. And lastly, his position clearly imposes upon him restrictions in matters of commerce and business from which the ordinary citizen is free.

Between the regular investment or management of a private fortune on the one hand, and speculative transactions in stocks, exchange or commodities on the other, there are obviously numerous gradations, and it may often be difficult to draw the precise line of demarcation between what is lawful and what is prohibited; it may even be inadvisable to make the attempt, because many things, though lawful, may yet be inexpedient. But some transactions fall indubitably on one side of the line rather than upon the other. It might well be desirable for a Civil Servant in all circumstances to avoid transactions wholly speculative in character; but where he is employed in any Department to which, whether rightly or wrongly, the public attribute the power of obtaining special information, such as the future course of political or financial events likely to affect the rise and fall of markets, then we assert unhesitatingly that participation in such transactions is not only undesirable or inexpedient, but wrong. The knowledge that Civil Servants so employed are engaged in them could not fail to shock public confidence at home, and, especially if matters of foreign exchange are involved, to produce a deplorable effect upon opinion abroad.

We content ourselves with laying down these general principles which we do not seek to elaborate into any detailed code, if only for the reason that their applications must necessarily vary according to the position, the Department and the work of the Civil Servant concerned. Practical rules for the guidance of social conduct depend also as much upon the instinct and perception of the individual as upon cast-iron formulas; and the surest guide will, we hope, always be found in the nice and jealous honour of Civil Servants themselves. The public expects from them a standard of integrity and conduct not only inflexible but fastidious, and has not been disappointed in the past. We are confident that we are expressing the view of the Service when we say that the public have a right to expect that standard, and that it is the duty of the Service to see that the expectation is fulfilled.

We have the honour to be,
Sir;
Your obedient Servants,

N. F. WARREN FISHER.
MALCOLM G. RAMSAY.
M. L. GWYER.

Treasury Chambers,
Whitehall, S.W.
February 25, 1929.

APPENDIX No. 9—REPORT PARA. No. 139.

PERSONNEL OF THE AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION.

Financial Year.	Commission.	Secretarial, Accounting and Stores Staff.	Technical Staff.
1949–50 ..	At this time the Commissioners were— Members— G. H. Watson, W. Scott, L. R. Benjamin, W. H. Williams } Commonwealth / Tasmania .. Deputies— A. H. Topp, P. W. Nette, H. B. Bennett, E. Parkes } Commonwealth / Tasmania ..	At this time, these were— Secretary—Mr. Dodd .. Accountant H.O.—Mr. Matterson (29th July, 1949). Accountant Launceston — Mr. Woodall (5th September, 1949) Accountant Melbourne—Mr. Viret (24th October, 1949)	At this time, these were— General Superintendent—Mr. Boyd Technical Superintendent—Mr. Carmichael. Field Engineer—Mr. McDowell Chief Chemist—Mr. Dunt 1st January, 1950—Mr. Bell appointed Reduction Superintendent 6th January, 1950—Mr. Debenham appointed Resident Engineer. 20th April, 1950—Mr. Lockey appointed Acting Chief Engineer 30th June, 1950—Mr. Boyd resigned
1950–51 ..	As at 1949–50	1st August, 1950—Mr. Woodall to be Stores and Purchasing Officer 4th August, 1950—Mr. Matterson to Launceston as Accountant 23th August, 1950—Mr. C. C. Robertson appointed Accountant H.O. 26th June, 1951—Mr. Woodall resigned	20th October, 1950—Mr. Lockey appointed Chief Engineer 16th February, 1951—Mr. Keast appointed General Manager
1951–52 ..	29th May, 1952—Mr. Topp died. ..	3rd August, 1951—Mr. Green appointed to Commission Staff 3rd December, 1951—Mr. Ward appointed as Senior Cost Clerk 1st January, 1952—Mr. Viret transferred to Bell Bay 14th January, 1952—Mr. Wilmshurst appointed as Chief Accountant 28th June, 1952—Mr. Ward appointed Assistant Cost Accountant	29th February, 1952—Mr. Carmichael resigned

Financial Year.	Commission.	Secretarial, Accounting and Stores Staff.	Technical Staff.
1952–53 ..	1st July, 1952—Mr. Stevens appointed Deputy 1st September, 1952—Mr. Hibberd an informal Deputy 24th March, 1953—Mr. Parkes died .. 17th April, 1953—The Commission was reconstituted with— Mr. Brodribb, Mr. Benjamin, Mr. Hibberd, Mr. Mawby } Commonwealth Mr. Bennett .. Tasmania ..	29th September, 1952—Mr. Conde appointed as Chief Accountant 10th October, 1952—Mr. Wilmshurst resigned 9th October, 1952—Mr. Green demoted to Assistant Stores Superintendent 9th October, 1952—Mr. Wheeler appointed Stores Superintendent October, 1952—Mr. Ward appointed Cost Accountant October, 1952—Mr. Viret appointed Senior Finance Inspector (Internal Audit) 31st January, 1953—Mr. Green's services terminated. 29th May, 1953—Mr. Ward appointed Supervising Accountant. 5th June, 1953—Mr. Robertson resigned	19th September, 1952—Mr. Storey appointed as Assistant Mechanical Construction Engineer
1953–54 ..	As at 17th April, 1953	*No movement of Senior Staff* .. November, 1953—Title of Mr. Ward's office altered to Superintendent of Accounts	16th September, 1953—Mr. Adamson seconded from B.A. Co. as Alumina Superintendent 11th March, 1954—Mr. Storey appointed as Assistant Planning Engineer 1st May, 1954—Mr. Dunt returned to Public Service 10th May, 1954—Mr. MacKenzie appointed as Chief Chemist
1954–55 ..	As at 17th April, 1953	16th August, 1954—Mr. Dodd left .. 16th September, 1954—Mr. Conde resigned 14th January, 1955—Mr. Badman took up his appointment as Business Manager	30th July, 1954—Mr. Lockey's services terminated 5th August, 1954—Mr. Bell resigned 29th September, 1954—Mr. McDowell's services terminated 7th October, 1954—Mr. Debenham promoted to Acting Works Manager 7th October, 1954—Mr. Storey promoted to Acting Chief Engineer 10th November, 1954—Mr. A. B. Jones appointed as Reduction Superintendent (seconded from B.A.C.) 19th January, 1955—Mr. Storey's services terminated

APPENDIX No. 10.—REPORT PARA. No. 159.

DRAFT CONTRACT WITH AUSTRALASIAN CIVIL ENGINEERING PTY. LTD.

AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION,
4 Albert-street,
Sydney.

Copy.
Form No. 13.

Australasian Civil Engineering Pty. Ltd.,
4 Albert-street,
Sydney.

Date: 22/2/1952.

Technical management and execution of a bauxite prospecting survey in the Wessel Islands, N.T., in accordance with the instructions of the Commission's Geological Advisers; including inter alia:—

(a) The design and execution by an approved shipbuilding contractor, of modifications and additions to the vessel "Illawarra" to make her suitable for transporting personnel, general engineering stores and foodstuffs (including refrigerated space) for the requirements of the survey.
The design and detailed estimates of the cost of this work shall be presented to and approved by the Commission before the work is commenced. Earliest possible despatch of the ship to Darwin is required.
(b) The engagement of the ship's company.
(c) The satisfying of any requirements of the Commonwealth Director of Navigation and the State Navigation Authorities.
(d) The engagement and direction of personnel required to carry out prospecting operations.
(e) The specification and purchase of—
(i) prospecting and general engineering stores, plant and equipment, and survey apparatus, required for efficient conduct of operations;
(ii) housing materials for shorebased camp or camps for the prospecting party, including messrooms, office, stores and amenities, and erection of same.
(iii) victuals for the maintenance of the parties.
(f) Provision and control of transport, labour and materials, and adequate camp maintenance and messing services.
(g) Technical advice in the general conduct of the survey, particularly in shafting, drilling and sampling operations, transport and wireless services, management of labour and maintenance of adequate food and general supplies.

In consideration of the above services the Commission will pay to your Company—

(a) a buying commission of 5% on all equipment purchased by you with the Commission's approval;
(b) all costs in connection with the engagement of labour, maintenance and fuelling of "Illawarra", maintenance and repair of engineering equipment, messing, housing, and other general costs of the survey, as approved by the Commission; and salary and expenses of your Engineer directing operations in the field; and
(c) a fee of 12½% on the costs mentioned in (b).

Appendix No. 11.—Report Para. No. 224.

COMPARISON OF ESTIMATES OF THE COST OF THE PROJECT.*

—	Estimate of £3,000,000 (1951). 10,000-ton Plant.	—	Estimate of £7,250,000 (1951). 12,000-ton Plant.	Estimate of £10,500,000 (1953). 12,000-ton Plant.
	£	A. Capital Cost of Plant—	£	£
Site and Development (including road, drainage, water services, &c.)	146,000	Plant, Equipment and Material	3,909,000	5,400,000
Alumina Works—		Labour	1,391,000	2,141,000
Buildings	223,000	Design, Administration, Establishment ..	799,000	967,000
Plant	421,000	Contingencies	469,000	537,000
Reduction Works—		Estimated lump sum provision to bring costs to 1st January, 1953	..	317,000
Buildings	405,000		5,868,000	9,262,000
Plant (including Rectifiers)	996,250	B. Working Capital	915,000	1,022,000
General—		C. Investigations—		
Administration Buildings, Change Rooms and Canteen	58,750	Search for Bauxite prior to 1st January, 1951	82,000	82,000
Plant, equipment and services	50,000	Wessel Islands Investigation	..	134,000
Working Capital (including stores)	550,000	D. Provision for Price Increases† ..	385,000	..
Contingencies	150,000			
	3,000,000		7,250,000	10,500,000.

* The 1943 estimate is not, as can be seen from the Table, compiled on the same basis as the two later estimates, but is included to give an indication of the first complete estimate made of the cost of the project.

† The amount of £385,000 was not included in the estimate of the cost submitted by the Commission to the Minister in September, 1951; but was included in the submission to Cabinet in December, 1951.

Appendix No. 12.—Report Para. No. 241.

EXPLANATION OF INCREASE FROM 1951 ESTIMATE OF £7,250,000 TO 1953 ESTIMATE OF £10,500,000.

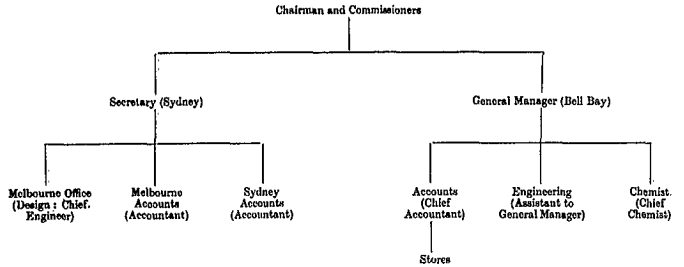
—	Increase of 1953 Estimate over 1951 Estimate.	
	£	%
Factory Capital Cost.		
(a) Increase due to movement in wages and prices (between January, 1951 and June, 1952, for plant and equipment, and between January, 1951, and November, 1952, for labour and salaries)	1,869,000	57
(b) Increase due to a number of special items which show rises in excess of movements in cost indices	581,000	18
(c) Increase due to the obligation to pay customs duty	60,000	2
(d) Net increase due to redesign and additions made on the advice of the Commission's technical consultants ..	70,000	2
(e) Increase due to omissions and discrepancies in the estimate of January, 1951	429,000	14
	3,009,000	
Working Capital.		
(f) Net increase due to movement in prices and freights	107,000	3
	3,116,000	
Bauxite Investigation.		
(g) Increase due to expenditure on Wessel Islands investigation	134,000	4
	3,250,000	

With the exception of item (e) which accounted for only 14 per cent. of the total increase, the Commission claimed that the increased cost was attributable entirely to factors beyond its control. Item (e) represents, in part, miscalculations and omissions in the estimate of January 1951 (presented to the Minister in September 1951), which were the result of a lack of knowledge at that time of many of the major features of the design of the plant.

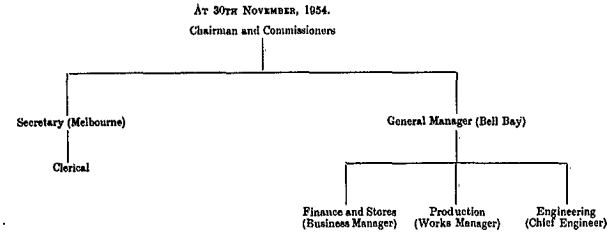
Appendix No. 13.—Report Para. No. 253.

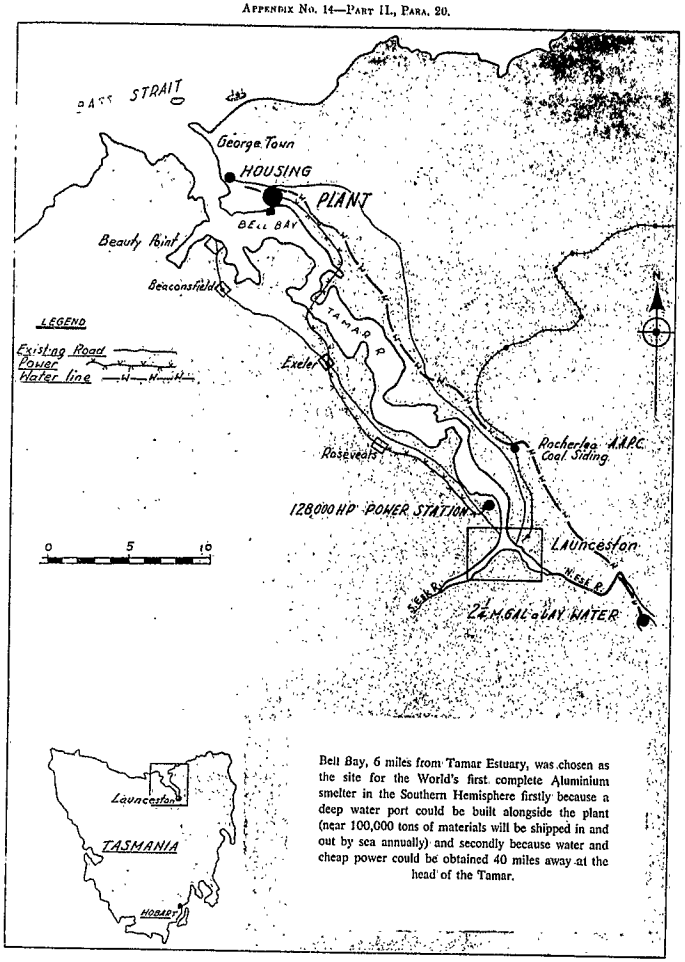
OUTLINE ORGANIZATION CHARTS: 1952 AND 1954.

At 30th June, 1952.



At 30th November, 1954.





Bell Bay, 6 miles from Tamar Estuary, was chosen as the site for the World's first complete Aluminium smelter in the Southern Hemisphere firstly because a deep water port could be built alongside the plant (near 100,000 tons of materials will be shipped in and out by sea annually) and secondly because water and cheap power could be obtained 40 miles away at the head of the Tamar.

Appendix No. 15—Part II., Para. 67.

THE AUSTRALIAN BROADCASTING COMMISSION.

Memorandum Submitted to the Committee by the Chairman, dated 22nd September, 1955.

1. The question of conveying information to a Minister by a statutory corporation is fundamentally bound up with the degree of public accountability which may lie at the door of either party. For example, it would seem that the conveying of information of a detailed character to a Minister would thereby involve him in some responsibility for the matters which have been brought under his notice, a responsibility which it may not be the intention of Parliament that he should assume and which properly should rest with the corporation. In other words, it would seem that the supplying to the Minister of information on activity or decisions coming within the clear jurisdiction of the corporation, could be embarrassing to the Minister much more than to the corporation itself, the latter, in effect, devolving on the Minister through the information some portion of responsibility which the Act may have laid squarely upon the corporation. It would therefore follow that the degree of information with which the corporation should supply its Minister would ultimately depend upon the areas of responsibility laid respectively on the Minister and the corporation in the relevant Act.

2. It seems clear that the essential purpose which impels Parliament to establish a statutory authority to undertake some form of public activity, is precisely that of devolving some portion of a Minister's authority and, therefore, responsibility on a special body constituted with that degree of independence necessary for the purpose. It is surely for this reason that Acts incorporating Public Authorities are normally precise in setting out the reserve powers which are held by the Minister as well as the powers and functions of the Authority itself. The degree of such reserve powers would obviously depend upon the nature of the activity to be carried out by the Authority. In the case of our own organization, for example, the Act sets out in detail powers of the Minister relating to our finances.

3. On the other hand, however, the Act specifically imposes full discretion and, therefore, accountability on the Commission for all broadcaste (other than parliamentary) which are of a political or controversial nature, for the obvious reason that the exercise of impartial and representative community judgment on these matters was one of the main reasons impelling Parliament to set up the Commission in the first place rather than that the National Broadcasting Service should be operated as a department of Government.

4. In the case of a business undertaking, where it can be assumed that the main purpose of Parliament in setting up the Authority is to secure expert business management, I should imagine that the area of responsibility resting on the Authority (and thereby relieving the Minister of an equivalent measure of responsibility) would lie precisely in this area of management. The reserve powers of the Minister would take the form of his approval of contracts above a certain figure, his right to appoint or dispense with his Commissioners either at pleasure or at short term, and in the receipt of an Annual Report in a prescribed form. Further governmental control, of course, is exercised through the activities of the Auditor-General. In the case of a business undertaking, however, as in the case of this Commission, it would seem that a definite area of authority and responsibility has been delegated to the Authority. Indeed, there would be no purpose whatever in the creation of an Authority if this were not the case.

5. One is therefore entitled to assume that in the case of a statutory authority there are distinct areas of Corporation and Ministerial responsibility for which each must be held accountable and which cannot be shared.

6. Mr. Herbert Morrison's views on this point, as set out in the copy of the report you kindly sent to me for my information, underline this principle very forcibly. That the ultimate responsibility for the Corporation's activities must remain with Parliament through a designated Minister does not, in my view, invalidate this point. If Parliament or the Minister have reason to complain of the activity of the Authority, the remedy is in the use of the reserve powers which are usually adequate. A Minister should not be held accountable for detailed activity of a corporation if it is within the area of responsibility given to the corporation in the constituting Act.

7. While these broad principles appear sound, there remains the difficulty which I note your Committee has faced in respect of the Aluminium Commission, of determining in actual practice how the Minister—while clearly not responsible for the use by the Authority of the delegated area of power—can be sufficiently informed of its operation to know when it is desirable for him to exercise his reserve powers (for example, to alter the personnel of his Commission or to refuse further moneys). On our own experience, I venture to say that the provision of the Annual Report, the comments of the Auditor General, the details of contracts over a specified amount and the informal liaison between the Chairman of the Authority and the Minister, are adequate for this purpose. For the reasons set out above, I would not consider that the supplying of the detailed minutes of the Authority to the Minister would be other than embarrassing to him, and in some cases to the Authority, which should be in a position freely and frankly to discuss its affairs and to record such discussions for its own confidential record. Further, I would doubt the practical efficacy of the proposal. One of the main reasons for establishing a statutory authority is to relieve Ministers already at full stretch with their own departments, from being burdened with the ever-growing complexity of governmental activity.

8. Unless one is steeped in the affairs of an organization, its minutes of proceedings are extremely difficult to understand and would be an intolerable burden on the Minister if he were seriously to study them. The chief objection, however, would be the one mentioned above, namely, that having before him the detail of the Authority's activities, he could not fail to be involved in a responsibility of which it was the intention of the Act he should be relieved.

9. The obverse of any addition of this kind to the Minister's responsibilities must, of course, be a subtraction from the authority of the corporation concerned. It is usually considered to be axiomatic, as a practical rule of effective administration, that any given responsibilities should be matched by adequate authority to discharge them. If all of the decisions of a statutory corporation are to be subject to detailed scrutiny and query by the Minister or officials to whom he may delegate this function, those who have the statutory responsibility for the management of the corporation could hardly escape the feeling that their authority was being circumscribed or even undermined. Such an arrangement would most certainly tend to encourage the corporation to play safe and to be content with small achievements rather than to take any risks calculated to gain outstandingly good results. In short, any system of detailed over-light designed to prevent a corporation from making mistakes, could so stifle initiative as to leave it little room to do anything worth while at all.

10. Alternatively, it is reasonable to assume that private citizens of some standing and experience would be loth to undertake public responsibilities of this nature unless an adequate degree of trust and authority were to be delegated. My own experience is that private persons of standing feel privileged to take some such part in public affairs as is offered by the activities of statutory corporations, and feel honoured to give service well out of proportion to the financial emolument involved. It would indeed be tragic if this reservoir of devoted public service should be dried up by lack of trust on the part of Parliament, expressed in terms of unduly abridged authority and responsibility. I would venture to suggest that if closer attention were given to the calibre of members chosen to assume the responsibility of statutory corporations, there would be less demand or necessity for Ministerial supervision.

11. Further, it is my considered view that it would be far preferable, in the relations of statutory corporations to their Ministers and to Parliament, if special committees of Parliament were set up to review in detail the activities of the corporation, say every three years, than that any attempt should be made for closer day-to-day supervision. With regard to this corporation (the A.B.C.), I have always advocated a triennial Parliamentary review for our own as well as the community's satisfaction.

12. That is not to say, however, that a corporation should regard itself as free to adopt any means to achieve the ends for which it was established. It is most obviously desirable that the means it chooses should be reasonably consistent with the policies of the government of the day. For example, it would clearly be most undesirable for a corporation to grant its employees pay and other conditions quite out of line with those granted to similar classes of employees in other branches of the Government service. Consistency in the-e fields can usually be achieved by understandings reached between the corporation and the Minister. To assist towards this end, departmental representatives have in some cases been appointed to the boards of some corporations.

13. A further issue in the matter of information is the obligation of the Minister to answer questions in the House on the activities of the Authority under him. I would not agree with those United Kingdom commentators on this point that the Minister should refuse to answer questions on matters which are clearly within the jurisdiction of the Authority. Indeed, this is one of the legitimate and healthy means by which a Minister can have brought to his notice any

section of an Authority which may require his attention. In practice, it is customary for the Minister to secure the answer to a quest on from the Chairman of the Authority concerned and convey it to the questioner and the House as the answer of the corporation, with or without his own comment. There appears no reason why this practice should involve the Minister in assuming responsibility for the action questioned if it is within the jurisdiction of the Authority. Apart from these regular means of conveying information to the Minister, he is supplied with a report on any specific matter which he may request. However, the informal discussions between the Minister and his Chairman could, in our experience, be taken as providing him with the best general appreciation of the Authority's doings.

14. A final issue in this relationship is, of course, the extent of the Minister's reserve powers. Of fundamental importance, in my view, is the period of appointment of the members of the corporation. Some criticism has been levelled at the practice of appointing the responsible members on a part-time basis, on the grounds that efficiency of operation requires the full-time attention of at least the Chairman, and, in some cases, the Vice-chairman of the corporation. Such criticism ignores the most vital element in Ministerial responsibility and the final authority of Parliament. If an adequate measure of independence of operation and of public accountability is to lie with the members of a corporation, it is essential that Parliament through its Minister should be in a position to change the personnel of its corporations at short term. This right to dispense with members at the end of statutory terms without reason given or required is the most vital of the reserved powers and the one most easily and properly exercised. Such a power cannot with equity be exercised if the members of the corporation are required to abandon their other means of livelihood, and the appropriate reserve powers of Parliament are to that extent unduly abridged. If, however, it is recognized that the function of corporation appointees is policy-making and supervision only, and that day-to-day execution of policy should be carried out by the corporation's permanent executive officers, after the manner of the Public Service in governmental departments, no difficulty in this matter should be anticipated.

15. In this connexion it is pertinent to point out that Ministers themselves (and indeed all Members of Parliament) are on short-term appointment (three years) at the end of which they face the electorate for a renewal or otherwise as the final, if not the only, effective sanction of accountability. In my view, members of Statutory Corporations, who in effect are carrying out certain delegated Ministerial responsibilities, should be subject to no less a sanction to ensure effective accountability to Parliament through their designated Minister. Permanent or even long-term appointment, with its necessary corollary of full-time professionalism is a grave hazard in the way of ensuring the effective safeguarding of the two essentials in Statutory Corporations, namely (a) an effective measure of day-to-day independence of operation, and (b) effective accountability to Parliament.

Appendix No. 16—Part II., Para. 74.†

PUBLIC CORPORATIONS.

Memorandum submitted to the Committee by Mr. Leicester Webb, Reader in Political Science, Australian National University, dated 7th September, 1955.

The Rationale of the Public Corporation.

1. It will be apparent that any view taken of the central controls appropriate to the activities of public corporations will be related closely to the view taken of the reasons for setting up public corporations as agencies of government. In the latter connexion it seems to me that the Committee has given too much weight to the views of a school of thought of which Mr. Herbert Morrison is the best-known representative. It is necessary to bear in mind that Mr. Herbert Morrison's interest in public corporations arose out of the fact that he was one of the first members of the British Labour Party to see that nationalization of industries presented difficult managerial problems. In his view the qualities of flexibility, enterprise, and efficiency found in private enterprise at its best could not be achieved in government departments, and in any case early Labour administrations in Britain felt that the civil service was unsympathetic towards socialism. In the public corporation Mr. Morrison believed he had found the reconciliation between public ownership and efficiency.

2. For the following reasons among others it seems to me that Mr. Morrison's views should be regarded with considerable reserve:—

1. Most of what Mr. Morrison says relates, not to public corporations generally, but to a particular class of corporations—those which have been set up to manage industries transferred from private to public ownership. Corporations of this class do not exist in Australia and present highly specialized problems.
2. In his comparisons between government departments and public corporations Mr. Morrison tends to underrate the level of managerial efficiency which can be achieved in government departments. Thus, in his evidence before the Select Committee set up by the British Parliament to inquire into the nationalized industries he refers to "a timber merchant unadventurous and conventionally civil service frame of mind which is all right in the case of government departments but is wrong in the case of public corporations". There are two questionable assumptions here. The first is that civil servants are characteristically red-tapeish and unadventurous. The second is that these qualities are "all right in the case of government departments" but not in the case of public corporations. As to the first assumption I would say that the qualities mentioned may be found in other large-scale enterprises besides civil services and that government departments are as capable as other organizations of adapting themselves to the needs of new forms of activity. As to the second, I would hold that flexibility and a spirit of enterprise are just as necessary in the management of, say, the defence establishment or the Department of Commerce and Agriculture as they are in the management of any public corporation.
3. Mr. Morrison sees as the sole justification for setting up public corporations the need "to combine the principle of public ownership . . . with the liveliness, initiative and a considerable degree of the freedom of a quick-moving and progressive business enterprise". In fact, the reasons for setting up public corporations, in Australia and elsewhere, are much more varied. For instance, one reason for setting up public corporations in the marketing field is that this form enables representatives of producers to take part in the administration of marketing. Again, it may be assumed that one reason for establishing the Australian Broadcasting Commission was the belief that a broadcasting service might be perverted to sectional ends if it were subject to continuous and detailed ministerial direction.
4. Mr. Morrison seems to assume that public corporations are of their nature more efficient and flexible instruments of management than government departments. There are many cases where the same enterprise has at different times been managed departmentally and through public corporations, and comparisons of results do not suggest any inherent superiority in the public corporation. Thus, a recent Royal Commission which inquired into the management of the New Zealand railways found that "boards or commissions that have been set up to run the railways have met with limited success". The public corporation is a device by which certain limitations of the departmental form of administration can be overcome. It is not a recipe for managerial efficiency.

The Decline of Corporate Freedom.

3. In the past, the vogue of the public corporation has been due to a belief that it is peculiarly suited to the administration of public enterprises concerned with trading or production of goods and that "its particular value lies in freedom of operation, flexibility, business efficiency, and opportunity for experimentation".* Such a view claims both too much and too little for the public corporation. It claims too much because it exaggerates the extent to which the public corporation does in fact achieve "business efficiency". It claims too little because it ignores the wide range of governmental activities apart from commercial and productive enterprises in which the public corporation has proved its usefulness.

4. The view that the public corporation is primarily a means of achieving managerial efficiency and that therefore relative freedom from Ministerial and other controls is its essential characteristic has another important defect. It ignores the fact that, over the last two decades, the tendency in all western countries has been to limit the autonomy of the public corporation by policy controls designed to integrate its activities more closely with governmental activities generally and by controls over salary and wage scales, employee classifications, borrowing and accountancy methods. In Australia, this tendency has in many respects been carried too far, with the result that controls have by their very complexity defeated their own purpose. But it has to be realized that, under modern conditions of government, autonomy for public corporations in such matters as borrowing, investment, current spending and staffing policy is neither practicable nor desirable. Public corporations occupy such a large part of the whole field of government that, even under a limited interpretation of the central government's responsibilities for the maintenance of economic stability, they cannot be left a free hand.

5. It is this inevitable growth of central controls which creates the problem of the public corporation in its present form. Any public corporation operating on a large scale will probably be subject to Ministerial direction on policy matters, will have to secure Ministerial approval for major financial transactions, will be required to keep its accounts in the form prescribed by the Treasurer, will have its accounts audited by the Auditor-General, will have a Treasury representative on its board, and will require to have its staffing arrangements approved by the Public Service Board. Thus, the flexibility and freedom of action which used to be regarded as the essential characteristic of the public corporation have largely disappeared, and in the process difficulties of management have been accentuated because of the dispersion of responsibility. Granted that public corporations still have a wide sphere of usefulness in government and that a restoration of their former freedom is out of the question, the problem of securing the efficient functioning of public corporations is to ensure that the controls are suited to their purpose and essential to that purpose and that responsibility is clearly allocated.

Types of Control.

6. At this point it seems convenient to distinguish two types of control over the activities of public corporations—

(i) generalized controls, applied to all or most public corporations irrespective of their activities.
(ii) specific controls, related to a public corporation's particular activities and objectives and also to the method of financing its activities.

7. Generalized controls have in the main two purposes: the first is to ensure certain minimum standards of probity and efficiency in administration. Under this heading come, in Australia, such controls as are vested in the Auditor-General, the Treasury and the Public Service Board. The second purpose is to ensure that the activities of public corporations do not conflict with or nullify national economic policy. For example, public corporations in Australia contribute about £150,000,000 a year to national investment, and no attempt by government to control the investment rate could be successful, which left public corporations free to invest as they chose.

8. In order to show the need for an overhaul of existing generalized controls and for a clearer understanding of their purpose, I will deal briefly with controls over the staffing of public corporations. The case for an overhaul of financial controls has been made with force and clarity in the Committee's Twenty-first Report.

Control over Staffing.

9. This type of control may reasonably be regarded as necessary to ensure minimum standards of efficiency in staff organization and, in full employment economies, to prevent competitive bidding for staff among public authorities. In the Commonwealth this control is exercised mainly by the Public Service Board, but the relevant legislation shows little consistency. All the marketing authorities, the Whaling Commission and the Snowy Mountains Hydro-electric Authority are required to obtain the Public Service Board's approval of their terms and conditions of employment. In practice this means that these authorities must submit to the Public Service Board their proposed staff classifications, the salary ranges attaching to these classifications, and the rules governing such matters as promotions, appeals and discipline.

10. In the case of two public corporations—the Commonwealth Scientific and Industrial Research Organization and the Atomic Energy Commission—Public Service Board approval is required for terms and conditions of employment and in addition for the maximum size of clerical and administrative establishments. Another class of authorities, some of which are only marginally within the public corporations category, are staffed by employees who are under the Public Service Act. This class includes the Australian Broadcasting Control Board, the Tariff Board, the War Pensions Board and the Repatriation Board. The obvious anomaly in this class is the Australian Broadcasting Control Board, which in view of the importance and range of its functions and the rapidity with which its responsibilities are increasing, should have much greater freedom in staffing than it now possesses.

11. Finally, it is to be noted that many public corporations functioning wholly or partly in the Commonwealth sphere are entirely outside Public Service Board control. This list includes the Australian Aluminium Commission, the Australian Broadcasting Commission, the Airlines Commission, the Commonwealth Bank, the Overseas Telecommunications Commission, the Shipping Board, the Stevedoring Industry Board, the Wool Realization Bureau, the Joint Coal Board, and the Commonwealth Railways Commission.

12. In practice, the Public Service Board is not the only authority with power to control the staffing policies of public corporations. Particularly in the case of public corporations financed by annual appropriation, it has become common for the Treasury, in the exercise of its financial responsibilities to question salary rates which it regards as inappropriate. I think that this overlapping of authority should be eliminated. It should also be noted that, in the case of several important public corporations, Ministerial approval is required for appointments to positions at or above specified salaries, varying from £1,500 in the case of the Australian Broadcasting Commission to £3,000 in the case of the Airlines Commission. It is difficult to find any good reasons for this control and easy to imagine circumstances in which its effects would be wholly bad.

13. This general picture is without much pattern of rationality. If the main purpose of the staffing control is to ensure minimum standards of efficiency, there is perhaps some point in excluding authorities large enough to employ competent staff sections. However, as the Committee's investigation of the Australian Aluminium Commission's affairs showed, the size of the enterprise does not necessarily guarantee efficient staffing arrangements. If, however, it is assumed that the more important purposes of the control over staffing is to prevent competitive bidding for staff by public authorities, then that purpose is defeated by the fact that many of the larger public corporations are outside the Public Service Board's authority. Again, it is difficult to see that much purpose is gained by requiring in the case of C.S.I.R.O. and the Atomic Energy Commission, Public Service Board approval of the size of clerical and administrative establishments. Since these authorities are financed by government grant, the size of their establishments will be determined by the Treasury control; and in any case the number of clerical and administrative employees will be related to the number of professional employees.

14. This brief summary of the position regarding central control of the staffing of public corporations is perhaps sufficient to show that here, as with other controls, there is both redundancy and inadequacy. In some respects they restrict freedom of management unnecessarily. Yet they are not sufficiently comprehensive to achieve their main purpose.

Specific Controls.

15. The more difficult and more important problem raised by central control of public corporations relates to those controls which I have called 'specific'—controls, that is, which are directly related to the activities and objectives of a public corporation and the method of financing those activities. The principle that controls (apart from those I have called 'generalized') should relate to function does not necessarily mean that they should be different for each corporation. Canada's Financial Administration Act of 1951 breaks new ground by classifying public corporations, for the purposes of financial control, into the following three classes:

(i) Departmental corporations, which have administrative, supervisory or regulative functions, closely akin to an ordinary department, and are financed by appropriations.
(ii) Agency corporations, which undertake trading, service or procurement functions and usually have revolving funds.
(iii) Proprietary corporations, which manage lending, financial, commercial or industrial operations and are expected to finance themselves from the sale of goods or services.

16. It seems to me that the idea of classification might usefully be applied to Commonwealth public corporations but not merely for the restricted purpose of financial control. For instance, the numerous Commonwealth public corporations in the marketing field could with advantage be grouped together under a uniform system of controls.

17. The idea of classification is also relevant to the problem of Ministerial responsibility, which is dealt with in the next section of this memorandum.

The Problem of Responsibility.

18. The question of controls is closely related to that of Ministerial responsibility, a matter dealt with by the Solicitor-General in a memorandum which appears as Appendix No. 4 to the Committee's Twenty-first Report.

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* *Report of the President's Committee on Administrative Management*, Washington, 1937, pp. 43-4.

† *See also*, Appendix No. 23.

* But see the memorandum submitted by the Public Service Board at Appendix No. 23.

10. The Solicitor-General notes that the legal powers conferred on the Minister by the relevant legislation put him in a position "to make himself just as fully responsible for the affairs of the [Australian Aluminium Production] Commission, if he so wished, as he is for the affairs of his Department". But he adds that "constitutional practice does not require the Minister to assume, and would not justify him in assuming, the same degree of detailed responsibility for the Commission as he does and should for his Department". The Solicitor-General then draws a distinction between matters expressly reserved for Ministerial approval and matters not so reserved. In respect of the former, the Minister "must of course be responsible either for giving or withholding his approval ". In respect of the latter, the Minister should be guided by "constitutional practice", which the Solicitor-General summarizes in the following three propositions:—

(i) that the establishment by Parliament of a public corporation rather than a Department of State as the chosen instrument for the conduct of a business undertaking implies an intention that the corporation should enjoy a substantial measure of freedom from political direction and control;

(ii) that Ministerial control over the public corporation should be restricted to matters of general policy and principle, and should not extend to the details of management;

(iii) that in order to promote business efficiency and flexibility it is necessary to accept some derogation from the complete measure of Ministerial accountability to Parliament which is insisted on, in the constitutional systems of the British Commonwealth, in relation to the Departments of State.

20. I am not clear whether the Solicitor-General regards these propositions as applying to public corporations generally or only to public corporations which are set up to manage "business undertakings". But even if the propositions have this restricted applicability, I would question their validity. For reasons already stated, I do not think that "business efficiency and flexibility" are incompatible with full Ministerial responsibility. Moreover, it should be noted that even in the case of government departments, full Ministerial responsibility does not require or in practice entail Ministerial control over details of management.

21. But the assumption in the Solicitor-General's memorandum I chiefly wish to question is that the relations between a Minister and a public corporation should, except in matters expressly reserved for Ministerial approval, be governed by constitutional conventions. As the Solicitor-General admits, this is a matter on which "differing views have been expressed by writers of standard works on the subject", and elsewhere in his memorandum he says that "constitutional conventions in this field . . . are by no means clearly established and leave room for much diversity of opinion". Inevitably, then, acceptance of the rule of constitutional conventions is acceptance of a considerable degree of uncertainty. Nor is it likely that the passage of time will eliminate or substantially reduce the uncertainty. Public corporations vary so widely in their purposes and in their administrative structures, and there is so much experimentation in their particular fields of activity, that the stability and uniformity of practice necessary as a basis for constitutional conventions will always be lacking.

22. Since clear allocation of responsibility is indispensable to good administration, it seems desirable that the relationship between a Minister and a public corporation should as far as possible be covered by deliberate and careful definition and that the Minister's responsibility should be regarded as being directly related to the powers conferred on him by legislation. For example, the powers of the Australian Aluminium Production Commission are to be exercised "subject to any directions given on behalf of the Commonwealth and the State by the Minister of State for the Commonwealth", a provision which must be read in relation to a requirement on the Commission to "keep the Minister continually informed of its operations". In my view, such provisions should be taken literally and regarded as making the Minister as fully responsible for the Commission's affairs as he is for the affairs of his department. If Parliament did not intend that the power of direction should be used except in special circumstances, if its intention was that the Commission should enjoy "a substantial measure of freedom from political direction and control", then it could have provided accordingly, as has been done in some United Kingdom legislation governing public corporations.

23. In saying this, I am not suggesting that the provisions of the Aluminium Industry Act quoted above are wise; nor am I arguing generally for closer Ministerial control of public corporations with its corollary of greater Ministerial responsibility. Indeed, the Aluminium Industry Act seems to me defective to the extent that the powers conferred on the Minister are inconsistent with one another and make it impossible to discover from the Act the intended relationship between Commission and Minister. My argument is simply that the Minister-corporation relationship should be defined as precisely as possible in the relevant legislation, having regard to the corporation's functions and its internal structure. The Case of the Australian Aluminium Production Commission illustrates what is likely to happen if this relationship becomes subject to uncertain assumptions. On paper, the controls provided were more than adequate as a safeguard of the public interest; their effect was in the main to blur the lines of responsibility and to lead to undue reliance on negative checks on efficiency.

Responsibilities of Members of Commissions.

24. In view of the need for clear lines of responsibility in the conduct of a public corporation's affairs, I desire to refer to paragraph 11 of Appendix 4 to the Committee's Twenty-first Report in which the Solicitor-General points out that the Act and the Agreement governing the Australian Aluminium Production Commission designate the members of the Commission as "representatives" of the Commonwealth or the State. He also points out that the agreement contemplates that the Commonwealth's views will be made known to the Commission on major policy matters such as defence and external affairs through its representatives. From my own experience of public corporations I would say that this procedure is an undesirable one in that it tends to confuse the relations between the public corporation and its Minister. It seems much preferable that the public corporation's contacts with the Minister should be through its Chairman and not through individual members and that all communications from the Minister on policy matters should be to the Chairman.

Accountability.

25. The accountability of public corporations is a matter too large to be dealt with here. I would, however, draw the Committee's attention to the fact that the United Kingdom Parliament has adopted the proposal made by its Select Committee on Nationalized Industries (in its report of July, 1953) for the establishment of a parliamentary committee to keep under review the policies and practices of the nationalized industries. The possibility of establishing a similar committee of the Commonwealth Parliament charged with keeping Parliament informed about the policies, activities and problems of Commonwealth public corporations is worth considering. The work of such a committee might lead to a greater understanding of the place of public corporations in the general scheme of government and to a resolution of the problems of control and responsibility.

Appendix No. 17—Part II., Para. 80.

AUSTRALIAN NATIONAL AIRLINES COMMISSION.

Memorandum Submitted to the Committee by the Chairman, Dated 15th September, 1955.

The questions raised by the Committee are—

(A) The measures to be taken by a Commonwealth Authority or Commission to keep the responsible Minister informed of its operations; and

(B) The question of a Commissioner having a financial interest in a company which may enter into a contractual relationship with the Commission of which he is a member.

Question (A):

2. Here, I suggest it is necessary to appreciate the differing nature and purposes of Commonwealth Authorities and to have due regard to the special considerations which may attach to the activities of individual bodies.

3. The public authority form of organization embodies the principle of Government ownership with the flexibility of private enterprise. The general approach is that such Authorities are responsible to Government, through the appropriate Ministers, for the efficient discharge of their allotted functions. Subject, however, to statutory obligations in respect of certain specific matters, these undertakings should be left free, under the direction of their Commissions or Boards, to perform their day-to-day operations guided by their own business judgment and sense of responsibility, propriety and discretion.

4. Within this general concept, and to an extent appropriate and necessary having regard to their particular obligations and circumstances, Commonwealth Authorities

should be able to reap the undoubted advantages which are enjoyed by private trading enterprises in respect of business policy decisions and speedy action in matters bearing on operational and administrative efficiency and the financial success of their undertakings.

5. In the case of the Australian National Airlines Commission which operates Trans-Australia Airlines, the foregoing considerations are especially important. The Commission is engaged in a highly competitive transport business and it would be undesirable from the viewpoint alike of the Commission and of the Minister to contemplate a situation in which it was mandatory for the Commission to refer for Ministerial approval or decision matters additional to those prescribed in the relevant legislation. These will be more specifically referred to later in this memorandum.

6. An important consideration in the establishment of a public authority is that the Minister is relieved of the pressure of detailed business for which the authority itself is responsible and which it had the organization and staff to handle.

This object would be defeated if the authority were required to keep the Minister informed of matters other than those of broad administration or involving principles or action of which the Minister should be advised either for information, or for the purpose of obtaining his approval or advice thereon in relation to Government policy. It would also tend to undesirable duplication of effort in that the more reports submitted, the more matters the Minister would in all probability pass to his departmental officers for examination and comment. Where the matters concern operational or specialized commercial aspects of activities of a public authority, they raise questions on which the Commission is best equipped to advise. Should a Department develop specialization so as to advise the Minister in respect of such problems, duplication of effort may arise. It may also engender an attitude of mind in the case of the authority and its administration which would be prejudicial to the maintenance of a full sense of responsibility.

7. Broadly, matters affecting the Minister in relation to the conduct of a public authority fall into two categories.

(*a*) Matters of Commission policy and their relationship to the policy of the Government of the day, which particularly affect the responsible Minister of State;

(*b*) Matters affecting the day-to-day operation of the Commission in respect of its commercial activities, staff, or its general public relations and probably arising by way of Parliamentary questions or external representations to the Minister.

The two categories are not necessarily mutually exclusive.

In regard to either category, however, it is considered advisable that the Minister should be informed by and deal direct with the Commission.

8. In respect of (*a*) above, it is clearly desirable that any information required by the Minister should come from the Authority, rather than second-hand through third parties. There is then no doubt as to the Authority's responsibility for the information supplied and for its objectivity.

9. In respect of matters embraced in (*b*) above, particularly those arising from Parliamentary questions or external representations, it is considered that the Minister might follow the practice of intimating to the inquirer that he will seek the necessary information from the authority concerned. Having done so and obtained the required information, the Minister can state that he is informed accordingly by the authority.

It is a matter of Ministerial judgment in some cases as to whether on the advice of the authority concerned the information sought should or should not be furnished—e.g., where the disclosure of confidential information concerning its business activities would embarrass the authority and be of assistance to its competitors, and serve no public purpose. Public authorities should feel free to represent this viewpoint strongly to the Minister when the circumstances appear to require it.

10. There is the further consideration that it is necessary to give public authorities an appropriate degree of responsibility if capable men are to be found willing to accept appointment as Members or Commissioners. Men with other important business activities are unlikely to be attracted to service in this capacity unless they know that ordinary business decisions taken by the authority will be put into effect without further reference.

11. If in the selection of Commissioners there is a blending of members with public administration and commercial experience, the Minister can feel assured that normal business practices will be followed as far as possible but that the Commission will at all times give proper weight to the obligations of a public authority to have regard to the policy of the Government of the day.

12. The Airlines Act provides that the Commission shall, as soon as possible after the close of each financial year, submit to the Minister for presentation to Parliament an annual report with respect to its operations, accompanied by its financial accounts certified by the Commonwealth Auditor-General. The financial accounts of the Commission are subject to continuing audit by the Auditor-General who can bring to the notice of the Commission from time to time any instances of accounting irregularities or departure in financial affairs from the terms of the Act, and who may subsequently make reference in the annual report which he submits to Parliament to any such irregularities or unusual features. The Auditor-General's responsibilities both to the Commission and to Parliament thus provide added protection to the responsible Minister.

13. The Act further provides (Section 41) that the Commission shall furnish all such reports documents and information relating to the operations of the Commission as the Minister requires.

Matters provided in the Airlines Act as requiring Ministerial approval are—

Operation of airline services between any place in Australia and any place outside Australia.
Purchase of land costing more than £5,000.
Entering into a lease of land for a period of more than five years.
Disposing of any property or privilege having an original or book value of more than £5,000.
Payment of salary to an officer where it exceeds £1,500 per annum.
Entering into any contract for the supply outside Australia of aircraft, equipment or materials of a greater value than £10,000.
Distribution of the profits is to be determined by the Minister in concurrence with the Treasurer.

11. By a provision in the Commonwealth Air Navigation Regulations Ministerial approval is required for increases in passenger fares and freight carriage rates. The Commission must therefore disclose the fullest information in regard to current and anticipated costs and revenue when proposing any increase in maximum tariff levels.

15. The Commission's activities are also subject to the provisions of the *Civil Aviation Agreement Act* 1952, by which it is bound to keep continually under review the question of air routes, schedules, fares, freight rates and other related matters so as to prevent uneconomic competition between its operations and those of Australian National Airways Pty. Ltd. In the event of the two operators failing to agree, an Arbitrator has been appointed to decide the matter in dispute.

16. By an amendment of the Airlines Act in 1952 the Commission was made liable for payment of Income Tax in addition to its already existing obligation to pay other rates, taxes and charges imposed by or under any law of the Commonwealth and such other rates, taxes or charges as the Minister specified.

17. Overall, therefore, it will be appreciated that there is a considerable number of controls over the operations of the Airlines Commission. These formal safeguards to Ministerial responsibility are supplemented and strengthened by frequent personal discussions by the Chairman with the Minister, when the opportunity is taken to review matters of current interest and importance. In this manner the Minister is kept well informed of the Commission's deliberations at policy level and in appropriate matters the opportunity is taken to ascertain the Minister's views in regard to proposed new courses of action. These frequent discussions promote mutual confidence and understanding as between Commission and Minister.

As necessary, specific matters are dealt with in correspondence between the Chairman and the Minister.

18. Because of the diversity of functions for which they were established, it would be in my view undesirable for standard procedures to be laid down for all public authorities of the Commonwealth. For example, some differentiation would seem to be required between those authorities for which finance is included in the Budget and those which are on the whole financially self-sufficient as is the case with the Airlines Commission. It would seem that the Minister stands in a different relationship to undertakings which receive annual appropriations from Parliament than in the case of a trading authority, where more regard is paid to their annual reports and audited financial accounts, and some efficiency check can be applied by comparing the results of competing private organizations.

19. Another factor has to do with the nature of the undertaking and the circumstances of its establishment. In some cases the status of membership on the controlling Commission or Board may reflect particular Government

concern in the conduct of activities. The Aluminium Production Commission, for instance, included at the outset representatives of two Governments having an interest in the undertaking. The Airlines Commission is not similar in its constitution.

20. Copies of the Minutes of Airline Commission Meetings are not forwarded to the Minister. For the reasons advanced in para. 6, the Commission would not consider it desirable that its Minutes be given other than the existing strictly limited and confidential internal circulation—to Commissioners and Top Management only. I think the foregoing paragraphs have made it sufficiently clear that in respect of the Airlines Commission, the Minister is kept informed by other and more appropriate ways.

Question (B):

21. The original clauses of the Airlines Act provided that a shareholder of a company consisting of more than twenty-five members was not thereby compromised in relation to his office as a Commissioner. However, this exemption did not extend to a director of the company. Amendment of Section 14 enacted in 1952 was designed to protect the Commissioner who was a director of a company in these circumstances, provided he gave a general notice to the Commission of his interest as a director in any company engaged in business dealings with the Commission. By protecting Commissioners in this way it is possible to widen the choice of Commissioners to include many more persons of standing in the business world who might otherwise feel that the tie-up to day contractual relationships between their companies and the Commission may be questioned, and their appointments as Commissioners challenged.

22. In our experience, the amendment did clarify the position of some members. Most of the leading men in business are directors of large companies. The legal position of Commissioners in relation to their interests in other companies dealing with the Commission has now been placed on a similar basis to that of directors as provided by the Companies' Acts of the various States.

A further safeguard lies in the fact that a properly managed public authority will have established appropriate contract procedures to ensure against the possibility of undue influence from any quarter.

23. However, in modern business the practice of businessmen being shareholders and directors of several companies means that to deny them the right to have interests in firms dealing with the Commission would restrict the choice of Commissioners very severely, and would particularly debar leading businessmen. Therefore, some compromise should be found between allowing Commissioners to have unrestricted interests or no interests in such companies.

24. I consider that the provisions of Section 14 of the Airlines Act as amended in 1952 satisfactorily meet the position.

25. It is established practice that, subject to disqualification provisions, a member of a Commonwealth Authority is appointed for a term certain as specified in the relevant Acts. In my view this has advantages since political pressure for a general review of membership is not likely to arise immediately following a change of Government. The possibility of damage to an authority's interests by major changes in personnel is thus avoided and the willingness of suitable men to accept appointment to vacancies on these bodies is not lessened by uncertainty as to tenure.

APPENDIX No. 18—PART II., PARA. 93.

OPINION OF THE SOLICITOR-GENERAL, 28TH SEPTEMBER, 1955.

ALUMINIUM INDUSTRY ACT 1944-1954: POWER OF THE AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION TO ENTER INTO COMMITMENTS.*

. . . . . .

3. The questions of law that seem to me to require answer are—

(a) whether the fact that at one stage the contracts entered into by the Commission committed the Commission to expenditure in excess of the funds provided by Parliamentary appropriation (plus the funds agreed to be contributed by Tasmania) would render those contracts or any part of them invalid;

(b) whether the validity of the contracts depends on the approval of the Minister for the over-commitment involved.

4. In my opinion, the answer to both questions is clearly "No". The over-commitment cannot be regarded as involving any breach of the law by the Commission. Except insofar as a contract involves more than £50,000, or belongs to a class (if any) which the Minister has directed the Commission to reserve for his approval, the Minister's approval of the Commission's contracts is not required as a matter of law.

5. The position of the Minister in relation to commitments made by the Commission in excess of the funds made available by Parliamentary appropriation seems to me to raise questions not so much of law as of constitutional usage or convention, with which I shall deal separately below.

Question (a).

6. It is, I think, necessary to observe at the outset, and to maintain throughout, a distinction between the power of a public authority to make contracts (i.e. to enter into legal commitments) on the one hand, and the power to make the expenditure, on the other hand, necessary to carry out the contracts. If, as in the case of the Commission before the 1952 Act was passed, the expenditure of a statutory corporation is to come from any part of the Public Account, it is of course governed by the Audit Act and the Treasury Regulations. But I do not think it necessary, for present purposes, to consider further the question of the Commission's expenditures. It is the prior power to make contracts with which we are here concerned. The distinction between the two matters was clearly drawn, in respect of contracts of the Executive Government, in the advice given in 1953 by the then Acting Solicitor-General to the Auditor-General, and referred to by Senator Byrne in the extract of evidence which you quoted in your memorandum under reply. (*See* Auditor-General's Report for the year ended 30th June, 1953, Appendix H.)

7. For a long time, it was thought that a contract by the Executive Government for the expenditure of public moneys was void in the absence of Parliamentary appropriation. That view has, during the last twenty years, been shown to be mistaken. The power to make a contract involving the expenditure of public funds is not now held to be necessarily limited by any such rule. Such a contract might be held by a Court to be subject to an implied condition that payment would only be made under it from funds appropriated by Parliament. But such a condition would not of course make the contract invalid. Nor would it prevent the contract from being sued upon, or judgment from being given on it.

8. Any limitation on the power of a statutory corporation to contract (as distinct from the power to expend the moneys) is generally to be sought in the relevant legislation. In the case of the Aluminium Commission, the powers to contract, and the limitations on those powers, are to be found exclusively in the Aluminium Industry Act. I do not think any assistance need be sought—or for that matter can be obtained—from analogy with the board of directors of an ordinary limited company.

9. It is understood that the events now in question arose in 1951, and, that being so, the questions of law fall to be determined in accordance with the 1944 Act. I should say, however, that the 1952 amendments do not seem to me to alter in any way the position existing under the original Act.

10. The powers of the Commission are to be found in section 7, which, before amendment in 1952, read as follows:—

> "7. Subject to the provisions of this Act and of the Agreement, it shall be the duty of the Commission, with all possible expedition, in order to promote the naval, military and air defence of the Commonwealth and its territories, to do all such acts and things as are necessary for the production of ingot aluminium, and for that purpose it shall have and may exercise the powers and functions, and shall perform the duties and obligations, of the Commission set out in the Agreement".

11. This section incorporates the powers which are set out in clause 4 of the Agreement between the Commonwealth and the State of Tasmania, as follows:—

> "4. Subject to any directions given on behalf of the Commonwealth and the State by the Minister of State for the Commonwealth administering the Act passed by the Parliament of the Commonwealth to approve this Agreement, and subject to this Agreement, the Commission shall with all possible expedition in order to promote the naval, military and air defence of the Commonwealth and its territories do all such acts and things as are necessary for the production by the Commission of ingot aluminium and in particular, for the purposes of that production, shall have power—
>
> (*a*) to acquire land, buildings, plant and equipment;
> (*b*) to obtain supplies of electricity;
> (*c*) to obtain supplies of bauxite, alumina and other materials;
> (*d*) to encourage and assist the production and manufacture in the Commonwealth or its territories of all materials required for the production of ingot aluminium;
> (*e*) to determine the processes to be employed for the production of ingot aluminium;
> (*f*) to make such arrangements as it considers appropriate for the construction and maintenance of works;
> (*g*) to conduct scientific research;
> (*h*) to engage such experts as it thinks fit;
> (*i*) to appoint such officers and employ such persons as it thinks necessary;
> (*j*) to dispose of ingot aluminium and other products produced by, and other property of, the Commission;
> (*k*) to enter into contracts and agreements; and
> (*l*) to do such other acts necessary or incidental to or expedient for the performance of the functions specified in the preceding paragraphs as shall be approved by the Commonwealth and the State."

12. Clause 5 of the Agreement provided that the Commission should not, without the prior approval of the Commonwealth Minister, proceed with any single project involving an expenditure of more than £50,000.

13. In view of the wide form in which powers were conferred on the Commission, the only room for discussion of limits of the power to contract, it seems to me, is the are of possible implied limitations. In this regard, the most important factor is the method of financing the construction of the Commission's works. One lump sum was appropriated by the Commonwealth Act, and it was envisaged that the State of Tasmania would contribute a similar amount. There was no provision, such as appears in some other Acts, that there should be payable for the purposes of the Commission such sums as should from time to time be appropriated by the Parliament, nor was the Commission given power to borrow. From all of these circumstances, it is possible to argue that there must have been some implied limitation on the power of the Commission to make commitments, especially in the stage of erection of the undertaking and in view of the fact that the Commission's power to dispose of any part of the undertaking was expressly restricted by section 9.

14. On the other hand, in a matter of this kind, and having regard to the general rules of constitutional law stated in paragraphs 6 and 7 above, I think the initial presumption must be against implying any such restriction on the powers of the Commission. The powers given in such wide terms could easily have been limited by express provision, and in fact in one matter (the £50,000 limit to any one project) were so limited. The absence of other express limitations is, in these circumstances, a most important factor—indeed, in my own opinion a decisive factor.

15. The matter does not, however, rest solely on these general considerations. The conclusion stated is reinforced by a close examination of the development of the Commission's undertaking. For instance, the fact that it was in the comparatively early stages of construction that the funds derived from Parliamentary appropriation were exceeded tends to give the question of law a disarming air of simplicity. The capital of a concern such as this must include working capital as well as fixed assets. If the question of commitments had arisen at a time when the Commission had entered, or was about to enter, into production, the contrast between commitments and total funds would not have been so clear; for example, in making contracts for a year's supply of, say, bauxite, or electricity for the purposes of production, it would not have been suggested that the Commission must necessarily have had sufficient of the original funds available to meet these commitments. Section 12 envisaged a commercial undertaking, paying expenses, in part at least, out of the moneys received from the operations of the Commission. Moreover, at the stage when the Commission was about to commence production, some contracts might well have included both materials for construction and materials for production. The difficulty in drawing a line between the two types of contract, and the absence of any implied limitation on the power to enter into one type, is, I think, strong additional evidence that there was no implied restriction, in law, on the power of the Commission to enter into commitments for construction.

16. I conclude therefore that there is no ground for regarding the Act as either expressly or impliedly prohibiting the Commission from entering into a contract which would involve expenditure in excess of the amounts appropriated by Parliament.

Question (b).

17. It is clear from the extracts from the Act quoted in paragraphs 9-11 above that the validity of a contract entered into by the Commission, in excess of the Parliamentary appropriation, is not, as a matter of law, made *expressly* to depend on approval by the Minister, except of course insofar as the contract involved an expenditure of over £50,000, in which case the Commission's power to enter into the contract was expressly made subject to prior Ministerial approval.

18. The reasoning which has led me to reject any implied limitation on the Commission's contractual powers by reference to the amount of the Parliamentary appropriation is at least equally cogent in leading to the conclusion that the Act ought not to be read as *implicitly* requiring the Minister's approval for a contract, of whatever amount, in excess of the Parliamentary appropriation. No limitations should be implied, over and above those which are expressed. This indeed is a familiar principle of statutory interpretation.

The Constitutional Position of the Minister.

19. To say that the validity of a contract made by the Commission in excess of the Parliamentary appropriation does not depend expressly or impliedly on the Minister's approval does not however dispose exhaustively of the Minister's possible concern in any over-commitment by the Commission.

20. It is not necessary at this stage, I would think, to enter into discussion of the general relation between the Minister and the Commission, or of the differences between the Minister's position in relation to the Commission and to his Department respectively. These matters were, as I recall, in the minds of both the Chairman of the Public Accounts Committee and myself in the course of the questions I was asked, and they explain in part my reluctance to be drawn into a definitive statement, in the abstract, and on the kerbside so to say, on the particular matter of over-commitment.

21. For present purposes, it seems to me sufficient to recall two provisions of the Act—

(*a*) the provision in section 14 (1) that "the Commission shall keep the Minister continually informed of its operations under this Act.";

(*b*) the provision in clause 4 of the Agreement that the powers of the Commission set out in that clause should be exercised subject to any directions given by the Commonwealth Minister.

In other words, the Commission was to exercise its powers subject to Ministerial directions and, in order to give the Minister a real opportunity to make his wishes known, was to keep him fully informed of its operations.

22. In this regard, the fact that, under the Act, members were not assured of an appointment for a term of years, but were to hold office on such terms as the Governor-General determined, is of much significance.

23. These provisions seem to me to indicate quite clearly how the statutory plan was intended to work—not by way of legal limitations on the Commission's contractual powers but by providing the Minister, as a matter of administrative arrangement, with sufficient information to enable him to maintain whatever degree of Parliamentary control seemed necessary in the circumstances.

24. Of course, it may well be that in practice the whole matter would be covered by the express requirement of prior Ministerial approval for any contract involving expenditure above £50,000. But even apart from this the Minister, insofar as he was familiar with the Commission's operations, would be aware when the limit of the Parliamentary funds was coming in sight. He could, if he thought it necessary, and of course in concert with the State, give whatever direction (if any) he thought appropriate. Such a direction could, in principle, be altogether absolute—i.e. it could forbid the making of any contract, of whatever amount, which would involve a commitment beyond the Parliamentary funds available. Alternatively, the Minister could direct the Commission, in such circumstances, not to make any such contract without prior reference to him, so that he might have an opportunity of obtaining the necessary further funds, or at least of ascertaining that they would be made available. Alternatively, the Minister might be in a position to know in advance that the necessary further funds would be approved—in which case presumably no specific direction would be required.

* This Opinion was made available to the Committee by the Australian Aluminium Production Commission, for whom it was prepared.

25. In fine, as it seems to me, the Act leaves the matter of over-commitment to the operation not of legal fetters on the Commission's contractual powers, but of the Minister's administrative discretion and judgment, exercised on the basis of his general knowledge of the Commission's affairs.

26. I have had before me statements numbered 34, 63, 77, 79, 113 and 120, prepared by the Commission for the Public Accounts Committee. For the reasons fully stated above, however, it will be apparent that these statements bear not upon the questions of law which I have answered but upon matters of Ministerial policy and judgment which it is clearly not within my province to consider.

Appendix No. 19—Part II., Para. 101.

AUSTRALIAN ATOMIC ENERGY COMMISSION.

Memorandum Submitted to the Committee by the Chairman, Dated 29th August, 1955.

1. The following are some general points perhaps worthy of consideration:—

(a) All, or most, Commissions have some obligations imposed upon them by the legislation under which they operate to submit certain specified matters to their Minister.

(b) Such legislation also usually prescribes that certain things cannot be done without prior Ministerial approval, thus ensuring submissions to Ministers in these cases.

(c) The respective physical locations of the responsible Minister and the Commission affect the extent and frequency of the contact between them.

(d) The personnel comprising the Commission also affects the degree of contact with the Minister, e.g., a Commission composed entirely or substantially of outside businessmen is perhaps less likely to keep its Minister as fully informed as one headed by or including members with an intimate knowledge of the Public Service and of how the machinery of Government works. It is not suggested by this that a Commission of businessmen deliberately avoids informing the Minister of happenings, but they probably are not as fully aware of the problems facing the Minister or of the extent to which the spending of public money has to be policed.

(e) Ministers themselves have, and always will have, very different ideas as to how they should exercise their Ministerial control and as to the extent to which they wish to be informed of the activities of Commissions for which they are responsible. Consequently, no one set procedure can be applied to all Commissions.

(f) The nature of the activities of each Commission affects the position. In the case of this Commission, which is operating in a new and rapidly changing field, there must of necessity be the closest contact between Minister and Commission because of the number of international and political aspects, many of which require the attention of Cabinet. There is also a very active public interest which manifests itself in many ways and thus invites the attention of the Minister to our activities and plans. In a Commission operating a more normal activity, where policy has been defined and operations have settled into a fairly well-defined pattern, there is probably less need for such a close contact.

(g) Matters of major policy require Cabinet approval which the Minister must obtain through submissions from time to time. Thus, he is fully familiar with such matters.

(h) The submission to the Minister of the Minutes of each meeting of a Commission is one way in which the Minister could see what is happening but, in my view, this is imposing a good deal of unnecessary work on him. If the Minutes are, as they should be, a comprehensive record of decisions and activities, the Minister would be required to read a great deal of detail which it is not really essential for him to know.

2. Summed up, I think the relations between Ministers and Commissions cannot be completely and arbitrarily set out. The main factors affecting the position are—

(a) the extent to which relevant legislation can reasonably and sensibly establish the essential overall Ministerial control without undue interference in the operations of the body concerned and without burdening Ministers with unnecessary detail. Some things such as the limits on financial transactions and on staff appointments without prior Ministerial approval, and the submission of annual reports to the Minister are appropriate items for inclusion in relevant legislation;

(b) the extent of the active interest which Ministers themselves take in the activities of the bodies under their Ministerial control, and their own prior knowledge of the field of activity of the Commission they control;

(c) the membership of the Commission and their personal relations with the Minister;

(d) the respective locations of (i) the Minister and (ii) the Commission.

The Means by which the Responsible Minister (Minister for Supply) is kept Advised of the Activities of the Commission.

(A) *Legislative Direction.*

1. The Commission operates under the *Atomic Energy Act* No. 31 of 1953. This Act imposes upon the Commission certain obligations and defines certain powers which the Minister exercises. These include the following:—

Part II.—Establishments, &c.—

Section 14.—Leave of absence for a Member is subject to the approval of the Minister.

Section 15 (2).—The Minister may at any time convene a meeting of the Commission.

Functions and Powers—

Section 19 (1).—The Commission must comply with the directions (if any) of the Minister, &c.

Section 20 (2).—The number of Advisory Committees and the number of Members of each such Committee shall be determined by the Minister.

The Service of the Commission—

Section 21 (4).—The Commission can only appoint a non-British subject with the approval of the Minister.

Section 21 (5).—Any appointment or promotion, &c., to a position carrying a salary in excess of a certain specified amount is subject to Ministerial approval.

Finance—

Section 26.—This imposes certain financial limitations on the Commission which cannot be exceeded without the approval of the Treasurer. Such approval, of course, must be sought through the Minister.

Section 28.—The Commission must prepare and submit to the Minister estimates of its receipts and expenditure for each financial year in such form as the Minister directs.

Section 29.—The Commission cannot enter into a contract exceeding £25,000 without Ministerial approval.

Section 30 (3).—The Auditor-General reports to the Minister the result of his audit of the Commission's accounts.

Section 31.—The Commission is required to furnish to the Minister each year an Annual Report, together with financial statements audited by the Auditor-General.

Section 33.—The Minister, with the concurrence of the Treasurer, determines how the profits (if any) are to be applied.

Part III.—Control of Materials.—This Part confers upon the Minister various powers which only he can exercise. The effect of the foregoing is that, unless the provisions of the Act are deliberately ignored by the Commission, the Minister must be advised of a considerable number of important matters.

(B) *Cabinet Agendums.*

The approval of Cabinet is required for major matters of policy and this is sought by appropriate submissions by the Minister. As a result of the preliminary discussions on these matters between the Minister and the Commission, and in the compilation and presentation of the submissions to Cabinet, the Minister becomes fully acquainted with the major activities in hand or contemplated. These submissions set the pattern for the Commission's operations. During recent months, the Minister has made eleven important submissions to Cabinet concerning the activities of the Commission. Two more submissions are awaiting consideration.

(C) *Correspondence.*

There is a limited, but continuing, volume of correspondence addressed to the Minister on atomic energy matters, which offers another avenue by which the Minister is kept aware of some activities.

(D) *Statements Issued to the Press.*

These are prepared from time to time by the Commission for issue by the Minister to the Press, either on the initiative of the former or at the request of the latter. They offer another means by which the Minister's knowledge of activities is kept up to date.

(E) *Questions in Parliament.*

Discussions on these and replies to them again supplement the Minister's knowledge of day to day happenings.

(F) *Personal Contact.*

The Chairman visits the Minister normally one day each week, and advises him of current happenings, discusses outstanding problems and seeks Ministerial advice, direction and/or approval as is necessary.

(G) *Attendance at Commission Meetings. Visits to Plant, &c.*

The Minister has, on occasions, attended meetings of the Commission when matters of special interest were under consideration. He has also visited areas of interest, such as the Rum Jungle Uranium Project and has had a number of discussions with uranium mining interests.

(H) *General.*

Since the Commonwealth Government has been really active in the atomic energy field, the Ministerial responsibility has been with one Minister, the present Minister for Supply. Under his Ministerial direction, the policy of the Government, as determined from time to time, has been given effect to, the present Atomic Energy legislation drafted and enacted, the Commission created and established and the programme to be followed in the raw materials and research field prepared and approved. The present Minister is, therefore, thoroughly familiar with the activities of this Commission.

AUSTRALIAN ALUMINIUM PRODUCTION COMMISSION.

Memorandum Submitted to the Committee by the Chairman, Dated 27th September, 1955.

3. To-day it is widely accepted—and I think rightly so—that some limitation must be imposed upon the statutory corporation's freedom to decide matters of general policy and principle. For a variety of reasons, the Minister administering the constitutive Act must be given certain powers and responsibilities in the policy field. These powers and responsibilities may cover the whole of the corporation's policy or be directed at certain important aspects; they may involve a positive power of direction or a negative power of control. I do not think it is possible to generalize, with any degree of certainty, as to what these powers and responsibilities should be; so much depends upon the particular circumstances and the purposes and functions of the corporation in question.

4. No matter how far Ministerial power may be taken to limit the freedom of the corporation in the policy field, it is essential at least to protect the corporation's independence in matters affecting management and day-to-day administration. Otherwise there seems to be little point in going to the length of establishing a statutory corporation to carry out a particular activity. The activity could be conducted through other organizational devices within a departmental structure.

5. If this be the case, the legislation should not only define, with some precision, the Minister's powers and responsibilities, but should clearly recognize the separate powers and responsibilities of the corporation itself. This is necessary for the protection of the corporation as well as the Minister who, in the discharge of his Parliamentary and Cabinet responsibilities, cannot be held responsible for the things entrusted to the corporation. It is with this consideration in mind that I comment upon the obligation imposed upon the A.A.P.C. "to keep the Minister continually informed of its operations".

6. This is the key provision in the Act governing the relationship between the Minister and the Commission. Yet the provision is written in very general language and, so it seems to me, without much regard to the respective responsibilities of the Minister and the Commission. If the wording is taken literally and is not overlain with the constitutional understandings referred to by the Solicitor-General in his opinion dated 30th September, 1954, it could be said that the present provision implicates the Minister in matters which are clearly not his responsibility. As the Minister's power of direction is so widely drawn in the Act, it is all the more important that the legal obligation to keep the Minister informed should be limited to matters of policy and principle—the only matters for which he should accept any degree of responsibility.

7. Turning now to your specific question, I do not agree with the idea that the minutes of Commission meetings should be sent to the Minister. To do so would certainly compromise the position of the corporation in its own sphere of responsibility and implicate the Minister in matters beyond his sphere of responsibility. On this point I am constrained to mention the concern I felt when I was asked by your Committee to produce the Commission's minutes for the purposes of the recent inquiry. There is a principle of considerable moment at stake, and I am of opinion that a practice requiring statutory corporations to produce their minute books to Parliamentary Committees should not be established without very careful consideration. Because of the special circumstances of the recent inquiry I, with the concurrence of other members, decided not to raise the question of principle when asked to make the Commission's minutes available to your Committee, but think that the matter ought now to be examined.

8. In my view it would be quite unwise to attempt to express in legislative form the various means by which the Minister should be kept informed of the matters falling within his area of responsibility. The means of contact between the Minister and the Commission is something which must be left to the parties concerned to work out according to circumstance and be established according to the needs of the personalities involved. It is quite obvious that the Commission cannot adequately discharge its obligations in this respect by merely observing legal requirements to produce annual reports and make submissions to the Minister on specific matters. Nor do I think that a full and proper intercourse can be established by sending to the Minister periodic reports on policy matters. The relation must be developed by personal contact and through regular discussion with the Minister of the policy problems confronting the Commission. The basic responsibility for conducting these discussions with the Minister must, of course, reside with the Chairman, but this should not, in my view, preclude other members having informal contacts with the Minister provided these are made with the knowledge of the Chairman.

9. Since I have been Chairman, I have made it my business to invite the Minister to have informal discussions from time to time with the Commission as a whole, especially when some major policy issue is under consideration. These informal contacts have proved to be an invaluable means of exchanging ideas freely and of bringing about a mutual understanding of the respective approaches to the problems under discussion. I fully recognize the need for certain formal procedures (such as annual reports, periodic policy reports and written submissions on specific questions), but I am certain that these means alone will not result in the kind of relationship which should exist between Minister and Commission.

JOINT COAL BOARD.

Memorandum Submitted to the Committee by the Chairman, Dated 9th September, 1955.

2. In considering the position of the Joint Coal Board it will be preferable first to set out the formal position and then to deal with the way in which this operates in practice.

3. The Board is a joint authority established in 1946 by the Parliaments of the Commonwealth of Australia and the State of New South Wales. The *Coal Industry Acts* of 1946 are substantially identical and, insofar as they bear upon the relationship of the Board to Governments, they are in precisely identical terms.

4. In 1946 the two Governments mutually agreed that it was necessary to establish an authority for the control and re-organization of the coal industry. This could not be done independently by the Commonwealth because it lacked the necessary constitutional power. The State of New South Wales was unable to provide the substantial finance which it was recognized would be required. In these circumstances the two Governments reached a joint arrangement to which the State contributed most of the constitutional power supplemented by

a limited amount of finance and the Commonwealth contributed most of the finance supplemented by a limited amount of power. Because of the essentially joint character of the arrangement neither Government was willing to allow the new authority to be solely responsible to the other. For this reason it was decided that the Joint Coal Board should be established as an independent body corporate.

5. The Coal Industry Acts, therefore, provided for the complete independence of the Joint Coal Board subject only to three limitations.

(a) Section 18 (2) of the Commonwealth Act and Section 15 (2) of the State Act both provide—

> "The Prime Minister of the Commonwealth may, in agreement with the Premier, issue directions to the Board on matters of policy and it is to be the duty of the Board to observe and carry out any direction so given."

In over eight years of operation no such joint direction has ever been issued by the two Governments to the Board.

(b) Section 18 (1) of the Commonwealth Act and Section 15 (1) of the State Act both provide—

> "The Board shall, as and when required by the Prime Minister or the Premier of the State, furnish reports to the Prime Minister and to the Premier with respect to the policy it is pursuing or proposes to pursue in the discharge of its powers and functions and, in particular, with respect to programmes of proposed reorganization, acquisition or development involving substantial outlay of capital, and with respect to proposals affected by or affecting matters of national policy including defence, full employment and price stabilization."

A formal request of this kind from either of the two Governments would require a report to be furnished to both Governments. Although there has been a very great deal of correspondence and discussion with both Governments upon policy matters, neither Government has ever sought a formal policy report from the Board under the provisions of these sections of the Acts.

(c) Section 22 of the Commonwealth Act authorizes the Treasurer of the Commonwealth to attach conditions to the provision of moneys to the Board. Section 22 (1) is as follows:—

> "There shall be payable to the Board from time to time, subject to such conditions (if any) as are imposed by the Treasurer of the Commonwealth such amounts as are appropriated by the Parliament, to enable any authority constituted under this Act to exercise the powers and functions vested in it by this Act."

In addition, Section 23 (3) provides—

> "The Treasurer may, out of moneys appropriated by the Parliament for the purposes of this Act make advances to the Board of such amounts and upon such terms as he thinks fit."

Under the provisions of these sections the Commonwealth has issued to the Board a financial directive. This directive, however, provides a framework within which the Board is required to conduct its affairs. Provided it complies with the directive it is not required to keep the Commonwealth "continually informed of its operations" and, consequently, it would appear to have little bearing upon the problem being considered by the Committee.

6. The purely formal position therefore, is that the Joint Coal Board is an independent authority pursuing its own course until it is jointly directed otherwise by the two Governments. However, it would not be practicable for the Board to insist upon the rigid formalities if only for the reason that it has no independent source of revenue and is dependent upon the provision of funds by the two Governments. For this reason the Board has, in practice, adopted two courses of action—

(a) Whenever it needs the assistance of either Government (whether this is financial or otherwise) an appropriate submission is made and the necessary approval is obtained.

(b) In addition, however, the Board has taken great care to keep both Government "continually informed of its operations" even although it is not statutorily required to do so.

7. The Board does not submit minutes of its meetings to the Governments for two reasons:

(a) It does not keep minutes in the conventional sense. With three full-time Board Members the Board is in semi-continuous session and each decision is recorded upon the appropriate submission, or where there is no submission, as a separate decision.

(b) These decisions are extremely voluminous and they include a host of minor matters which are of no interest or concern to the two Governments.

8. However, the Board does send certain information regularly to the two Governments. In addition, the Board sends to the Minister for National Development copies of the minutes (together with a summary of the minutes) of each of the Directors' meetings of its four subsidiary companies.

9. The formal responsibilities of the Prime Minister and the Premier under the *Coal Industry Acts* of 1946 have, in practice, been delegated to the Minister for National Development and the Minister for Mines respectively. It is these two Ministers with whom the Board keeps in constant and close touch. This is done, not only through the regular statements which I have referred to above, but also through frequent personal discussions between the Chairman of the Board and the two Ministers and supplemented by correspondence on important matters.† Correspondence of this kind is quite frequent, even although the Ministers concerned have no purely formal responsibility in relation to the matters involved.

10. In consequence, therefore, you will see that although the Board is formally quite independent of the two Governments it does, in practice, take great care to keep the two Ministers "continually informed of its operations".

* This material is primarily of a detailed statistical nature.

† A letter to the two Ministers, dealing with Durham open cut mine is attached to the original memorandum.

OVERSEAS TELECOMMUNICATIONS COMMISSION (AUSTRALIA).

MEMORANDUM SUBMITTED TO THE COMMITTEE BY THE CHAIRMAN, DATED 21ST SEPTEMBER, 1955.

2. The constitution of the Commission is set out in Section 8 of the *Overseas Telecommunications Act* 1946-1952, and its powers, functions and duties in Division 3.

3. This Act makes specific provisions under which the Commission is required to furnish to the Minister certain reports and to secure from him certain approvals before it may proceed in those respects. These provisions are comprehensive and are referred to briefly hereunder:—

Section 53 and Section 54—Reports.

Section 53—This requires the Commission to submit to the Minister an Annual Report with respect to the operations of the Commission and financial accounts in respect of each year.

Section 54—Under this Section the Minister is enabled to secure from the Commission such reports, documents and information relating to the operations of the Commission as he requires.

Section 55—Estimates.—Under this Section the Commission is required to submit to the Minister annually a statement of estimated receipts and expenditure for the ensuing financial year. This statement is comprehensive and informative.

Section 75 (2)—Rates, Services, &c.—Under this Section the Commission must obtain the approval of the Minister before—

(a) effecting any alteration in the rates charged in Australia for messages or communications transmitted over the overseas telecommunications services operated by it, or in the apportionment of those rates;

(b) withdrawing any category of overseas message or communication;

(c) discontinuing any overseas telecommunications route or service;

(d) instituting any new overseas telecommunications route or service;

(e) extending or altering any portion of the telecommunications system operated by the Commission which does, or might, form part of the Empire telecommunication network;

(f) entering into any agreement with a foreign telecommunications undertaking; or

(g) taking any action or decision relating to or affecting the defence policy of the British Commonwealth and Empire or any part thereof.

Sections 38 (2) and 38 (3)—Purchase and Disposal of Assets.—These Sections oblige the Commission to secure the approval of the Minister before—

(a) acquiring by purchase any land the cost of acquisition of which exceeds the sum of Five thousand pounds;

(b) entering into any lease of land for a period exceeding five years; or

(c) in any manner disposing of any property, right or privilege having an original or book value exceeding the sum of Five thousand pounds;

(d) entering into any contract in any case where the contract is for the supply, either directly or indirectly, from places outside Australia, of equipment or materials of a greater value than Five thousand pounds.

Section 43—Treasury Advances.—Under this Section the Commission may accept from the Treasury only those amounts which, in the opinion of the Minister, are required by the Commission.

Section 52—Application of Net Profits.—This Section obliges the Commission to obtain the approval of the Minister and the concurrence of the Commonwealth Treasurer before utilizing any net profit in any other manner than the re-payment to the Treasury of moneys advanced by the Treasurer.

Section 18 (7)—Salaries of Staff.—The approval of the Minister is necessary in the case of positions carrying salary in excess of £1,500 per annum.

Section 74 (1)—Licences, &c., for Conduct of Radio-Communication Services.—The requisite licences, permissions or approvals for the operation of these services must be obtained from the Minister under the *Wireless Telegraphy Act* 1905-1950.

Section 79—Inspection of Stations and Services.—All stations and services licensed in accordance with the Act are subject to inspection by any officer authorized by the Postmaster-General.

Section 80—Regulations.—All Regulations made under the Act are, of course, subject to the recommendation of the Minister and the approval of the Governor-General.

4. In regard to the financial arrangements of the Commission, it is important also to bear in mind that, apart from the statutory obligations above referred to, Section 44 of the Act provides that the Commonwealth Treasurer shall determine the terms and conditions of any advances made to the Commission. The Commission's accounts are also kept in such form as the Treasurer approves (Section 48). Further, the approval of the Treasurer must be obtained by the Commission to the setting aside, from its revenues, of reserves for specified purposes (Section 51 (1)).

5. In addition, the Auditor-General is, of course, responsible for the examination and certification of any of the Commission's accounts and for reporting the result of such examinations to the Postmaster-General. (Section 49).

6. The measures taken by the Commission to keep the Minister informed of its activities stem directly from the statutory obligations summarized above. These obligations are fulfilled conscientiously and thoroughly.

7. It is the considered view of the Commission that, subject to the fulfilment of the statutory obligations as above stated, the places squarely upon the members of the Commission the responsibility for the day-to-day operation and development of the overseas telecommunication services so far as Australia is concerned.

8. No doubt the Commission was set up in its present form by the Parliament so that the business of overseas telecommunications could be conducted expertly and to relieve the Minister of direct responsibility for day-to-day management. Any decision to furnish the Minister with a further mass of information must pre-suppose that he would intervene at certain points in the management or, alternatively, that he would accept some responsibility for the matters revealed in the information.

9. Apart from the obvious source of possible embarrassment to the Minister which such an arrangement would create, it would seem to be a negation of the intention of the legislature.

10. In other words, there is set out clearly in the Act the respective fields of responsibility for the Minister and the Commission, and it is thought that the furnishing by the Commission of the information prescribed by the Act preserves to the Minister the means of fully meeting his responsibility.

11. It would appear that the circumstance which your Committee is seeking to cover is a serious failure on the part of the Commission which might be avoided if the Minister had some further regular information. Quite obviously the Minister could not function in this way unless he gave to the business of the Commission the degree of attention which the Chairman and individual Commissioners give it. This must surely add seriously to his burden.

12. The view is taken that the Commissioners, having been carefully selected and being responsible men, must be trusted to exert good management, and that there is no practical alternative to this outlook.

13. Section 15 (1) of the Act provides for the dismissal of a Commissioner for inability, inefficiency or misbehaviour. A drastic penalty for failure by the Commission to discharge its responsibility is therefore available, but such failure is not failure by the Minister.

14. It should, of course, be understood that if a condition of affairs arose in the business of the Commission which might involve the Minister or the Government in embarrassment, immediate steps would be taken to inform the Minister suitably and promptly.

15. In the ordinary course of events interviews between the Minister and the Chairman occur from time to time and it must be remembered that the Permanent Head of the Postmaster-General's Department is Vice-Chairman of the Commission.

16. Your Committee has inquired as to whether the minutes of Commission meetings are forwarded regularly to the Minister. This practice is not followed and any suggestion for its adoption is not viewed favorably by my Commission.

17. It is essential that the Commissioners in meeting should discuss their business fully, frankly and in complete confidence. The minutes are a faithful reflex of this discussion and the decisions reached. The preparation of copies is carefully policed and issue is restricted to Commissioners and top management. In any case, a proper appreciation of the minutes and the decisions must involve careful perusal of the whole Agendum and associated data.

18. The submission of the minutes to the Minister could easily prove embarrassing to him and might also cause difficulty from the Commission's standpoint. If the Minister, as a regular thing, perused the minutes in detail or had them perused on his behalf by his staff, it would bring him into a field of control which appears quite out of harmony with the intentions of the legislature so far as my Commission is concerned.

19. In the view of the Commission the procedure contemplated by your Committee envisages a degree of personal supervision by the Minister over the activities of the Commission which is non-existent, and indeed, impracticable, in relation to the Department which he administers. In large Commonwealth Departments it is necessary for the Minister to delegate to his permanent head and to executive officers powers which are, in many respects, greater than those conferred upon the Commission by the *Overseas Telecommunications Act 1946-1952*. The Commission feels that there is no justification for assuming a greater need for supervision over the work of the Commission, consisting, as it does, of trained experts and administrators, than there is in the case of the activities of a Department.

20. The views expressed in this letter are those which are held unanimously by the members of my Commission.

SNOWY MOUNTAINS HYDRO-ELECTRIC AUTHORITY.

MEMORANDUM SUBMITTED TO THE COMMITTEE BY THE COMMISSIONER, DATED 20TH SEPTEMBER, 1955.

2. Let me deal first with the Authority's direct obligations to the Minister under the *Snowy Mountains Hydro-electric Power Act*, 1949. Section 22 of Act requires the Authority to obtain the Minister's approval to the appointment of officers who are not British subjects and to the appointment or promotion of officers to positions for which the salary exceeds £1,500 per annum. Section 30 of the Act requires the Authority to obtain the Minister's approval to placing contracts involving the payment or receipt of amounts exceeding £100,000. The Minister has always required full information on these matters before giving his decisions.

3. Under Section 32 of the Act the price at which electricity may be sold is determined by the Treasurer on receipt of a recommendation from the Minister. In this connexion the Authority keeps the Minister advised on all matters which have a bearing on the cost of producing electricity. In addition to such information submitted from time to time by the Authority, the Minister frequently calls for special reports on the financial aspects and the economics of power production proposals.

4. Under Section 40 of the Act the Authority submits annual accounts to the Minister. In this connexion, and for closer advice on the Authority's spending, the Minister is

provided with a monthly financial statement showing actual expenditure in relation to the Authority's Budget. From time to time queries arise from these statements, necessitating the submission of additional information. Under the same section of the Act, the Authority is obliged to furnish to the Minister an annual report and such other reports, documents and information as the Minister requires.

5. The Treasurer has issued through the Minister a Directive to the Authority defining the procedures which he wishes the Authority to follow in fulfilling the financial provisions of the Snowy Mountains Act, bearing in mind that under Section 25 of the Act, money, if borrowed from the Commonwealth Bank by the Authority is subject to the Treasurer's guarantee, secondly that advances made by the Treasurer are subject to such terms as he thinks fit, and thirdly that money borrowed otherwise is subject to his consent. Under this Directive the Authority submits annually to the Minister and to the Treasurer a detailed programme covering its operations for the succeeding year and a programme in broad outline covering the succeeding five years. The programmes disclose the work to be carried out, requirements in finance, man-power, materials, sources of supply of materials, and commitments to be incurred in acquiring permanent plant. The Directive also lays down the rate of interest to be paid on Treasury advances.

6. It should be borne in mind that any approach the Authority might make to the Treasurer in connexion with the implementation of the Directive is channelled through the Minister. This affords the Minister the opportunity, which in practice he always takes, of supporting or opposing any such matters.

7. In addition to the various aspects of the Authority's operations covered specifically by the Act or the Treasurer's Directive, the Authority keeps the Minister fully informed on all matters which it is thought may be of special interest or concern to him or the Government. The present Minister likes this to be done. Such matters include negotiations with the States at officer level on the preparation of the draft agreement between the Governments of the Commonwealth, New South Wales and Victoria; the effect of the terms and conditions imposed on the Authority by the Treasurer under which money is advanced to the Authority; any major alterations to the original plans prepared by the Commonwealth/States Snowy River Technical Committee for the development of the Snowy Mountains Area; negotiations with Unions on the formulation of an Industrial Award and on other industrial matters of major importance. The Minister on his own initiative often seeks full information on such matters.

8. Subject to the legal and customary obligations outlined above, it would appear that Parliament has given the Authority, a statutory corporation, power to carry out its functions under Part III. of its Act with complete responsibility and freedom of control. It should be pointed out, however, that the Treasurer, controlling as he does the conditions under which funds are supplied, could if he wished, limit many of the activities of the Authority. It is in this connexion that the relationship between the Minister and the Authority is of the utmost importance because the Authority must look to the Minister to resist any attempted restrictions of the powers given to the Authority by Parliament so that it can carry out its functions.

SNOWY MOUNTAINS HYDRO-ELECTRIC AUTHORITY.

FINANCIAL DIRECTIVE FROM THE TREASURER OF THE COMMONWEALTH ISSUED BY THE MINISTER FOR WORKS AND HOUSING.

(1) *Preamble.*

The Snowy Mountains Hydro-Electric Authority, appointed in pursuance of Act No. 25 of 1949, is charged with the responsibility of constructing and operating works for the generation of hydro-electric power in the Snowy Mountains Area (as defined in Section 6 of the Act) for the purpose of providing additional supplies of electricity to meet the increasing requirements of defence works and undertakings and the Australian Capital Territory.

The Authority is responsible for ensuring the proper use of public moneys invested in it by the Commonwealth for the construction and operation of the foregoing hydro-electric works.

The object of this Directive is to define the procedures which are to be followed by the Authority in fulfilling the financial provisions of the Act.

This Directive is issued in relation to the period up to the date on which the Authority first commences to sell power, and shall remain in force until such time as it may be superseded by a later Directive.

(2) *Programmes and Estimates.*

The Authority shall draw up annually for submission to the Minister and the Treasurer a programme for the next five years. The first programme shall be submitted as soon as practicable.

The programmes will disclose the works proposals in broad outline, cover man-power and material requirements and the sources of supply of the material as between domestic resources and imports.

The Authority shall furnish estimates of the funds which will be necessary to implement the programmes.

At least three months prior to the commencement of each financial year, the Authority shall submit to the Minister:-

(a) A statement in broad outline indicating the operations which it is proposed to carry out during the ensuing year; the man-power and materials required and (where possible) the country of origin of the materials.

(b) A statement of the commitments to be incurred in acquiring permanent machinery, equipment, and other capital items during that year, and (where possible) the country of origin.

(c) In a form to be approved by the Treasurer, estimates of the expenditure involved in (a) and (b) above; and

(d) Estimates of the receipts (if any) of the Authority during the year on capital or other account.

(3) *Provision of Capital.*

The provision of funds for the performance of the functions and powers of the Authority is governed by the power to borrow money under Section 25 of the Act. Applications for advances by the Treasurer out of moneys appropriated for the purpose of the Act shall be made at such times and in such amounts as are considered necessary by the Authority, and shall be submitted for the approval of the Minister prior to submission to the Treasurer. Any request for an overdraft with the Commonwealth Bank of Australia on the guarantee of the Treasurer to provide finance for temporary purposes shall also be submitted for the prior approval of the Minister.

(4) *Interest and Capital Repayments.*

The rate of interest due to the Commonwealth on advances made by the Treasurer to the Authority under Section 25 of the Act shall be the effective long-term bond rate, as determined by the Treasurer, at the time each advance is made. Interest will be calculated on daily balances and be treated in the books of the Authority, as a capital accretion to the debt due to the Commonwealth. (This involves capitalisation of interest during construction.) Interest shall not be compounded.

The Authority shall not be required to pay interest or repay advances to the Commonwealth until such time as it commences to sell power. The terms on which interest shall be paid, and advances repaid to the Commonwealth, shall be determined on the occurrence of that event.

(5) *Expenditure.*

As a condition to the provision of advances by the Treasurer under Section 25 of the Act:—

(i) The Authority shall not, without the approval of the Minister and the Treasurer:

(a) Enter into any arrangement with a State or local authority, involving finance, that may be of concern to the Commonwealth in its financial relations with the States;

(b) Introduce any staff pension scheme or provident fund.

(ii) The rent formulae and policy on sales adopted by the Authority in providing houses for its construction personnel shall be subject to the approval of the Minister and the Treasurer.

(6) *Insurance.*

In conformity with the Commonwealth's policy of self-insurance, insurance including workers' compensation shall not be effected with outside insurers. Until such time as the Authority commences to sell power, any insurable losses that may occur shall be treated in the books of the Authority as part of the capital cost of the works.

(7) *Accounts.*

Before the 31st March, 1950, the Authority shall, in compliance with Section 28 of the Act, submit to the Minister for the approval of the Treasurer a proposed form of accounts.

APPENDIX No. 20—PART II., PARA. 106.

OPINION OF THE SOLICITOR-GENERAL, 19TH JULY, 1955.

ALUMINIUM INDUSTRY ACT 1944-1954: DATE WHEN THE AUDIT ACT CEASED TO APPLY TO THE ACCOUNTS OF THE COMMISSION.

Aluminium Industry Act 1944-1954: Date when Audit Act ceased to apply to the accounts of the Commission.

I refer to your memorandum dated 3 February, 1955, in which you say that the Secretary of the Public Accounts Committee has asked you for a considered opinion on the question when the Audit Act ceased to apply to the accounts of the Australian Aluminium Production Commission.* As the question involves a point of law, you have asked me for an expression of my views.

2. As you know, I found it difficult to answer that question in the form in which it was asked; firstly, because it assumed that the Audit Act applied in its entirety to the accounts of the Commission before the commencement of the *Aluminium Industry Act 1952*, namely, 2 October, 1952; secondly, because it assumed that the Act thereafter ceased at some date to apply at all to the accounts of the Commission. As a result of discussions between officers of our respective Departments, I understand that the first difficulty has been mentioned to the Chairman of the Public Accounts Committee, and that it has been decided to seek my advice on a further question, namely, to what extent did the Audit Act and Treasury Regulations apply to the accounts of the Commission before 2 October, 1952. The Committee has mentioned in the first part of its report on the Commission (paragraph 76) that my opinion has been sought on this question.

The position before 2 October, 1952.

3. I propose, therefore, to devote the earlier part of this memorandum to the further question, as that is really the fundamental question. My short answer will be given after my detailed reasons.

4. There was no express provision in the *Aluminium Industry Act 1944* that the Audit Act should apply to the accounts of the Commission. This result followed, if at all, only to the extent to which it was a necessary consequence of the fact that the Act (section 12) established the Aluminium Production Trust Account and provided that the expenses of the Commission were to be paid out of, and the moneys received by the Commission from the operations of any undertaking carried on by it were to be paid into, that Trust Account. It is clear that a Trust Account is part of the Trust Fund and the Trust Fund is part of the Commonwealth Public Account; it is clear also that moneys in a Trust Account are "public moneys" within the meaning of that expression as used in the Audit Act.

5. In practice, I understand, it has been assumed that operations on a Trust Account are governed by the Audit Act and Treasury Regulations in all respects. This conclusion is, in my view, a natural one. Potent arguments are needed to overthrow, even in part, a presumption that the entire provisions of the Act and Regulations, for example, apply to all aspects of the incurring of a liability, and the making of the consequent payment, when the payment is to be of public moneys out of a part of the Commonwealth Public Account.

6. It is clear, of course, that the basic requirements of the Act and Regulations must apply to all payments out of a Trust Account. By the "basic requirements", I mean sections 33, 33 and 34 of the Act, and the related Regulations. The necessary warrant must have issued, and the certification and authorization of the payment must occur; the certifying officer must comply with regulation 45, payment must be by cheque (regulation 48).

7. When, however, Parliament sets up an independent statutory corporation, and also provides for the financial operations of the corporation to be operations on a Trust Account, the question must arise whether the corporation is thereby placed under an obligation to observe all the requirements of the Treasury Regulations. I shall, for the moment, put aside considerations arising out of the *Aluminium Industry Act 1944*, and out of the decision to create a statutory corporation, and examine first the Audit Act and Treasury Regulations themselves.

8. The main scope of the Audit Act is defined by the references to the Commonwealth Public Account and to public moneys. The intention would seem clearly to be that the whole Act should apply to any dealing with "public moneys". It is interesting, however, to see that there are some references to "Departments" and this word is defined as including "*such authorities of the Commonwealth as are prescribed*". The Aluminium Production Commission has not been prescribed. The specific references to Departments in the Act are, however, few. This is, in fact, one example of a difficulty often met in construing the Audit Act. Important amendments, adding new concepts, have from time to time been made and experience has shown that the new concepts have not been completely integrated with the general scheme of the Act. The result is that the Act as a whole does not now represent a completely integrated system, it really requires a complete *restatement. I understand that your Department* is at present engaged on that task.

9. When one comes to examine the regulations regarding payments, a distinction may be drawn between regulations regarding the incurring of a financial liability (for example, entering into a contract, ordering goods) and regulations regarding the payment itself. I would myself think that the intention of the Audit Act was that both sets of requirements should apply to payments made out of any part of the Public Account. *Sect on 71 (3.) reads as follows:—*

"(3.) No such person shall certify any account until he shall have ascertained that the expenditure has been duly approved in writing by the prescribed authority and that the account is correct in every particular and that the expenditure involved therein is in accordance with the law and regulations applicable thereto and is charged against the proper head of expenditure."

10. If the word "expenditure" in the first two places in that sub-section is an all *embracing word, as I think it must* be, there can be little doubt as to the intention of the Act. "Expenditure" is used in this wide sense elsewhere in the Act (see, for example, section 12 (1.)).

11. On the other hand, it would have been difficult to apply some of the regulations to payments of expenses of statutory corporations. Regulation 48 (2.), regarding approval of requisitions, and 83 (1.) (retention of services of officer after attainment of age of 65 years), were, in terms, hardly applicable. The whole of the provisions of *Part II. of the* Regulations relating to collection of public moneys would seem not to be appropriate to the receipt of money by a statutory corporation carrying on a business undertaking. Regulation 49 (1.) which gives functions to a "chief officer", would also have *caused difficulties* at the relevant times, but the definition of "chief officer" was amended in 1953 to include the "chief executive officer of an authority of the Commonwealth established under an Act."

12. When one comes to consider the terms of the *Aluminium Industry Act* 1944, the difficulties are increased. From this Act, it appears that the Commonwealth and the State of Tasmania agreed to the establishment of a statutory corporation; the establishment was to be by the Commonwealth it is true, but it was to be the establishment of *a corporation in* which Tasmania would have a substantial financial interest and would share in the administration.

13. The agreement set out in the Schedule to the Act provided that the Commission should have extensive powers; these included power to acquire land, plant and equipment, to obtain supplies of bauxite, to engage experts, to employ officers and to enter into contracts and agreements. The Act conferred these powers. The substantial question, as I see it, is whether the 1944 Act intended that these powers should be exercised subject, in all respects, to the Audit Act and Treasury Regulations of the Commonwealth, so that, for example, every requisition for supplies should be approved by the Minister or an officer appointed by the Minister.

14. Another point of interest is that, if the Audit Act applied in its entirety to the accounts of the Commission, as distinct from the payments out of the Trust Account, the Auditor-General was, by virtue of the Audit Act, under a statutory obligation to examine and audit those accounts. Yet section 13 of the *Aluminium Industry Act* 1944 provided that the books and accounts of the Commission should be subject to inspection and audit by the Auditor-General.

15. In the result, I consider that it is impossible to reconcile completely the provisions of the two Statutes; hence it is impossible to say with any certainty the extent to which the Audit Act applied to the accounts of the Commission before 2 October, 1952. In coming to a conclusion, I have been influenced by the matters mentioned in paragraphs 4 and 5 above; the moneys provided for the purposes of the Commission remained "public moneys"; the provisions of the Audit Act and Treasury Regulations are established to protect public moneys both in the matter of incurring of liabilities and in the matter of making payments. I cannot find, either in the Audit Act or in the *Aluminium Industry Act* 1944, a sufficiently clear expression of a legislative intention that any part of those provisions should not apply to the incurring of liabilities by, or the making of payments in respect of, the Aluminium Commission. For these reasons, not without doubt, I advise—

(a) that the "basic requirements" of the Audit Act and Treasury Regulations, as defined above, clearly applied, and

* This Opinion was made available to the Committee by the Secretary to the Treasury.

(b) that, although it is probable that Parliament intended the Commission to have considerable *freedom in the conduct of its business arrangements*, and although the application of whole of the Audit Act and Treasury Regulations presented some difficulties of construction, the better view probably is that the requirement that the Commission's operations were to be through a Trust Account attracted all the provisions of the Audit Act and Treasury Regulations.

When did the Audit Act cease to apply?

16. The Audit Act has not, even now, ceased to apply *to the accounts of the Commission. Lump sum payments* out of the Commonwealth Public Account to the Commission for payment into the Commission's bank account must be made in accordance with the "basic requirements" of the Audit Act; section 51A, which requires the Auditor-General to include in any report made by him under the Act "such information as he thinks desirable in relation to audits, *examinations and inspections carried out by him in pursuance* of the provisions of any other Act", still applies. In what follows, however, to avoid complications I ignore these residual effects.

17. Even after the background to your original question has been cleared, and the assumption is made, for this purpose, that the answer I have given in clause (b) of paragraph 15 is clear beyond doubt, *I still find it not possible to* give a simple answer to the question, when did the Audit Act cease to apply to the accounts of the Commission. It is, I think, clear that Parliament intended that the Audit Act should cease to apply to the accounts of the Commission on the coming into operation of the *Aluminium Industry Act* 1952, namely, 2 October, 1952. Payments on the Trust *Account after 2 October, 1952, were not, in my view,* authorized by the Act as amended. On the other hand, payments were, in fact, made from the Commonwealth Public Account and those payments had to be made in accordance with the relevant provisions of the Audit Act and Treasury Regulations. I discuss below (paragraphs 22-26) whether this is equivalent to saying that the Audit Act continued to *apply in its entirety to the accounts of the Commission so* long as the Trust Account was, in fact, maintained.

18. I have mentioned above (paragraph 4) that the reason why the Audit Act applied to accounts of the Commission was that section 12 established a Trust Account. The 1952 Act repealed section 12. It is clear from section 9 (2.) of the 1952 Act, which gave authority for the disposition of the balance in the Trust Account at the date of the commencement of the Act, that the repeal of the section which established the Trust Account was intended to bring operations on the Trust Account to an end. Since the existence of the Trust Account, and the statutory requirement that the expenses of the Commission were to be met out of that Account, were the only reasons why the pro*visions of the Audit Act (other than the basic requirements)* applied to the accounts of the Commission, it seems clear that Parliament intended that the accounts would not be subject to that Act after the commencement of the 1952 Act. Other provisions of the 1952 Act are consistent with this view—including the provisions that a bank account was to be opened, that accounts were to be kept in a form approved *by the Treasurer and that the Auditor-General was to inspect* and audit the accounts.

19. There would seem to be little room for doubt, therefore, that under the 1952 Act, Parliament intended that the detailed expenditure of the Commission should not be from the Commonwealth Public Account, but that the Commission's own distinct accounts should be maintained; these accounts were to be subject to proper commercial safeguards, and were to be audited by the Auditor-General, but were not to be subject to the limitations imposed by the Audit Act on operations on the Commonwealth Public Account. It follows, therefore, as stated in the short answer given in paragraph 17 above, that there was, after 2 October, 1952, no legal authority for paying into the Trust Account large sums out *of the special appropriation made by the 1952 Act*, and for continuing to operate the Trust Account to make payments on behalf of the Commission.

20. The Public Accounts Committee may feel that this statement is sufficient to answer the substantial question involved. However, I make below an attempt to answer in terms the question as put to me. It is not easy to do so, as the attempt involves the consideration of the effect, in law, of an action which was not authorized by law. The problem is perhaps novel in the particular context, but is not novel in its general implications. It often happens that the Courts have to consider a case where Parliament has directed that something be done in a particular manner and the end desired by Parliament is achieved, but not in the manner *specified. The question then arises whether the whole should* be treated, in law, as a nullity, or whether the non-compliance with the formalities may be regarded as mere irregularities, possibly involving the participants in administrative or, in some cases, curial sanctions, but not either requiring or per*mitting that which was, in fact, done to be treated as not* having been done.

21. In my opinion it is quite clear, in the present case, that the operation of the Trust Account after 2 October, 1952, cannot be regarded as a mere nullity, and the Trust Account cannot be treated as though it were, in fact, as it ought to have been, an ordinary bank account kept by the Commission under the *1952 Act*. Payments were, in fact, made out of a part of the Commonwealth Public Account, and no payment may be made out of that Account unless the amount involved has been appropriated by Parliament for the purpose and unless the requirements of the Audit Act are met. Under the 1952 Act, a sum of £4,250,000 was appropriated for the purpose of the Commission. This sum could have been *paid out of the Commonwealth* Public Account to the Commission (for payment into a bank account opened in pursuance of section 13), either in one sum or in smaller amounts from time to time; the only requirements of the Audit Act which would then have had to be met are what I have called "the basic requirements". The Commission could, at any time, have asked for such a payment, and; *indeed, I do not believe that the fact that part of the special* appropriation had, in fact, been credited to the Trust Account in the books of the Treasury would have operated in law to prevent the payment of those sums out of the Commonwealth Public Account to the Commission *in globo*.

22. It follows that, although the Trust Account was continued, payments, or "advances", could have been made out of that Account to the Commission for payment into a bank account opened in pursuance of section 13. Only the "basic requirements" of the Audit Act would have had to be satisfied in that case. In fact, I understand, more than half of the expenditure of the Commission in the period in question was made from a bank account (the "Bell Bay Account") and the necessary funds for this purpose had been paid out of the *Commonwealth Public Account after compliance with the* "basic requirements".

23. The bank account into which these amounts were paid was *not* a bank account *opened* in pursuance of section 13. It was an account opened in 1950 under the provisions of the Audit Act, and as such was itself part of the Commonwealth Public Account. After the commencement of the 1952 Act, the strictly correct course would, I think, have been to close the existing bank account, and open a fresh one in pursuance of section 13. Strictly, therefore, the payment of the Commission's funds into the already existing Bell Bay Account, after 2 October, 1952, was an irregularity. But, having regard to the intention of the 1952 Act mentioned in paragraph 19 above, I would myself think that the irregularity would *not prevent the Bell Bay Account from being operated as a* separate account of the Commission, and would not require the conclusion that moneys in the Bell Bay Account were still in the Commonwealth Public Account.

24. In the result, I incline to the view that, from 2 October, 1952, to 24 June, 1953, payments from the Bell Bay Account were not subject to the Audit Act and, to that extent, the *accounts of the Commission* were not "*subject to the Audit* Act".

25. The matter may not rest even there. On the view I *express in the previous paragraph, the Commission could,* acting on ordinary commercial principles, and without complying with the Treasury Regulations, have entered into a contract, for example, to purchase a machine costing £5,000. *If*, thereafter, it paid for the machine out of the Bell Bay Account, the requirements of the Audit Act and Treasury Regulations would not have been attracted. The position would be no different if the Commission had asked that a further £5,000 be paid, out of the special appropriation, from the Trust Account to its Bank Account to enable it to pay the account in question. On such a payment out of the Trust *Account, only what I have above called the "basic require*ments" of the Audit Act would have been applicable, and not, for example, the requirements of the Treasury Regulations as to the making of contracts involving the payment of moneys out of the Commonwealth Public Account. If, instead of taking this action, the Commission expressly or impliedly asked the Treasury to pay the sum of £5,000 on its behalf to the supplier of the machine out of the Trust Account, it would, I think, be an unduly literal or formal view to say that the whole of the requirements of the Audit Act, and not only the "basic requirements", had to be met. The result of that view, in the case supposed, would be that the form in which the contract was entered into, although valid at the time of the contract, was subsequently invalidated by the method of payment which, contrary, as I think, to the intention of Parliament, was adopted to discharge it.

26. It may be, therefore, that a detailed examination of the accounts of the Commission during the period from 2 October, 1952, to 24 June, 1953, would reveal many cases where it could not be said that, because an amount was paid out of the Trust Account, all the incidents of the Audit Act and Treasury Regulations applied to the account as paid. Subject to this, however, I think it must be accepted that the maintenance of the Trust Account and the payment of the expenditure of the Commission directly from that Account attracted the various relevant provisions of the Audit Act and Treasury Regulations to the accounts of the Commission, despite the clear indication from Parliament that it did not intend those provisions to apply. On the other hand, the Audit Act and Treasury Regulations did not, in my opinion, apply to payments from the Bell Bay Account.

General.

27. I am aware that the answers and reasoning given above do not at all times reach those standards of brevity and simplicity which we would all wish to achieve; but the

subject does not admit of short and simple answers. At the expense of over-simplification, I would sum up my answers as follows. *Before 2 October, 1952, the "basic requirements"* of the Audit Act clearly applied, and all the requirements of the Act probably applied, to the accounts of the Commission; but the provisions of the 1944 Act cannot readily be reconciled with the latter conclusion. After 2 October, 1952, operations on the Trust Account should not have continued, and, if they had not been continued, only the "basic requirements" of the Audit Act would have applied, and only to the lump-sum payments to the Commission. Despite the continuance of the Trust Account, the Audit Act did not apply to payments out of the Bell Bay Account after 2 October, 1952, but it probably *applied to most of the accounts which* were paid out of the Trust Account.

Appendix No. 21—Part II., Para. 120.

THE APPLICATION OF THE AUDIT ACT TO STATUTORY CORPORATIONS.

Memorandum from the Treasury Dated 10th March, 1953.

Of the corporations listed below the provisions of the Audit Act apply only, and *then in part, to the Australian* Atomic Energy Commission, Australian Broadcasting Commission and Australian Broadcasting Control Board.

The principal reason for the exclusion of the transaction of a corporation from the detailed provisions of the Audit Act, and Treasury Regulations is to enable a corporation, within the terms of its statutory directions, to have immediate control over its revenue and expenditure. The corporation is, of course, responsible for adopting such accounting procedures and instructions as will ensure the maximum *safeguard of the funds under its control.*

The Audit Act does not authorize the Treasurer to apply its provisions in whole or in part to the accounts of statutory corporations.

Authority.	Constitutive Act.
Australian Aluminium Production Commission	*Aluminium Industry Act* 1944-1954
Australian Atomic Energy Commission	*Atomic Energy Commission Act No.* 31 of 1953
Australian Broadcasting Commission	*Broadcasting Act* 1942-1951
Australian Broadcasting Control Board	*Broadcasting Act* 1942-1954
Australian Dairy Produce Control Board and other Primary Production Boards	*Dairy Produce Export Control Act* 1924-1954.
Australian National University	*Australian National University Act* 1946-1947
Australian National Airlines Commission	*Australian National Airlines Act* 1945-1947
Australian Shipping Board	National Security (Shipping Co-ordination) Regulations
Australian Stevedoring Industry Board	*Stevedoring Industry Act* 1949-1954
Australian Whaling Commission	*Whaling Industry Act* 1949
Canberra University College	*Canberra University College Ordinance* 1929-1940
Christmas Island Phosphate Commission	*Christmas Island Agreement Act* 1949
Commonwealth Bank ..	*Commonwealth Bank Act* 1945-1953
Commonwealth Trading Bank	*Commonwealth Bank Act* 1945-1953
Commonwealth Savings Bank	*Commonwealth Bank Act* 1945-1953
Flax Commission	*Flax Industry Act No.* 25 of 1953
Joint Coal Board ..	*Coal Industry Act* 1946-1951
Overseas Telecommunications Commission	*Overseas Telecommunications Act* 1946-1952
River Murray Commission	*River Murray Waters Act* 1915-1954
Royal Australian Air Force Veterans' Residences Trust	*Royal Australian Air Force Veterans' Residences Act No* 92 of 1953
Snowy Mountains Hydro-Electric Authority	*Snowy Mountains Hydro-Electric Power Act* 1949-1952
Tea Importation Board ..	*Tea Importation Act No.* 73 of 1951

Appendix No. 22—Part II., Para. 139.

OPINION OF THE SOLICITOR-GENERAL, 22ND SEPTEMBER, 1954.

Accounting to Parliament for the Receipt and Expenditure of Public Funds—Independent Authorities.

1. In a memorandum dated 3 August, 1954, the Secretary of the Committee intimated that, in pursuing an investigation of the form and content of the financial documents presented to the Parliament, the Committee would probably consider the *question, "Who is accountable to the Parliament for the* receipt and expenditure of public funds?". In the first part of this letter, I have endeavoured to answer that question in relation to the form and content of the financial documents referred to, but if there is any particular aspect of the matter on which further advice is desired, I shall endeavour to supply it on request.

2. Under the system of responsible government, the general assumption is that, for the administration of each Act passed by the Parliament, a Minister of State is responsible. The Administrative Arrangements Order is based on this assumption and indicates the Ministers respectively responsible for the administration of the Acts specified in the Order. Similarly, for every item of expenditure of public moneys *authorized by Parliament, a Minister is responsible, in the* sense of being politically answerable.

3. The nature of the responsibility to be borne by a Minister, in relation to the expenditure of public funds, will vary from one Act to another. In particular, the responsibility may be very different in relation to the expenditure incurred in respect of a *Department which he administers, on the one* hand, and in relation to the expenditure of a more or less autonomous authority of the Commonwealth, on the other hand. In relation to the former, the Minister is answerable for all the details of the expenditure because those details are, in general, under his control; in relation to the latter, the authority may have been given statutory powers to act independently of the Minister and the Minister is not answerable in the same way for all the details of the expenditure of the authority.

4. Even in the case of an authority which is quite independent of Ministerial control, some Minister must take the responsibility of recommending an appropriation of public funds: if the authority makes an annual report, it is the duty *of the Minister to lay the report on the table of the House* and, if necessary, to defend the report. His answer to the House may take something of this form: "Under the Act, I cannot control the actions of the Board in this regard; but the Board speaks to Parliament through me, and this is what it says . . .". Again, in the case of a special appropriation it is the duty of the Minister to consider whether any alteration *should be recommended to Parliament from time to time.* From the general constitutional point of view, I would myself attach much importance to these aspects of the responsibility

of a Minister, but this is scarcely the place to enter upon a discussion at large of the relation of Ministers to statutory authorities.

5. Consideration of this aspect leads me to the particular reference made by the Secretary of the Committee to the votes for certain Commonwealth authorities. It follows from what I have already said that, in my view, it is desirable that all amounts voted in the annual Appropriation Act should be shown in relation to some Minister who will be answerable, in the appropriate degree, to Parliament for the expenditure. This is so even where the payment may be made out of the Public Account to the authority in a lump sum, the authority being vested with the necessary statutory power to expend the money so paid to it.

6. In the case of the six authorities mentioned by the Secretary of the Committee, the suggestion is made that they may be responsible directly to Parliament for their expenditure. It follows from what I have said above that the train of responsibility must always be through a Minister. There is, however, in some cases, a distinction between the expenditure of an authority for which the Minister only takes the kind of indirect responsibility mentioned in paragraph 4 above, and expenditure for which the Minister has the same direct responsibility as in the case of the expenditure of his own Department.

7. Perhaps I may illustrate my meaning by reference to the Superannuation Board. The Board controls, *inter alia*, the Superannuation Fund. It expends money from the Fund to pay benefits to contributors according to the statutory provisions. In this regard, it has a statutory independence. The Minister is not responsible, therefore, for this expenditure except in the sense that I have discussed in paragraph 4 above.

8. In order to carry out its activities, however, the Board has a staff, and this staff has to be employed and paid and other administrative expenses have to be met. But the Board has no statutory independence in respect of the employment of staff and the payment of salaries and other administrative expenses. (Sections 73 and 74 of the Superannuation Act make some provision in this regard, but do not alter the general propositions except to the extent that section 73 requires that there shall be a Secretary). The Board has no funds on which it can draw for these purposes.

9. The Permanent Head (the Secretary to the Treasury) and ultimately the Treasurer himself, is responsible for the expenditure mentioned in the previous paragraph. Though the staff of the Superannuation Board is appointed under the Public Service Act, the Treasurer is responsible to Parliament for the number of officers employed to assist the Superannuation Board and for the rates of pay paid to those officers. If the Parliament thinks that too much money has been spent on the administrative expenses of the Board, that too many officers have been employed or that they have been paid salaries too high in relation to their duties, it is to the Treasurer that the Parliament should look for an answer, not to the Board.

10. In the case of some of the other authorities mentioned by the Secretary of the Committee, the executive head of the authority has the powers of a Permanent Head under the Public Service Act. That, however, does not make him directly responsible to Parliament. A permanent Head can not, of course, make recommendations to the Executive Council and the Prime Minister is responsible for the recommendations to the Executive Council for the creation of positions in the office of the Public Service Board and the Audit Office.

11. My conclusion, therefore, is that, in so far as Parliament has not given the named authorities any statutory independence in regard to employment of staff or administrative expenses, the political answerability of the relevant Minister of State is of much the same degree as his answerability for departmental expenditure and I think that it is not unnatural that the votes should be grouped with the departmental votes.

Appendix No. 23—Part II., Para. 74.*

PUBLIC CORPORATIONS: CONTROL OVER STAFFING.

Memorandum dated 12th October, 1955, Submitted to the Committee by the Secretary, Public Service Board.

The memorandum of 7th September, 1955, from Mr. Leicester Webb of the Australian National University on public corporations seems to the Board to ignore one important factor in wages co-ordination for Government corporations and that is that all of the employees are subject to the Public Service Arbitrator. If there is to be co-ordination at that level, then surely it is appropriate that there should be co-ordination of internal conditions at the wage fixing point below the Arbitrator.

2. There is, of course, a considerable spread of Commonwealth employment outside the Public Service Act. Mr. Webb has concentrated on corporations but the picture is not complete without reference also to employment under Acts, other than the Public Service Act, which are administered by Departments. (*See* the list below.) The total employment under these Acts is quite extensive.

3. It is true that the older corporations have not been brought under the system whereby the Public Service Board exercises a supervisory control over staffing. That was a product of the times but the present times certainly require that some co-ordination should exist at the administrative level. This does not necessarily have to be through the Public Service Board and where there are alternatives, e.g. the Commonwealth Bank working through consultation with other banks to a general level of salaries in the banking industry, the Board would not need to be concerned.

4. One other point might also be mentioned. Mr. Webb assumes that co-ordination of conditions of service through the Public Service Board is a reduction of the powers of the authority, limiting them in performing the functions for which they have been created. It may limit them but, to the extent that it does, it is only a minor extension of limits already imposed through Arbitration processes, i.e., the Public Service Arbitrator and the Courts.

Acts with employment provisions administered by Departments.

(Other than those establishing corporations.)

Supply and Development Act.
Naval Defence Act.
High Commissioner Act.
Seat of Government (Administration) Act—Police Ordinance.
Northern Territory (Administration) Act (Police and Prisons).
Stevedoring Industry Act.
Post and Telegraph Act.
Peace Officers Act.
Conciliation and Arbitration Act.
Nauru Island Agreement Act.
Papua and New Guinea Act.
Norfolk Island Act.
Cocos (Keeling) Island Acceptance Act.

In addition to the above, there is other employment under the National Security (Shipping Co-ordination) Regulations.

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* *See also*, Appendix No. 10.

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