

DEPARTMENT OF THE SENATE  
PAPER No. 1593  
DATE PRESENTED  
16 SEP 1980  
*W. Hancock*  
Acting Clerk of the Senate



# Canberra Commercial Development Authority

Report

# 181

Joint Committee of  
Public Accounts

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE OF PUBLIC ACCOUNTS

181ST REPORT

THE CANBERRA COMMERCIAL DEVELOPMENT AUTHORITY

(BELCONNEN MALL)

Australian Government Publishing Service  
CANBERRA 1980

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\* Ex-officio member being Chairman,  
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Committee on Expenditure

### DUTIES OF THE COMMITTEE

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

- 8.(1) Subject to sub-section (2), the duties of the Committee are:
- (a) to examine the accounts of the receipts and expenditure of the Commonwealth including the financial statements transmitted to the Auditor-General under sub-section (4) of section 50 of the Audit Act 1901;
  - (aa) to examine the financial affairs of authorities of the Commonwealth to which this Act applies and of intergovernmental bodies to which this Act applies;
  - (ab) to examine all reports of the Auditor-General (including reports of the results of efficiency audits) copies of which have been laid before the Houses of the Parliament;
  - (b) to report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
  - (c) to report to both Houses of the Parliament any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
  - (d) to inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question,

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

## PREAMBLE

The Joint Parliamentary Committee of Public Accounts is constituted under the Public Accounts Committee Act 1951. It is composed of ten Members of Parliament: three are Members of, and appointed by, the Senate, and seven are Members of, and appointed by, the House of Representatives. In addition, the Chairman of the House of Representatives Standing Committee on Expenditure is an ex-officio Member of the Committee, with the Chairman of the Public Accounts Committee holding a similar position on the Expenditure Committee.

The duties of the Committee are laid down in Section 8 of the Public Accounts Committee Act, and are reproduced in Appendix 1.

The Committee has pursued a vigorous program of inquiry into the financial operations of Commonwealth departments and statutory authorities. In this work, which is in the nature of an efficiency audit, the Committee is searching for value for money spent and is concerned to establish whether the department or authority under examination is adequately organised to implement the policies of Government which fall within its area of responsibility.

The role of the Committee in relation to Government policy, is that it does not, as a rule, question the adequacy of policies laid down by the Government but rather their administrative implementation. In any inquiry the Committee must have a clear understanding of the policies of Government that underlie the operations of the department or statutory authority involved. It has been the Committee's experience that policy objectives have not always been clearly defined or even the policy itself enunciated clearly.

During the course of an inquiry, the Committee asks witnesses representing departments and statutory authorities to inform it of the particular Government policies which they are required to administer. It does not ask them to express opinions on the adequacy of those policies. It is not unusual to find, however, that in the implementation of Government decisions, departments and statutory authorities develop administrative policies. These are matters which the Committee regards as clearly within its purview and it examines officers of the public service and statutory authorities on the nature, purpose and justification of policies that have so developed.

Inquiries which normally arise from matters raised in the reports of the Auditor-General are usually shaped by the enabling legislation, or terms of reference, of the Committee. It sees its purpose as being to examine the effectiveness and efficiency of Government administration,

with a view to reporting to Parliament with recommendations for improvements in administration or correction of defects. The Committee is assisted in its Inquiries by the Auditor-General's Office, the Department of Finance and the Public Service Board.

The Canberra Commercial Development Authority

This inquiry arose out of unsatisfactory comments made by the Auditor-General in his reports to Parliament which are outlined in more detail in Chapter 2.

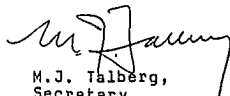
Some sections of the community were deeply dissatisfied with aspects of the administration of Belconnen Mall and, having voiced their dissatisfaction through other channels without immediate effect, they sought action through the Public Accounts Committee. This dissatisfaction extended from matters such as late payments to contractors, to matters of principle and propriety. Very few were prepared to place their opinions formally. The Committee sifted these to attempt to discover whether there was any basis for complaint.

This was an unusual inquiry in which the Committee was often called upon to assess its role and policies and had to spend much time in examining the establishment of the Authority and its retailing operations, before assessing the effectiveness of the Authority's administration.

For and on behalf of the Committee,



David M. Connolly, M.P.,  
Chairman



M. J. Talberg,  
Secretary,  
Joint Committee of Public Accounts,  
Parliament House,  
CANBERRA ACT

28 August 1980

THE CANBERRA COMMERCIAL DEVELOPMENT AUTHORITY

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## CHAPTER 1

### SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

#### General

1.1 The Belconnen Mall was constructed by a statutory authority to aid and assist development to the north of Canberra so that the community could receive the benefits of wider retail choice, greater competition and better community facilities. Opinion at the time was that private enterprise would not have sought to achieve this. Continued criticism and controversy surrounded the Mall from its inception. The Canberra Commercial Development Authority was established on 1 October 1974 by Australian Capital Territory Ordinance No. 40 of 1974, under the Seat of Government (Administration) Act 1910.

1.2 It is the Committee's opinion that, unfortunately, the Authority regarded its public status and obligations as major problems facing the Mall's successful operation. The Authority seemed determined to prove it could operate in a similar manner to a private company. The Committee believes in many respects it can, but with two significant exceptions. The first is the joint one of accountability and communication and the second relates to legal observance.

1.3 For instance, with respect to relations with tenants, a private company could afford to take a fairly autocratic approach as long as market conditions were favourable. Its requirement to communicate with tenants and maintain goodwill need be dictated only by the continued profitability of the development, and any plans for future developments. The Authority's situation is similar, with the added consideration of accountability to government which in turn is accountable to the electorate. Although it is accepted by governments that a public corporation, by its establishment, should retain a measure of independence, the distinction is rarely apparent to the public. In practice, a public corporation is seen as an arm of government and faces pressures to maintain the same high standards expected of departments of state.

1.4 The Authority's status as a public corporation has encouraged dissatisfied clients or contractors to voice complaints of perceived injustices because of their expectations of redress through government, the Minister, the ombudsman or the local parliamentary representatives even and this Committee.

1.5 Instead of taking greater care in its conduct and operations, the Authority seems to have perceived all criticism as an attack on itself. Instances which occur to the Committee are:

- . It agreed to wage arrangements with employees some of which could be construed as being in direct conflict with Section 26(e) of the Taxation Act.\*
- . It evolved in a manner which could be subject to misinterpretation; for example, the lack of accountability for Mr. Pead's travel, the operations of the Marketing Fund, the conditions for security of tenders, the use of consultants and relations with employees and tenants.

1.6 While continued disregard of accountability by a statutory corporation will impair its efficiency, disregard of legal requirements is, in the Committee's view, far more serious and could lead to bureaucratic and legal impediments which could divert the corporation's efforts from their intended purpose. The CCDA Ordinance is the instrument which brought the Authority into being and it provides the only basis for the Authority's continued existence. It was clear to the Committee that the Authority ignored the Parliament by its disregard of the provisions of its Ordinance.

1.7 It was apparent that the Authority emphasised those parts of its Ordinance which stipulated that it shall pursue policies directed towards making a profit by operating in a commercial manner. Witnesses from the Authority did not hesitate to refer to these sections of the Ordinance as authority for their actions and policies.

1.8 There were sections of the Ordinance which the Authority felt might inhibit its commercial operations. It appeared to the Committee that these were, on most occasions, deliberately ignored or evaded. The Committee believes that it is simply not good enough to say this action was taken in good faith. The Committee considers that while the motives of Authority members were profit oriented and their actions were based on commercial pragmatism, the end, generally does not justify the means taken.

1.9 The Authority's attitude to its Ordinance and what it regarded as Government restrictions were apparent from the beginning of the Committee's Inquiry. For example, the Authority justified its breach of section 22(2)C of its Ordinance by referring to the higher interest offered by investing in bank bills.\*\*

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\* Committee File 1978/2

\*\* CCDA Submission 14 March 1979, Committee File 1978/2

1.10 The Authority also rejected the claim by the Chairman of the Loan Council that payment of indemnity fees on oversubscriptions was "contrary to usual commercial practice", on the basis that it considered that the Authority had saved \$35 000 to \$40 000 by its actions.\*

1.11 Financial economy was also presented as a general reason for the Authority's lack of response to government requirements in that it would need "to allocate one man full time to government requirements", or "we do not have an empire of people".\*\* The Authority made it plain that it hadn't responded to the Public Service Board on a set of draft terms and conditions of employment because "its requirements were changing and ... it had had more important things to do .."\*\*\*

1.12 The Committee believes from the evidence that the Authority's managers, commercially pragmatic though they may be, have never been able to comprehend, much less accept the responsibilities attaching to a public authority. The sections of the Ordinance which in general place some restriction on the independence of the Authority are common to most statutory authorities, and are fairly basic if some measure of public control is to be retained.

#### Approval of the Minister for the Capital Territory

1.13 Under the ordinance, the Minister's responsibilities are:

- approval of other undertakings related to the shopping centre (Section 14(b));
- approval to carry out or join in carrying out works on land of which the Authority is not lessee (Section 15(2));
- determination of payments to Australia (Section 19);
- certification of borrowings (Section 20);
- determination of application of profits (Section 27(2));
- require information from the Authority (Section 29(b));
- make regulations (Section 30).

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\* Minutes of Evidence p.54

\*\* Minutes of Evidence pp.30 and 109.

\*\*\* Minutes of Evidence pp.107,111 and 116

1.14 Under Section 24(1), the Authority is required to submit to the Minister an annual report of its operation together with financial statements in a form approved by the Minister for Finance. Under Section 24(2), the Auditor appointed by the Minister for Finance is required to report upon certain matters to the Minister.

1.15 In addition, the Minister advises the Governor-General in relation to appointments to the Authority.

1.16 The Authority's unwillingness to observe its Ordinance has emphasised the defects in present law and practice applying to the relationship between an Authority and its Minister. It is an ill-defined and often personal relationship which operates at its best when an authority itself is competent and aware of the delicate balance on which it is based.

1.17 The Committee considers that more effective control by the Minister over the Authority's affairs could be effected by amending its ordinance to permit the appointment of the Permanent Head of the Department of the Capital Territory, or his departmental nominee, as a permanent member of the Authority.

#### Approval of the Treasurer

1.18 The two sections which require approval for borrowings and types of investment are the minimum restriction that could be applied. Mr. Pead, the Chairman of the Authority said:

"If we have to rush to government departments continually to get approval we will be hamstrung."\*

1.19 It has not been shown to the committee that the Authority has had to seek continual approval for its actions. Where approval is a statutory requirement it has in most cases been promptly given by Treasury or the Public Service Board once they have been made aware of the need. Such approval is often on-going and further approval on the same issue does not have to be sought again. For instance with regard to investment, once the Authority stated what its requirements were, the Treasurer approved a wider range of secure investment and bankers than the Authority requested. Unless exceptional circumstances occur, it is unlikely that the Authority would need to seek the Treasurer's approval for investment again.

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\* Minutes of Evidence p.65

### Approval by Public Service Board

1.20 Public Service Board approval of terms and conditions of employment (Section 17) is also a common provision, and one which statutory authorities usually find most to complain about. In this case, the Committee believes that the Authority has never seriously attempted to work in co-operation with the Public Service Board in observing Section 17 of its Ordinance, and that consequently, the Board has had particular difficulty in fulfilling its obligations. It has been acknowledged by the Authority\* that the Board had never acted except in a co-operative and constructive manner. The Authority, on the other hand, appeared to have a record of delay fostered by attitudes which seem to be based on prejudice rather than experience, as the following response by the Chairman of the Authority indicated:

"If we are bound hand and foot with a huge bible of terms and conditions of employment where people believe that once they are a member of an authority or government department they are there for life, then we cannot work in that area."\*\*

1.21 If the Authority had an agreed set of terms and conditions the number of occasions on which it would need to seek Board approval should be considerably reduced. The Board has demonstrated to the Committee and to the Authority that it is prepared to negotiate on a simple and flexible set of terms and conditions which do not have to follow Public Service conditions. It has provided the Authority with examples of the range of conditions applicable in other authorities.\*\*\*

1.22 In its memorandum of 2 April 1979, and on several occasions in evidence before the Committee, the Board has maintained that it only became aware in January 1978 that the Authority had employed staff other than the Executive Director, 2 stenographers and a clerical assistant. The Committee has received copies of correspondence prior to January 1978 between the Department of the Capital Territory and the Board, which show that the existence of, or the intention to employ, additional staff was implicitly if not overtly stated. The Committee refers to:

A Department of the Capital Territory internal memorandum of 5 November 1976 on the appointment of a Shopping Centre Manager and referring to Board advice.

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\* Minutes of Evidence p.102,111

\*\* Minutes of Evidence p.107

\*\*\* Committee File 1978/2

- A letter of 3 June 1977 from the Department to the Board referring to the Authority's intention to relocate its senior executives and naming the positions. (The author of this letter assumes that approval for additional senior executive positions has been given).
- A letter from the Department to the Board of 22 August, 1977, referring to three executive positions and seven consultants working at Belconnen Mall.

1.23 Some of the Board's staff were aware that these additional positions had been created, but it appears that nobody checked whether approval had been sought or granted until adverse reports of the Authority's staffing appeared in the media in January 1978.

1.24 The Board conceded that, with the benefit of hindsight and in particular against the background of events that unfolded from January 1978 when it first became aware that there were staff of the Authority in addition to those for whom Board approval had been given, the Department of the Capital Territory correspondence might have alerted it to investigate the situation more closely at that time.\* Had the Board done so it would have disclosed unauthorised employment arrangements earlier than in fact occurred.

1.25 The Board also states that during 1977 the confusion which existed over the distinction between contract staff and employees of the Authority may have contributed to it not realising that in fact the Department was referring to the Authority's employees.

1.26 The Committee considers that the Board could have maintained closer contact with the Authority's staffing situation if it had followed up the Department's correspondence more thoroughly. In the Committee's view this would not have infringed the Authority's independence.

#### Approval for Financial Statement

1.27 The final restriction placed upon the Authority is that its financial statements must be a form as approved by the Minister for Finance. The Authority has not published a statement for the year 1978/79 despite having received approval for the form of its statement on 9 November 1979, and has indicated that until approval is given for the

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\* Letter of 19 March 1980 from the Assistant Commissioner, Pay Policy Branch, Public Service Board, to the Secretary, Public Accounts Committee, Committee File 1978/2

capitalisation of all expenditure net of income for the period 1 July to 9 November 1978 that it is not in its commercial interests to publish. The Committee rejects this view emphatically.

1.28 The Committee considers that the Authority's accounts should clearly show total revenue for the accounting period 1978-79. This is not inconsistent with Section 23 of its Ordinance.

1.29 The requirement to seek the approval of the Minister for Finance to the form of a financial statement is a standard requirement in most legislation establishing Statutory Authorities. It is there as a safeguard to ensure their activities are fully reported to Parliament and the nation. In the Committee's experience the amount of information published by Statutory Authorities often leaves much to be desired. Accordingly it most emphatically rejects the view that such matters are essentially for the commercial judgement of directors. It considers it is incumbent on a Statutory Authority, particularly one engaged in a commercial undertaking and the recipient of Commonwealth benefits, to adopt a high standard of disclosure.

1.30 The Authority does not acknowledge that, under its Ordinance, the Minister for Finance has the final say on the form of its financial statement. While consultation should and has taken place between the Authority and the Department of Finance, in the event of disagreement the Department of Finance has an obligation to impartially advise and make recommendations to its Minister on a form of financial statement which they consider will adequately meet the legitimate needs for clear, concise and informative information.

1.31 If the Authority still strongly objects to the Minister for Finance's determination, the only course open to it is to persuade its Minister, in this case the Minister for the Capital Territory, of the validity of its case and that he take the matter up directly with the Minister for Finance or at Cabinet.

#### Legislation

1.32 The Committee is concerned at the lack of adequate machinery and sanctions available to government to investigate and control an authority which has been the subject of repeated adverse report and public comment, and has been prepared to act contrary to its legislation.

1.33 The Authority has deliberately sought to evade the provisions of the Canberra Commercial Development Authority Ordinance 1974, by:

- Investment in bank bills, contrary to the provisions of section 22 of the Ordinance.

The Committee considers that the Ordinance is explicit and that the Authority was aware of the need for the Treasurers approval. Even after being advised formally by the Auditor-General of the need for approval it refrained from seeking approval for a further 2 months.

- Payment of underwriting fees on oversubscriptions.

The Authority misrepresented the nature of the oversubscriptions on its \$10 million public loan in 1976-77 thus acting contrary to the public interest and established Loan Council practice. In doing this, the Committee considers that it failed to observe sections 16 and 20(1) of its Ordinance. The Committee has not determined such misrepresentation was intentional and considers officers of the Treasury ought to have been more alert and confirmed the precise nature of the additional borrowing before the relevant papers were presented to the Loan Council.

- Payment of salaries and allowances without the approval of the Public Service Board to the terms and conditions of employment.

The Authority has, since 1977, repeatedly contravened its Ordinance by not seeking the Board's approval to the terms and conditions of employment, as required by Section 17 of the Ordinance. It has further failed to observe Section 22 (1)(c) of the Ordinance by making payments that were not in accordance with its Ordinance. The Committee considers that the Authority did so deliberately in full knowledge of the Ordinance's requirements. The Committee also considers that the continued delay by the Authority in presenting a set of terms and conditions to the Public Service Board for approval has been a deliberate policy of the Authority.

- Failure to publish its financial statement for 1978-79.

The Minister for Finance approved the form of the Authority's statement on 9 November 1979. The Committee believes that the Authority has failed to publish its statement because it wishes to capitalise all expenditure net of income for the period 1 July to 9 November 1978. The Committee demands that the Authority publish its financial statement in the form approved by the Minister for Finance forthwith.



1.34 The Committee does not consider the Authority's Ordinance to be unduly restrictive, or that those Departments charged with approving or overseeing certain actions of the Authority have been obstructive or dictatory.

1.35 The Authority has attributed the breaches of its Ordinance to a misunderstanding of government requirements (e.g. underwriting of the public loan) or to a difference in interpretation of the provisions of its Ordinance (e.g. investment in bank bills and terms and conditions of employment).

1.36 The Authority has contributed to such misunderstandings by being slow in seeking clarification or by supplying insufficient or incorrect details (e.g. indemnity of public loans). Its claims about differences in interpreting the Ordinance do not bear close examination, as it has either refrained from seeking proper opinion (e.g. investment in bank bills) or deliberately applied a selectivity to the opinions it did receive.

1.37 The Chairman of the Authority has said that he does not believe that the Ordinance provides a satisfactory framework in which the Authority can function.\* The Committee does not agree and considers that with greater goodwill the Authority could have found that the Ordinance provided a satisfactory framework. Furthermore, if the Authority found the ordinance to be unsatisfactory then the Authority could have sought to make appropriate changes to it. It advised the Committee that it had not done so.\*\*

1.38 The Committee does not consider the Authority's Ordinance to be onerous nor engages its staff in time wasting and bureaucratic activities. The legislation governing the Authority's financial and employment activities was enacted to ensure compliance with tested procedures designed to protect public funds. The Authority's continuous practice of ignoring Sections of its Ordinance raises serious doubts as to the competence of the members of the Authority.

#### Other Matters

1.39 During the course of this inquiry, recurring reference was made by the Authority's witnesses to alleged interference by the bureaucracy. For example:

"...the volume of paper from various bureaucracies that flows into the Authority is unbelievable..."\*\*

"Every tribunal in the land wants to know about us."\*\*\*\*

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\* Minutes of Evidence p.25  
\*\* Minutes of Evidence p.108.  
\*\*\* Minutes of Evidence p.116  
\*\*\*\* Minutes of Evidence p.26

"I do not believe that we can continually cope with a great string of requests for information from government departments."\*

1.40 No evidence was produced to support these statements despite repeated requests\*\* for examples or instances of the "masses of paper" going through the Authority.

1.41 The Committee was prepared to examine the Authority's complaints with some sympathy, but except for its belated submission on financial reporting, the Authority produced nothing to show that demands placed upon it were excessive. Requests for information from the Authority arose from:

- . the usual requests for information and compliance placed upon any company or trading authority;
- . legitimate requests from the Minister and his Department;
- . other requirements of the Canberra Commercial Development Authority Ordinance 1974; and subsequently,
- . the Authority's own misunderstanding of what was required of it and/or its non-observance of the Ordinance.

1.42 In view of the lack of supporting evidence, the Committee considers the Authority's statements to be irresponsible and illfounded.

1.43 The Committee believes that there are sufficient grounds for concluding that the administration of the C.C.D.A. has been below the standard expected of a public authority. While it is a trading authority, its responsibilities as a public organisation are not reduced nor can be it be absolved from observing those sections of its Ordinance which are non-commercial in nature. On this basis, the behaviour and actions of the Authority must be able to withstand greater public scrutiny than applies to a private company.

1.44 The Authority's actions have shown that it does not always consider itself answerable to either government or its tenants, and its administration has been notable for its inability to communicate or adhere to the higher standards expected of it.

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\* Minutes of Evidence p.26

\*\* Minutes of Evidence p.66

1.45 The Committee was most dissatisfied with the content and manner of the presentation of evidence to the extent that it sought legal advice on the application of section 18 of its Act, which refers to the giving of false evidence to the Committee. While the Committee regards this matter very seriously, it decided that, after doubts were raised it would not proceed other than to report its misgivings.

1.46 It appears that, by Act of Parliament Section 21(4) of the Public Accounts Committee Act 1951, the Parliament has surrendered some of its control over its internal affairs to that of the Executive by requiring the written consent of the Attorney-General for proceeding in his name for prosecutions. While argument exists that a political assembly is not capable of exercising judicial functions, the Committee believes that Parliament itself should be served by its own legal officer. This subject, however, is beyond the scope of this report.

1.47 The Authority's submissions were generally uninformative, inadequate, and, at times misleading; the oral evidence of Authority's witnesses was at times inaccurate although the standard of evidence and the attitude of witnesses improved during the latter stages of the inquiry.

1.48 While the Board of the Authority must take collective responsibility for the criticisms embodied in this Report, the Committee considers that some measure of individual responsibility for the Authority's actions attaches to two of its members most actively concerned in the Authority's affairs since its inception, namely the Chairman, Mr. James Pead M.B.E., and former Executive Director, Mr. Harold Calderwood.

1.49 Mr. Pead has been the only Chairman of the Authority and seems to the Committee to have been the dominating force on the Authority's board. Mr. Calderwood was the Executive Director of the Authority until June 1979, and was primarily engaged in overseeing the construction and establishment of the Mall. With Mr. Pead, he was responsible for the Authority's administration until early 1977 and later continued to play a central role in the events discussed in this Report.

1.50 The Committee believes that they demonstrated little willingness to work within the established procedures required of all public authorities.

1.51 The Committee found no evidence of impropriety on the part of any member of the board or the staff of the Canberra Commercial Development Authority. It also believes that no impropriety attaches to Mr. Elsworth, Deputy Chairman of the Authority, or to the Authority as a result of the use

of Mangaroo's consulting services by the Authority. However it considers that this action was unwise and open to misinterpretation while Mr. Elsworth remained a member of the Authority and that the Authority should have determined its priorities and either retained Mr. Elsworth's expertise as Deputy Chairman or his services as a consultant to the Authority, but not sought to do both concurrently.

1.52 The Committee hopes that its criticism will not obscure the benefits the community has derived through the Authority, or the work put in by members and staff of the Authority. It is recognised that the Belconnen Mall is a showpiece and will be an asset to the people of the ACT in the amenities and range of shopping it offers. Whatever the justice or criticism of its cost it was a daring commitment to the future and exceptional in that it was constructed quickly, to schedule and close to budget. As such it is a commentary on the enthusiasm and ability of those involved in its establishment.

1.53 This enthusiasm was particularly apparent in the efforts of the Chairman of the Canberra Commercial Development Authority, Mr. Pead. He was one of the prime movers for the establishment of the Authority and, though technically a part-time Chairman, was closely involved in the construction and operations of the Mall. He has maintained a strong personal commitment to the project despite initial opposition to its establishment and controversy and problems during its early stages.

1.54 Mr Calderwood was the Authority's Executive Director from 1975 to June 1979, and shares the credit with Mr. Pead for the Authority's achievement in constructing and setting up the Mall. The Committee was told that Mr. Calderwood has a high professional reputation in construction management.

1.55 It is a pity that this report cannot be concluded only with due credit to them and the Board of the Authority. However, where credit is taken, so must the responsibility for the many defects the Committee found in the administration of the Mall and the conduct of the Authority.

## Recommendations

1.56 The Committee was conscious of the need of such a trading authority for independence from political control, but considers that the current members are not sufficiently conscious of the nature of the relationship between a publicly owned commercial operation and its Minister, and through him the Parliament. Furthermore, the Authority by its actions has shown an obvious lack of appreciation of the roles of the Treasury, the Public Service Board, and the Department of the Capital Territory. The Committee recommends that:

- at the conclusion of the current period of office of members of the CCDA, the Minister should consider restructuring the Authority and those who were subject to criticism in this report not be reappointed; and
- the Ordinance be reviewed to provide for the appointment of the Permanent Head of the Department of the Capital Territory, or his Departmental nominee, as a member of the Authority.

1.57 While the Ordinance is being reviewed, the Committee trusts the Minister will retain a close interest in the Authority.

1.58 The Committee believes the Authority has left itself open to accusations of patronage in selecting its employees. Consequently the Committee recommends that:

- the Authority adopt a policy of advertising for each staff position.

1.59 The Committee is not satisfied that conditions for security of tenders were adequate during the period of the Mall's construction. It believes that the allegations which have been made should be resolved in the interests of the witnesses and the reputations of Authority members and recommends that:

- the Attorney-General initiate a full inquiry into this matter.

1.60 A strong case exists for giving Parliament control and review powers over statutory authorities. This Committee shares the concern of the Parliamentary Standing Committee on Public Works that no action has been taken to implement an Interdepartmental Committee Report which recommended, inter alia, that the powers of the Public Works Committee be extended. The Committee recommends that:

- The Public Works Committee Act be amended to bring all Statutory Authorities within its ambit.

1.61 The Committee supports the conclusions of the Senate Standing Committee on Finance and Government operations that major and comprehensive changes to the system of annual reporting is required, particularly in relation to the preparation of the accounts of authorities. The Committee notes the Report of the Joint Working Party on Financial Statements of Commonwealth Undertakings\* and recommends that:

- changes in the system of annual reporting be effected through an Annual Reports Act, which would apply automatically to all authorities, as proposed by the Senate Standing Committee on Finance and Government Operations in its Third Report on Statutory Authorities.\*\*

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\* Report of the Joint Working Party on Financial Statements of Commonwealth Undertakings (Abridged Edition), Department of Finance and Auditor-General's Office, June 1980.

\*\* Statutory Authorities of the Commonwealth, Third Report, Senate Standing Committee on Finance and Government Operations, January 1980, Parliamentary Paper 1980/2.

## CHAPTER 2

### INTRODUCTION

#### The Authority - Its History and Background

2.1 The Canberra Commercial Development Authority was established on 1 October 1974 by Australian Capital Territory Ordinance No. 40 of 1974, under the Seat of Government (Administration) Act 1910.

2.2 Prior to its establishment, the Minister for the Capital Territory appointed, in late 1973, an ad hoc committee which was called the Belconnen Mall Interim Board, to investigate the feasibility of constructing a publicly-owned shopping mall in Belconnen.

2.3 The Belconnen Mall Interim Board was chaired by Mr J.H. Pead, M.B.E., M.H.A., and many of its members subsequently were appointed to the first board of the Canberra Commercial Development Authority. Since that time, there have been changes in membership. The present members of the Authority are:

Mr J.H. Pead, M.B.E., M.H.A.	Chairman
Mr D.L. Elsworth	Deputy Chairman
Mr E.L. Byrne	
Mr E.S. Keehn	
Mr J. Clements, M.H.A.	

2.4 The Chairman and members of the Authority are appointed by the Governor-General for periods not exceeding 5 years, and are eligible for re-appointment after that time. The exception to this is that one member shall be a member of the House of Assembly, nominated by the Assembly and serving for the life of that Assembly.

2.5 Section 14 of the CCDA Ordinance specifies that the functions of the Authority are:

- (a) to construct and conduct a shopping centre in the District of Belconnen;
- (b) to carry on such other undertakings related to that shopping centre as the Minister approves; and
- (c) to provide community facilities related to the conduct of that shopping centre."

2.6 Section 16 further states that.

"It is the duty of the Authority to carry out its functions in accordance with sound commercial practice in so far as those principles are not inconsistent with the public interest."

2.7 Construction of the Mall commenced in 1976 and the retail area was substantially completed in late 1978 when Myers opened a department store on 3 levels of the Mall. The Mall was officially opened on 28 February 1978. Total cost of the project was \$39.24m.

2.8 This was provided by one million dollars in equity capital by the Commonwealth, and the rest was raised by six Commonwealth Government guaranteed loans. The Authority is required to repay the equity capital to the Commonwealth as well as any further amount determined by the Minister. Repayment shall be assessed from the profits of the Authority, after (as required by the Ordinance) the Minister has consulted with the Treasurer and has had regard to "any advice the Authority has furnished to the Minister in relation to the financial affairs of the Authority."\*

2.9 Section 26 of the Ordinance says:

"26. The Authority shall pursue a policy directed towards securing revenue sufficient to meet all its expenditure properly chargeable against revenue, and to permit the payment to Australia of a reasonable return on the capital of the Authority."

2.10 The Ordinance also states that the Authority's auditor, appointed by the Minister, should report to the Minister:

- "(a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with those accounts and records and show fairly the financial transactions and the state of affairs of the Authority;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Authority during the year have been in accordance with this Ordinance; and
- (d) as to such other matters arising out of the statements as the auditor considers should be reported to the Minister."\*\*

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\* ACT Ordinance No 40 (CCDA) section 119(3)

\*\* op.cit. section 24 (2)



2.11 The Auditor-General was appointed by the Minister to conduct this audit.

2.12 The Mall has a gross floor area of about 650,000 square feet, is the largest shopping centre complex in the A.C.T., and is the first to provide structured car parking facilities for customers. It occupies a site by the shores of Lake Ginninderra in Belconnen, an urban district to the northwest of Canberra.

2.13 The decision to proceed with the construction of Belconnen Mall took place against the background of a buoyant economy, high population growth and a climate of social experiment. In addition, there was the feeling that retail shopping in Canberra was dominated by a few major retailers with a corresponding lack of competition and consumer choice. The press statement by the Minister for the Capital Territory reflects this:

#### "BELCONNEN TOWN CENTRE PLANNED

Press Statement, K. Enderby, 5 April 1973

The Minister for the Capital Territory, Mr Kep Enderby, announced today the Government will establish a statutory authority with powers to arrange the development and long term management of Canberra's third retail shopping mall at the Belconnen Town Centre. Malls have already been built in the City and at the Woden Town Centre.

The Belconnen Mall will contain a wide range of retail, commercial and community facilities of about 650,000 sq ft gross, including a major pedestrian concourse. The proposal for the Mall Authority was developed by the Department of the Capital Territory with the N.C.D.C. from ideas and suggestions from the A.C.T. Advisory Council and community organisations. It will require special legislation which will now be drafted. It is expected there will be community representation on the Authority which will operate on commercial principles to be approved by the Government.

Mr Enderby said it was an exciting proposal representing very high quality planning by the N.C.D.C. which will give an opportunity for the community to get the best possible range of facilities, create an attractive and competitive centre, help to reduce pressures on prices and promote new community ventures. This approach to development by a Government agency of a major retail centre could provide valuable social experience for other proposed urban areas throughout Australia."

2.14 Since then, Canberra's population growth has slowed from 6.5% in 1974 to less than 3% in 1979; there has been a change in Government; five Ministers for the Capital Territory have succeeded Mr Enderby; and the number and size of retail centres in Canberra have increased.

2.15 Public support for the establishment of an Authority to construct and manage the Mall was by no means unanimous and controversy has continued to surround the management of the Authority. Whilst opposition to the project came from major retailers and developers already established in Canberra, there was also considerable local political opposition. There was a general feeling at that time that the Australian Capital Territory would be granted self-government in the near future and some, like the Chairman of the Canberra Commercial Development Authority, Mr Pead, believed that the Government revenues derived from the Mall could provide a means of broadening the financial base of the Australian Capital Territory.

"...It is my view that with a self-governing situation ... we should be looking for ways and means of broadening the financial base and of providing revenues other than through the rating structure. This is one way of doing it... The whole philosophy behind the Authority being established was based on the premise that we might move one day to a form of self-government."\*

2.16 The Hansards of the then A.C.T. Legislative Assembly during this early period indicate some members were concerned that the Mall could be a white elephant and a charge upon ratepayers and that the Authority could be used for political advantage.

2.17 Regardless of the merits of either view, the Authority is to be commended for its achievements to date.

#### Conduct of the Inquiry

2.18 In his Supplementary Report for 1977-78 presented to Parliament on 23 November 1978, the Auditor-General commented upon aspects of the accounts of the Canberra Commercial Development Authority for the year 1976-77, in the following terms:

##### "Investment in bank bills

The Authority invested in bank bills in 1976-77 without the approval of the Treasurer as required under section 22(2)(c) of the Ordinance. The Treasurer's approval was obtained on 16 March 1978 to invest in bank bills.

## Terms and conditions of employment

Salaries and allowances were paid under section 22(1)(b) of the Ordinance without the approval of the Public Service Board as to the terms and conditions of employment as required by section 17(2).

## Public Loan - Underwriting Fees

The Authority's \$10 million public loan was over-subscribed by \$2.75 million. An audit of the borrowing arrangements revealed a number of unusual features which were referred to the Authority. One such feature was the payment of under-writing fees of \$27,500 in respect of the \$2.75 million over-subscribed. My Office considered this contrary to:

- . usual commercial practice;
- . established Loan Council practice; and
- . section 16 of the Ordinance.

In response the Authority stated its belief that the underwriting fees were in accordance with the terms of the Loan Council's 'Gentlemen's Agreement' at that date and that its action on additional brokerage and underwriting fees was sound commercial practice and consistent with the public interest.

The 'Gentlemen's Agreement' was amended in July 1977 specifically prohibiting payment of underwriting charges on over-subscriptions. The Authority has assured the Minister that any breach of the Agreement was completely unintentional."

2.19 The Committee sought submissions on the Auditor-General's comments from the Authority and the Department of the Capital Territory. These organisations' submissions,\* dated 14 and 13 March 1979 respectively, were considered by the Committee and further information was sought and supplied in supplementary submissions dated 27 and 26 March. The Public Service Board and the Department of the Treasury also provided the Committee with written comments.\*

2.20 The Committee subsequently decided to proceed to public hearings into the matters raised, as part of its general inquiry into the Auditor-General's Reports for 1977-78.

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\* Committee File 1978/2

2.21 Public hearings were held on:

19 April 1979 (Inspection of Belconnen Mall)  
26 April 1979  
30 January 1980

2.22 An in camera hearing was held on 29 May 1979.

2.23 Considerable public interest was generated by the announcement of the Committee's decision and representations were made that the terms of the Committee's inquiry should be widened to include the total administration and operations of the Authority.

2.24 At that time the Committee considered that its decision to examine specific matters arising from the Auditor-General's Report in no way prevented it from examining other aspects of the Authority's administration. Consequently, as the Committee felt that it had the option of asking wider-ranging questions if such a need became apparent during the course of the inquiry, the Chairman announced that the Committee would be prepared to invite and consider submissions from the public, subject to certain conditions.

2.25 A further four submissions to the Committee were received from:

- . The Australian Association of Independent Businesses
- . Belconnen Shopping Mall Tenants' Association
- . Mr and Mrs L. Balogh
- . Mr D. Parsons and Mr E. Parker

2.26 The first three submissions related to operational and leasing matters, which the Committee elected not to pursue at public hearings. These are discussed further in Chapter 7.

2.27 The fourth submission, from Messrs Parsons and Parker, provided the basis for the Committee's in camera hearing on 29 May 1979.\* They are former employees of the Authority, who gave evidence to the Committee on alleged irregularities in the Authority's operations and by Authority members.

2.28 On 19 June 1979 the Committee sought the advice of the Crown Solicitor on a number of matters relating mainly to the conduct of witnesses and the future of the Inquiry. Despite repeated written requests to the Crown Solicitor stressing the urgent need for this advice and verbal assurances that it was forthcoming, advice was not received until 15 October 1979. This delay caused the Committee to

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\* Committee File 1978/2

cancel a number of hearings and caused considerable inconvenience to both the Committee and witnesses. Resolution of the questions raised by the Crown Solicitor's opinion also took some time, with the result that this Report has been over a year in production. The Crown Solicitor's advice cast doubt on the power of the Committee to examine the Authority on the matters raised by the Auditor-General, much less any additional matters.

2.29 This advice arose from his opinion that section 53 of the Audit Act did not give the Auditor-General authority to report to Parliament on the Authority's affairs, although the Auditor-General cites this section as his authority in the introduction to his Report. (The Authority's Ordinance specifies that the auditor should report to the Minister for the Capital Territory.) Although the Audit Act was amended in March 1979 the Crown Solicitor's opinion related to the Audit Act as it was during the period in which the Authority's accounts were examined.

2.30 The Committee did not necessarily agree with the Crown Solicitor's conclusions but it felt it had no option except to indefinitely defer the Inquiry until this situation was clarified. As neither the Committee nor the Auditor-General had received any fore-warning of the direction in which the Crown Solicitor's examination was leading, considerable disruption was caused to the Committee's activities.

2.31 A Bill amending the Public Accounts Committee Act was proclaimed on 4 December 1979.\* In effect the amendment removed any doubt as to the Committee's independence in investigating matters outside the substance and text of the Auditor-General's reports. They also expanded the range of organisations, including statutory bodies which the Committee may investigate.

2.32 The Committee wishes to record its appreciation of the assistance given to it by all witnesses and by the Department of Finance, the Auditor-General, the Crown Solicitor and the Public Service Board. In addition, the Committee thanks the Real Estate Institute of New South Wales and the Master Builders' Association of New South Wales for their expert assistance.

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\* Public Accounts Amendment Act (No. 187) 1979

## CHAPTER 3

### THE ORIGINAL REFERENCE - INVESTMENT IN BANK BILLS

#### Background.

3.1 In his report the Auditor-General commented upon the Authority's investment in bank bills in the following terms:

"...the Authority invested in bank bills in 1976-77 without the approval of the Treasurer as required under section 22(2)(c) of the Ordinance. The Treasurer's approval was obtained on 16 March 1978 to invest in bank bills."\*

3.2 In response, the Authority made the following submission to the Committee:

"The large amounts of borrowed funds required to finance this project have resulted, from time to time, in the Authority having considerable short term cash surpluses.

In an endeavour to reduce net interest charges and in accordance with sound commercial practice the Authority sought to place cash surpluses in the best available interest bearing situations while giving paramount consideration to security.

The terms of the Authority's Ordinance section 22(2)(a) authorised the placement of funds on fixed deposit with its approved bankers.

Current banking practice in fact has seen the dropping of the term Fixed Deposit and substitution of the terms Interest Bearing Deposit and Certificates of Deposit.

Initially funds were placed on IBD with the Authority's approved bankers.

Following the success of the Authority's Cash Loan No. 1 and in view of the higher interest rates offered against bank endorsed or accepted Bills of Exchange and in accordance with normal commercial practice of maximising returns where this could be done without diminution of security the Authority invested some of its surplus funds in Bank Bills. The Bills so purchased are considered to have equal if not greater security rating than either IBD's or Certificates of Deposit while yielding higher interest return:

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\* Supplementary Report of the Auditor-General for year ended 30 June 1978, Parliamentary Paper No. 412 of 1978

The reasons for this opinion are:

1. Bank accepted or endorsed Bills of Exchange are also bank guaranteed investments,  
and
2. In the unlikely event of bank failure, one has recourse to prior endorsers in turn. This additional right does not occur in the case of either IB'D's or Certificates of Deposit.

Further all Bill transactions which have been undertaken have been negotiated through the Commonwealth of Australia.

It is the opinion of the Authority that not only have they sought the maximum return available but have also exceeded the security specified by the Ordinance.

Having received notice from the Auditor-General that in his opinion such investments required specific approval, the Authority sought and was granted approval by the Treasurer to invest in bank bills."\*

3.3 The Committee does not dispute that investment in bank bills with the Commonwealth Trading Bank offers good security and is in accord with "sound commercial practice". However, in the context of the Auditor-General's comments, this is irrelevant to the issue of observance of the Ordinance. Section 22 specifically states:

"22.(1) The moneys of the Authority may be applied by the Authority -

- (a) in payment or discharge of the costs, expenses or other obligations incurred by the Authority in connexion with the performance by the Authority of its functions under this Ordinance;
- (b) in payment of remuneration and allowances payable to members and employees of the Authority; and
- (c) in making payments in accordance with this Ordinance, but not otherwise.

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\* CCDA Submission, Committee File 1978/2

(2) Moneys of the Authority not immediately required for the purposes of the Authority may be invested -

- (a) on fixed deposit with an approved bank;
- (b) in securities of Australia; or
- (c) in any other manner approved by the Treasurer."

#### Evidence

3.4 The Authority claimed that the term "fixed deposit" is no longer used in current banking practice, having been superseded by the terms "interest bearing deposit" and "certificates of deposit". The observer from the Department of the Treasury agreed that "description of fixed deposits in contemporary bank parlance would include also interest bearing deposits and certificates of deposit." However he also said:

".. Bank accepted or bank endorsed bills of exchange are a quite different form of instrument and ... would require the Treasurer's approval under section 22(2)(c)".\*

3.5 In response to a question concerning interpretation of this section, Mr Taylor said:

"We sought advice from the Commonwealth Trading Bank of Australia which was one of our approved bankers, as to whether or not investment in bank bills was outside the terminology of the first two sections of section 22(2)."

3.6 Later, the Committee was advised\*\*\* that in fact the Authority had only sought the Bank's advice as to the relative security of the investment.

3.7 The Authority claimed in its submission that:

"... once this position became known to us we made formal application to the Treasurer for approval ..."

3.8 However, the Authority's request for approval was not as immediate as this infers, as examination of the following schedule shows:

- . November 1977 - the Auditor General's Office orally advised the Authority of the need to seek the Treasurer's approval. This advice was followed up by a letter dated 24 November 1977.\*\*\*

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\* Minutes of Evidence p.130

\*\* Minutes of Evidence p.43

\*\*\* Committee File 1978/2



- . 3 February 1978 - The Department of the Capital Territory wrote to the Authority stating that the Treasury and the Auditor-General had advised the Department of the Authority's unapproved investments, and requesting that the Authority seek formal approval.
- . 13 February 1978 - Reply to the Department of the Capital Territory requesting that it take appropriate action to "formalise our actions."
- . 3 March 1978 - Request to the Treasury for approval from the Department on behalf of the Authority.
- . 21 March 1978 - Approval given.

### Conclusions

3.9 Given section 22(2)c of the Authority's Ordinance clearly states that investments other than fixed deposits or securities of Australia require the approval of the Treasurer, the Committee fails to understand why the Authority should seek, as it claims to have done, an interpretation of this section from the Commonwealth Trading Bank rather than the Department of Treasury. In any case, regardless of any outdated definition of fixed deposits, the Authority appears to have taken an irresponsible approach on this matter, and should have either been aware or informed itself that bills of exchange were quite a different form of investment.

3.10 The Authority laid great stress on its opinion that it was adhering closely to the intention of section 22(2), which it saw as being to ensure that the Authority invested its funds securely. This is not the issue.

3.11 The Ordinance clearly says that the Authority needs to seek the Treasurer's approval for certain forms of investment. The Authority was aware of this and also ought to have been aware that its proposed investment was not covered by existing approval in the Ordinance. It did not seek approval prior to investing and inordinately delayed in seeking such approval after the need to do so was brought to its attention.

3.12 The issue is not one of relative security or dollars and cents, but rather a matter of principle in which the Authority failed to observe its own Ordinance.

## CHAPTER 4

### THE ORIGINAL REFERENCE - PUBLIC LOANS - UNDERWRITING FEES

#### Background

4.1 The Authority received approval from the Australian Loan Council to borrow up to \$22.5 million in 1976-77. As part of its borrowing program for that year, it issued a public loan for \$10 million which closed on 6 May 1977. The loan was underwritten by Bain and Company on terms and conditions approved by the Loan Council, including an underwriting fee of 1 per cent and brokerage of 0.25 per cent. These are the maximum rates permissible under the provisions of the Gentlemen's Agreement.

4.2 The loan was well received and in April 1977 Bain and Company offered to underwrite an amount of \$2.75 million as oversubscriptions.\* The Loan Council agreed to the oversubscription without being properly informed of the terms and conditions. These oversubscriptions brought the total loan to \$12.75 million and filled the Authority's borrowing program for that year.

#### Evidence

4.3 In his Supplementary Report for 1977-78, the Auditor-General made the following comments on this transaction:

"The Authority's \$10 million public loan was oversubscribed by \$2.75 million. An audit of the borrowing arrangements revealed a number of unusual features which were referred to the Authority. One such feature was the payment of underwriting fees of \$27,500 in respect of the \$2.75 million oversubscribed. My Office considered this contrary to:

- . usual commercial practice;
- . established Loan Council practice; and
- . section 16 of the Ordinance.

In response the Authority stated its belief that the underwriting fees were in accordance with the terms of the Loan Council's 'Gentlemen's Agreement' at that date and that its action on additional brokerage and underwriting fees was sound commercial practice and consistent with the public interest.

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\* CCDA Submission, Committee File 1978/2

The 'Gentlemen's Agreement' was amended in July 1977 specifically prohibiting payment of underwriting charges on over-subscriptions. The Authority has assured the Minister that any breach of the Agreement was completely unintentional".

4.4 In response, the Authority submitted to the Committee that:

"As the additional sum was to be raised on identical terms to those approved for the original \$10 million it was thought necessary only to detail the additional amount involved and not necessary to repeat details of the underwriting agreement as these were already known to the Minister and Treasurer.

It was not realised by the Authority at the time of acceptance of Bain & Company's offer that payment of underwriting fees on oversubscriptions was not in accordance with accepted practice under the Gentleman's Agreement.

This position was not disputed in any way by the Authority and when the Authority became aware that payment of the fees was unusual in loans covered by the Gentleman's Agreement, a full and frank discussion was held with senior officers of the Loans Section of the Treasurer's Department by the Authority's Chairman and Executive Director.

It was agreed at these discussions that in view of acceptance by the Authority of Bain & Company's terms in relation to the \$2.75 million, payment of the underwriting fees should be effected.

It was the considered opinion of the Board and senior officers of the Authority that ensuring a further \$2.75 million on a firm underwritten basis, which had the effect of guaranteeing the completion of the Authority's approved loan raising for 1976-77 at no additional cost to the Authority except underwriting and brokerage was very much sound commercial practice and could in no way be construed as being inconsistent with the public interest.

The Gentleman's Agreement at the time of the loan was subject to varying interpretations on the matter of oversubscriptions and in July 1977 the Agreement was amended to specifically prohibit the payment of underwriting charges on oversubscriptions.

Any breach of the generally accepted interpretation of the Agreement by the Authority was completely unintentional."\*

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\* CCDA Submission, Committee File 1978/2

- 4.5 There are three main questions which arise:
- . Was the payment of the additional fee contrary to usual commercial practice and therefore contrary to section 16 of the Ordinance?
  - . Was the payment in contravention of the 'Gentlemen's Agreement'?
  - . Why were terms of the new underwriting agreement not clearly spelt out to the Loans Council?

4.6 With respect to the first, the Chairman of the Loan Council (the Treasurer) described the payment as

"...contrary to usual commercial practice, which inhibits the variation of any of the terms of an underwriting agreement after a loan has opened."\*

4.7 The Authority disputed this statement. It claimed it saved in the region of \$35 000 to \$40 000, by seeking to amend its original borrowing authority from \$10 million to \$12.75 million.\*\* Mr Pead said:

"The cold realities of the situation are that if we had not taken an over-subscription and we were not able to raise the money privately, the only alternative open to us to complete our total borrowing for the year would have been to go public a second time, which would have involved additional advertising, printing of prospectuses and running through the whole gamut again. That would be a very costly exercise."\*\*\*

4.8 The Authority also said that a comparison with usual commercial practice was not particularly valid in that the situation (seeking oversubscriptions and paying an underwriting fee) would not have occurred in a commercial context. Mr Taylor said:

"In a commercial situation the terms of the total loan would have been agreed upon before the loan went out and the amount of oversubscriptions, up to a permissible maximum, would have been spelt out in the prospectus."\*\*\*

4.9 The observer from the Department of the Treasury agreed, but pointed out that in such a case an underwriting fee is not paid on the over-subscription as the underwriter takes no risk in accepting oversubscriptions.

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\* Letter of 27 May 1977 to Minister for Capital Territory, Committee File 1978/2

\*\* Minutes of Evidence p.54

\*\*\* Minutes of Evidence p.53

4.10 The Authority responded that the arrangement with Bain and Co. could not be compared with this because the company in fact did underwrite the raising of \$2.75 million oversubscription, and thus would have had to make up the difference if the oversubscription had not been made.

4.11 Mr Taylor for the Authority, said:

"It was really almost in the nature of a new loan situation which they (Bain & Co.) underwrote."\*

4.12 Mr Elsworth elaborated further:

"It was not really in the nature of an oversubscription. It was an extension of the underwritten amount." (Committee's emphasis)

4.13 This brings the committee to the second question posed earlier in this section:

"Was the payment in contravention of the 'Gentlemen's Agreement'?"

4.14 Obviously, as the Agreement forbids payment of underwriting fees on oversubscriptions, the Authority acted in contravention of the Agreement. The Authority maintains it was not aware of this provision.

4.15 However, it would seem to the Committee that the Authority misrepresented the nature of the 'oversubscription' to the Treasurer. Either it was an oversubscription, which was the basis on which it was approved, but which the Authority denies; or, as the Authority was implying to the Committee, it was a new loan in the form of an addition to the underwritten amount, and application for approval should therefore have been presented to the Treasurer in those terms.

4.16 The Committee has noted also that during 1977-78, the Authority's bank accounts were overdrawn, again without the statutory approval of the Treasurer as set out in section 20(1). The Authority sought and received the Treasurer's approval to short term overdraft facilities in May 1979.\*\*

#### Conclusions

4.17 Although the Committee is not convinced that the method of raising the additional \$2.75 million was the only or the most advantageous alternative open to the Authority, it considers that in this case the question of whether it was 'sound commercial practice' must remain a matter for debate.

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\* Minutes of Evidence p.56

\*\* CCDA Board Minutes, Committee File 1978/2

4.18 However, section 16 also specifies that these principles of sound commercial practice must be observed 'in so far as those principles are not inconsistent with the public interest.' The Committee strongly believes that the Authority's actions in obtaining the Treasurer's approval on the basis of misleading information were not 'in the public interest'.\* In that context the Committee considers that the Authority contravened section 16 of its Ordinance.

4.19 Furthermore, officers of the Treasury ought to have been more alert and confirmed the precise nature of the additional borrowing before the relevant papers were presented to the Loan Council.

4.20 Finally, whether this misrepresentation was intentional or otherwise, it would appear that section 20(1) of the Ordinance has not been properly observed, because the Treasurer's approval was based on incorrect information.\*\*

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\* ACT Ordinance No. 40 (CCDA), Section 16

\*\* Minutes of Evidence pp.51,52

## CHAPTER 5

### THE ORIGINAL REFERENCE - TERMS AND CONDITIONS OF EMPLOYMENT

#### Background

5.1 From October 1974, when the Authority was established, to February 1977, the Authority was staffed by an Executive Director, Mr Harold Calderwood, a stenographer and a clerical assistant. Consultants were hired to provide the major input to the project and the Authority's Chairman, Mr Pead, was also very actively involved.

5.2 In his examination of the Authority's financial statements for the year 1976-77, the Auditor-General reported to the Minister that:

"Salaries and allowances were paid under section 22(1)(b) of the Ordinance without the approval of the Public Service Board as to the terms and conditions of employment as required by section 17 (2)."

5.3 Section 17 of the Authority's Ordinance specifies that:

"17.(1)The Authority may employ such persons as it thinks necessary for the purposes of this Ordinance.

(2) The terms and conditions of employment of persons employed under sub-section (1) shall be determined by the Authority with the approval of the Public Service Board."

#### The Authority's Submission

5.4 In response to the Auditor-General's comment above, the Authority made a submission to the Committee in the following terms:

"The Authority was somewhat concerned at the attitude taken by the Auditor-General on this matter as the position applying to the 1976-77 period was no different to that which applied in respect to the period October 1974 to June 30, 1976, and to which the Auditor-General, with full knowledge of the procedures adopted by the Authority, had raised no objection.

It was the understanding of the Authority that the procedure adopted, i.e. contract of employment on a temporary basis only, had been cleared by the Department of the Capital Territory, after consultation with the Public Service Board.

A further understanding was that once the permanent, ongoing staffing of the Authority was settled such appointments would require Public Service Board approval as to terms and conditions."

The Authority understood that:

1. The arrangements made for temporary employment of staff under contract is legal and binding on the part of the authority.
2. That moneys paid have been properly applied in accordance with section 22(a) and (b) of the Ordinance, and
3. The Authority has complied with section 16 namely:

"It is the duty of the Authority to carry out its functions in accordance with the principles of sound commercial practice in so far as these principles are not inconsistent with the public interest."

and this is confirmed by the endorsement of the Public Service Board letter dated March 31, 1978, of the terms and conditions applying to temporary employees.

The relative importance of this matter is highlighted by the fact that in the period May 31, 1978, the total remuneration paid to employees of the Authority was \$292,999 while total expenditure to that time exceeded \$28,000,000."\*

5.5 The Committee asked the Authority to clarify its statement that the position between July 1976 and June 1977 was 'no different' to that applying prior to June 1976. Authority witnesses then referred to their understanding that

"contract of employment on a temporary basis only, had been cleared by the Department of the Capital Territory, after consultation with the Public Service Board."\*\*

Despite the efforts of the Committee, no evidence to support this assumption was received.

5.6 Between July 1976 and 30 June 1977, the Authority engaged staff to fill additional positions other than the three positions approved when the Authority was first established. Of these additional positions approval was sought only for the employment of another stenographer. In

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\* CCDA Submission, Committee File 1978/2

\*\* Minutes of Evidence p.120



this respect the situation was most certainly quite different to that applying prior to July 1976. Furthermore, as the Authority had received Public Service Board approval for the positions prior to July 1976, it was not surprising that the Auditor-General raised no objection.

5.7 The Department of the Capital Territory submitted that its policy with respect to the Authority's staffing requirements "is to allow it to deal directly with the Public Service Board."\* During questioning, the witnesses placed the Department's withdrawal from direct involvement in the Authority's staffing in "December 1974, or early January 1975".\*\* Since that time, witnesses from the Department stated that it limited itself to forwarding Authority requests to the Board and in assisting in liaison between those two bodies.

5.8 At the Committee's request, the Department carefully searched its records for copies of correspondence on matters relating to terms and conditions of employment, but could find no correspondence that offered or implied an on-going 'clearance' for employment of temporary or permanent staff.

5.9 A similar request was also made to the Public Service Board but again no record of any on-going approval could be found, nor did witnesses have any recollection of it.\*\*\*

5.10 In evidence to the Committee Mr Calderwood said that approval to engage people on a contract basis

"goes back to early 1975. At that stage we were verbally advised - you will not find anything in writing. Mr Clery (sic) said ... that he approved my modified conditions. We were told verbally that provided we offered all contractual employment in relation to temporary personnel we were conforming."\*\*\*

5.11 The Committee initially sought Mr O'Clery's comments in writing, and took sworn evidence from him at its hearing on 30 January 1980. The Department also provided a copy of a paper by him setting out his recollections of terms and conditions of Authority staff. In summary, he stated that he did not recall having provided advice to the Authority on that matter, and in response to Mr Calderwood's comments said specifically:

"You drew my attention to the fact that in evidence to the Committee Mr Calderwood suggested that I may have given advice on the question of employment conditions at a meeting of the Authority on 23 April

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\* Source: Department of the Capital Territory Submission, 14 March 1979, Committee File 1978/2

\*\* Source: Minutes of Evidence p.117

\*\*\* Minutes of Evidence p.121

1975. At this meeting Mr Calderwood's consultancy was again temporarily extended. The minutes of that meeting however do not refer to any advice being sought or given, but do state that 'Mr O'Clery undertook to seek clarification of members' fees and allowances in order that payment could be made'. No mention is made of my being asked for advice on any staffing issue and I have no recollection of any such request.\*\*

5.12 In its submission, the Authority also referred to a letter of 31 March 1978 from the Public Service Board and described it as endorsing the terms and conditions the Authority had applied to temporary employees. This letter was read out at the hearing of 26 April 1979, and says in part:

"...In the circumstances the Board does not wish to raise any objection to the terms and conditions that have been applied."

5.13 The circumstances mentioned in the letter were the appointment of a number of people to positions for which Board approval had not been sought. These positions had come to the attention of the Board after press reports of the termination of employment of Mr Parker and Mr Parsons (the former incumbents of two of the positions), and the Board had then sought information from the Authority.

5.14 The Authority's response of 7 March 1978 to the Board's request for information detailed existing positions and proposals for the future, and enclosed copies of the letters of appointment and termination of Mr Parker and Mr Parsons.\*\* Faced with a fait accompli, which if approval were withheld could affect many people who had entered in good faith into agreements with the Authority, the Board did "... not wish to raise any objections." At the hearing of 26 April the observer from the Public Service Board was asked if he recalled the letter of 31 March 1978 as 'endorsing' terms and conditions of employees, to which he replied:

"Certainly not endorsing the fact that it went ahead and entered into these arrangements without having obtained prior approval."\*\*\*

5.15 The observer then went on to explain that the letter conveyed an "on-going approval" to existing terms and conditions but that it did not convey retrospective approval nor did it validate payments that may have been made prior to approval.

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\* Letter to Mr. Lalor, Committee File 1978/2

\*\* CCDA Submission, Committee File 1978/2

\*\*\* Minutes of Evidence, p.128

5.16 In the Committee's opinion this is very important. It is a pity that the Board was not more specific in its letter of 31 March to the Authority, as this letter was also shown to the Minister for the Capital Territory as conveying tacit approval to the circumstances and conditions of Messrs Parker and Parsons termination.\* The Minister then released a press statement which included this information.\*\*

### Conclusions

5.17 The Committee places no credibility in the Authority's understanding that it did not have to seek formal approval for contract employment in the light of two documents one of which clearly draws the Authority's attention to the need to seek approval, while the other clearly states its actions were not in accordance with its Ordinance. These documents are reproduced in Appendices 2 and 3.

5.18 Firstly, Mr. O'Clery wrote to Mr. Calderwood on 8 November 1976 drawing his attention to the provisions of the Authority's Ordinance requiring it to seek the Public Service Board's Approval of the Authority's terms and conditions of employment.

5.19 Secondly, following the conclusion of the public hearings, the Committee obtained a copy of an opinion from the Acting Deputy Crown Solicitor to the Authority dated 5 July 1978 which clearly states that payments made before 31 March 1978 were not in accordance with the Ordinance.

5.20 The Committee does not accept the Authority's reasons for not complying with section 17 of its Ordinance, nor the Authority's statement of its understanding of staffing procedures. It appears that they do not bear any relation to the understanding or records of the Department of the Capital Territory or the Public Service Board.

5.21 The Committee is also concerned that during the course of the second hearing Mr. Pead attempted to mislead the Committee when queried as to the basis of the Authority's understanding that:

- "1. The arrangement made for temporary employment of staff under contract is legal and binding on the part of the Authority.

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\* Evidence submitted by Department of Capital Territory, Committee File 1978/2

\*\* Statement by the Minister for the Capital Territory, Mr. Bob Ellicott, Committee File 1978/2

2. That moneys paid have been properly applied in accordance with section 22(a) and (b) of the Ordinance ..."

5.22 During this hearing the Chairman of the Authority, Mr Pead, quoted directly and indirectly from the Crown Solicitor's opinion which, at that time, the Committee did not have in its possession. Mr Pead's quotes were generally used to illustrate his contention that the interpretation of section 17(2) is open to doubt and that the Authority's actions were legal.

5.23 For instance, Mr Pead quoted the Crown Solicitor thus:

"The payments are certainly a discharge of obligations incurred by the Authority under section 22(1)(a) although it is arguable that the Authority has no power to enter such an obligation without the consent of the Public Service Board."\*\*\*

5.24 Later in the hearing, the observer from the Auditor-General's Office contended that:

"Until the terms of section 17 are complied with there is no legal power to pay."\*\*\*

5.25 To which Mr Pead replied:

"If I may go to the Crown Solicitor's letter, in part he says that the Authority is authorised by section 22 to make certain payments including the payment of remuneration and allowances payable to members and employees of the Authority under section 22 (1)(b). As I mentioned this morning, later on he says that they are legal."\*\*\*

5.26 This last statement by Mr Pead is quite incorrect and at the time had the effect of misleading the Committee and restricting further examination. As the Committee later discovered, the Acting Deputy Crown Solicitor said that the payments were illegal although as they were made in discharge of an obligation at law, they were not recoverable.

5.27 A comparison of the Authority's original submission, statements made at the Public Hearings and the Crown Solicitor's opinion shows that:

The arrangements made for temporary employment under contract are binding on the part of the Authority to the extent that the resulting payments are not recoverable as they were made under a mistake at law.

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\* CCDA Submission, Committee File 1978/2

\*\* Minutes of Evidence p.126

\*\*\* Minutes of Evidence p.145

- . The payments themselves were made in breach of the Ordinance and cannot be described as legal.
- . Subsequent Public Service Board approval to the positions does not give retrospective legitimacy to those payments.

5.28 The Committee is most dissatisfied at the manner in which this opinion was used in an attempt to mislead it. In the Committee's view the Authority's submission to the Committee on employment matters could not be supported by fact.

5.29 In this context, the Committee was interested to note that this section of the Authority's submission is taken almost directly from a letter of 12 June 1978\* from the Authority to the Chief Auditor, A.C.T. The Committee must conclude that despite the subsequent receipt of what appears to be a fairly unequivocal legal opinion, the Authority either presented its submission to the Committee carelessly, or it submitted a deliberate fiction with the intention of misleading the Committee, or both. The Committee views this very seriously, and draws attention to section 18 of the Public Accounts Committee Act, which states:

"A person shall not wilfully give false evidence on oath or affirmation before the Committee.  
Penalty : Five years' imprisonment."

5.30 The Committee considered proceeding along the lines as indicated in section 21(4) of the Public Accounts Committee Act 1951 which states:

"An offence against this Act shall not be prosecuted summarily without the written consent of the Attorney-General or of a person thereto authorized in writing by the Attorney-General, and an offence against this Act shall not be prosecuted upon indictment except in the name of the of the Attorney-General."

5.31 The Committee decided that, after doubts were raised, it would not proceed other than to report its misgivings.

5.32 Section 21(4) concerns the Committee in that it appears that, by Act of Parliament, the Parliament has surrendered some control over its own internal affairs to the Executive. While argument exists that a political assembly is not capable of exercising judicial functions, the Committee believes that Parliament itself should be served by its own legal officer. This subject, however, is beyond the scope of this report.

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\* Committee File 1978/2

CHAPTER 6

THE ORIGINAL REFERENCE -  
THE APPLICATION OF SECTION 17 OF THE ORDINANCE

Background

6.1 The Public Service Board stated that section 17 of the Ordinance only gives it power to veto terms and conditions of employment set by the C.C.D.A.,\* citing as authority a body of opinion on similar provisions in other legislation.

6.2 The distinction between dictating terms and conditions and exercising a power of veto becomes easily blurred, particularly if a situation arose in which the Board vetoes any arrangement except that which it advocated. This is an extreme interpretation, but appeared to be the outcome that the Authority feared. When asked whether the Public Service Board had been effectively precluded from being in a position to exercise a degree of traditional overview of the Authority, Mr. Pead said:

"I do not dispute the point you make other than to say that if one literally interprets that section I find it difficult to appreciate how the terms and conditions of persons employed under sub-section 1 shall be as determined by the Authority. The simple fact of the matter is that if we take this to its logical conclusion, they are not determined by the Authority if in fact the Public Service Board can alter or disagree with them. It does not say either that the terms and conditions as determined by the Authority have to have the prior approval of the Public Service Board."\*\*

6.3 He concluded:

"...we do have the power to determine it and set it out to the Public Service Board as a formality."\*\*\*

6.4 Presentation to the Board of terms and conditions of employment as a 'formality' is not quite the same as allowing the Board to exercise a power of veto. In fact, the Committee believes that the Board has rarely been placed in a position where it could properly exercise its veto, due to the Authority's adherence to this practice of presenting action on these matters to the Board as a formality. On some occasions, the Authority has not consulted the Board even as a formality, and it has been left to the Board to later obtain information and refer it to the Authority for comment.

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\* Minutes of Evidence p.103

\*\* Minutes of Evidence p.101

\*\*\* Minutes of Evidence p.102

6.5 An examination of the position of Executive Director gives examples of both approaches. Mr Calderwood was originally a consultant to the Interim Belconnen Mall and was later appointed as Project Manager to the Authority. Early in 1975, he was appointed its Executive Director. Because the Authority had few resources of its own, formal negotiations for this appointment were conducted mainly by the Department of the Capital Territory. Public Service Board approval was given to the creation of the position of Executive Director at a salary range equivalent to Level 1, Second Division in the Public Service.

6.6 During the course of the hearing on 19 April, witnesses from the Authority stated that the Executive Director received a salary of \$31 000 p.a. As the Public Service Board later realised, this was then about \$4 400 above the current salary range for level 1 officers for which approval had been given.\* The Committee is concerned that the Public Service Board, was never given the opportunity to assess the variations in the salary for this position.

6.7 Similarly, in February 1978, the Executive Director received an alternative offer of employment, but was persuaded to stay in the Authority's employ by its offer of a lump sum payment if he stayed until 30 June 1979. In June 1978, three months after the Authority's offer, the Authority sought Board approval for its action, but only after the Department of the Capital Territory had queried if this approval had been sought.\*\*

6.8 The Board was firmly against this arrangement. The Board observer stated that such arrangements were not compatible with public employment, as they were contrary to overall Government wages policy.\*\*\* However, it felt that it had little choice but to give approval, as by the time this was sought the Executive Director had, in good faith, rejected the alternative offer of employment. The Authority received a letter from the Board dated 10 July 1978 granting approval which said,

"...the Board will not in future consider itself bound by commitments made by the Authority without prior approval of the Board ... such cases will be judged on their merits on the basis that any offers made by the Authority without prior approval are a statement of the intention of the Authority to seek Board approval to the terms and conditions ... . Accordingly, to avoid any embarrassment or possible

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\* Minutes of Evidence pp.98,99

\*\* Minutes of Evidence p.99

\*\*\* Minutes of Evidence p.112

litigation it would be appreciated if you would ensure that all terms and conditions and matters outside existing Board approvals are brought to the attention of the Board before any commitments are made."\*

6.9 The Board also told the Committee\* that it had since become aware of other instances subsequent to that letter where the Authority employed staff without its prior approval to terms and conditions of employment.

6.10 Where a set of general terms and conditions has not been agreed, the Board gives approval to the terms and conditions applying to individual positions. If those terms and conditions are varied from the agreed base (for example, in salary or duties, or a new position is created) then the authority must seek Board approval again. On the other hand, with an agreed set of terms and conditions, an authority is not limited (except by its own budget and staff ceilings) as to the number of staff it may employ at each approved classification.

6.11 As explained by the Board observer:

"...The normal approach is that very soon after a statutory authority has been established, officers of that statutory authority and quite often the department to which that authority has an attachment through the Minister, get together to discuss their immediate needs and their longer term needs, in terms of the sorts of conditions they see applicable and the sort of designations and staff they would want to take on. We come to an agreement as to what is appropriate and a formal determination of what we would call general terms and conditions to apply within an authority are approved by the Board.

If at a later date they wish to alter those terms and conditions, to add an additional classification which they may not have initially seen a need for, or if there are other peculiarities about the Authority and its methods of operations which were not initially foreseen, it is always open to come back and have further discussions and amend the general terms and conditions of employment."\*\*

6.12 The Board did not actively seek the Authority's agreement to a general set of terms and conditions until March 1978, when it first became aware that the Authority had expanded its staff beyond the approved positions of Executive

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\* Minutes of Evidence p.100

\*\* Minutes of Evidence p.105



Director, two stenographers and a clerical assistant.\* Meetings followed, and the Board gave the Authority examples of terms and conditions that other trading authorities had settled upon, and suggestions of terms and conditions that the Authority might find desirable.

#### Conclusions'

6.13 While it can be argued the Authority need not seek prior Board approval before it employs personnel, such action runs the risk that Board approval may be withheld and any payments to such employee may need to be recovered. This is clearly unacceptable even if the employee is fully aware of the situation. It is the responsibility of the Authority to ensure that any offer of employment which it makes is legal, and its employees are not placed in a position whereby they may possibly have to repay moneys earned.

6.14 The Chairman of the Authority undertook to discuss the general set of terms and conditions with the Board, but the Authority has still not submitted a draft set of terms and conditions for approval.\*\* The Committee was informed, however, that, at the time of writing of this Report, discussions were taking place between the Board and the Authority on these matters.

6.15 The Chairman of the Authority placed great emphasis throughout the hearings on the need for the Authority to retain flexibility in employment matters. The Committee does not accept that the Authority has, to date, been unduly inhibited by the Board nor that observance of section 17 would necessarily result in an inflexible situation.

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\* Minutes of Evidence p.106

\*\* Minutes of Evidence p.195

## CHAPTER 7

### ADMINISTRATION

#### Background

7.1 On 29 May 1979, the Committee heard evidence in camera from two former employees of the Authority who had made a joint submission. The Committee decided to conduct an in camera hearing as their submission contained allegations which reflected on the integrity of some Authority members and staff. As these allegations were unsubstantiated, the Committee did not wish to attract unnecessary public speculation nor did it wish to cast these witnesses or the Authority as adversaries.

7.2 The basis of the submission by the former employees was that they had never been allowed to properly carry out the duties of their positions under fair circumstances. They attributed this to the Authority's style and methods of operation and to the Authority members' lack of retailing expertise. They cited instances of what they regarded as poor management and political expediency, and drew the Committee's attention to rumoured irregularities in the Authority's operations.

#### Termination of Employment

7.3 The Committee was told that the reason it was necessary to terminate their involvement with the CCDA, despite what was stated in the Deed of Termination, was, according to the Executive Director, Mr H.D. Calderwood, a clash of personality with the Chairman of the Authority, Mr J.H. Pead.\*

7.4 The Authority's official position, stated in the Deed of Termination, was due to a decision to reorganise the senior executive structure, and further that the Authority had not been impressed with the marketing budgets presented.\*\*

7.5 Although the Authority's letters appointing them to the staff of the Mall specified only three months pay in lieu of notice, it paid each employee the balance due on their contracts, that is, almost a full year's salary. Those amounts totalled \$41 000.

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\* Committee File 1978/2

\*\* Minutes of Evidence p.278

7.6 Whatever the reasons for their termination, and they are not mutually exclusive, the Committee questioned the basis for payment of the balance of the contracts and the reasons for the terminations. Mr Elsworth, Deputy Chairman of the Authority, told the Committee that this was what would have been done in a commercial enterprise.\* Mr Powell of the National Capital Development Commission also advised the Committee that a similar payment was made by the Darwin Reconstruction Commission during the period that he was its Chairman.\*\*

7.7 As discussed in Chapter 4, the Authority informed the Minister that the Public Service Board had not objected to the terms and conditions of this termination, and showed him the Board's letter of 31 March 1978.\*\*\* The Board has since said that this letter did not convey approval of terms and conditions entered into prior to that letter; that is, the letter shown to the Minister was not meant to give approval, tacit or otherwise, to the severance payments.

7.8 The Committee has also been given a copy of an internal document from the Department of the Capital Territory which contains a statement by the then First Assistant Auditor-General to the effect that "he understood the Public Service Board had approved the terms and conditions of severance and had advised CCDA by telephone."\*\*\*\* The basis for this understanding is not given and there was no reference to consultation with the Public Service Board in the other documents provided by the Department.

7.9 This has left considerable doubt in the Committee's mind as to whether the Minister was fully aware of the conditions and implications of the termination.

#### Conclusions

7.10 In the Committee's experience, under normal circumstances a commercial or private enterprise would settle with former employees for the amount for which they were legally liable if their employment was terminated, for reasons of incompetence, or impropriety. On the other hand termination of employment because of reorganisation or a clash of personalities would normally result in the payment of the balance due on a contract, the distinction being that employment is terminated because of factors wholly or partially outside the employee's control.

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\* Minutes of Evidence p.150

\*\* Minutes of Evidence p.155

\*\*\* Evidence submitted by Department of Capital Territory, Committee File 1978/2

\*\*\*\* Committee File 1978/2

7.11 While the Committee does not question the Authority's right to dismiss employees, it believes the reasons given for the dismissals are obscure. However the Authority, by acting with undue haste incurred considerable additional costs by terminating contracts and employing outside consultants. If their employment was terminated because of a reorganisation of the executive it would have been less costly to reemploy the individuals for the duration of their contract within the new structure. Furthermore if the Authority was unimpressed with the marketing budgets it would have been wiser to have endeavoured to develop a strategy with which all parties could agree.

#### Staff Appointments

7.12 The former employees gave evidence that they had not interviewed subordinate staff nor in fact, discussed operational staff appointments with the Authority or the Executive Director. They considered this as a normal part of their duties which was confirmed by independent advice given to the Committee. They suggested that they were discouraged from participating in staffing in order to allow the Chairman to exercise patronage in selection of staff. They had no evidence to support this contention except exclusion from the selection process and the apparent haste to fill positions.

7.13 The Committee asked the Authority if these positions had been advertised and with what result. It was told that few had been advertised and that staff had been recommended to the Authority, sought the work themselves or had been referred to the Authority by the Commonwealth Employment Service.\* In response to questioning, Mr Pead said that in respect of staff 'down the line' the decision to appoint someone to a position was made by the person in charge of the particular area concerned.

#### Conclusions

7.14 It is not clear to the Committee who decided the individual appointments to operational positions in the absence of a centre manager, as the operations manager was not appointed until March 1978.

7.15 Although it is plain that the opportunity for patronage existed, the Committee has no evidence to conclude that this occurred. Furthermore, there is the question of defining 'patronage'. Although standard Public Service practice lays down fairly rigorous procedures for the selection of staff, the Authority is under no obligation to adhere to these. Under the terms of its Ordinance, the manner in which it selects staff is its own affair as long as the terms and conditions applied have received Public Service Board approval. It is common practice in small commercial enter-

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\* File Reference No. 1978/2

prises for positions to be filled in a similar manner to that outlined above. In such a situation, the line between patronage and effective costcutting can be rather hazy.

7.16 Notwithstanding, the Committee believes that the Authority, the custodian of a large public enterprise, would have been wiser to advertise for each position, and suggests that it follow this practice in future. It considers that more detailed records of employment should be kept.

#### Travel by Authority Members

7.17 The justification for an overseas trip in September 1977 by Mr. Pead, five months prior to the Mall's opening, was questioned. The Committee sought further information from the Authority when it could find no reference to Mr. Pead's itinerary or report in the Authority's minutes of meetings.

7.18 The purpose of the trip was to examine developments overseas in "ancillary activities in shopping centres".\* The itinerary was developed in conjunction with Cameron, Chisholm and Nicol, the architects to the Authority. Mr. R. Chisholm, from the architects, and Mr. P. Howarth, from the leasing agents, accompanied Mr. Pead on various stages of his trip at their own expense. The trip lasted for 58 days and took Mr. Pead to Europe, the United States and South East Asia at a total cost to the Authority of \$9900.

7.19 The Authority also stated that no detailed itinerary was submitted to the Board of the Authority when approval was sought for the trip, nor was one submitted at a later stage. The Board approved Mr. Pead's travel at its meeting of 25 May 1977.

7.20 The Committee queried whether the approval of the Government's Overseas Visits Committee, should have been sought. In response, the Public Service Board advised that:

"...authorities which are funded by Capital Grants/Loans which are repayable to the Commonwealth either from the authorities' profits or capital are only subject to OVC consideration in respect of overseas visits involving a specific allocation of Government Funds for travel not related to the normal business of the undertaking... While exempt from OVC processes it is expected that overseas visits by staff of such authorities would be subject to the same critical assessment provided under OVC processes, that visits would be for essential business purposes only, and that as far as practicable OVC guidelines would be observed. It would also be

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\* Minutes of Evidence p.220-227

expected that the relevant Minister would be kept informed on programs and the more sensitive and costly visits."\*

7.21 On Mr. Pead's return, no written report was presented to the Board by Mr. Pead or the consultants who had accompanied him, although we were informed that Mr. Pead discussed his trip with individual members of the Authority. Mr. Taylor, for the Authority, agreed that a written report was desirable to ensure that any value from the trip was not lost.\*\*

7.22 As it was, Mr. Pead's expenses were also not paid at the rates set down in the Remuneration Ordinance 1976, and were apparently paid without proper authority.\*\*\*

7.23 At the suggestion of the Chief Auditor, ACT, the Authority contacted the Department of the Capital Territory who advised that Mr. Pead should have been paid the statutory travel allowance of \$41 per day plus the set fees for those days or parts thereof in which he was engaged on Authority business. The Department's advice concluded:

"Assuming that the Chairman was so engaged for the whole of the 58 day period of his visit he was entitled to have been paid a total of \$6,438.00. The amount of remuneration which Mr. Pead actually received was, as advised to Ms. Haydock of this Branch by your Ms. Lawless, \$5,933.03. This excludes, of course, the amount paid by the Authority for Mr. Pead's travel."\*\*\*\*

### Conclusions

7.24 The Committee considers that a written report ought to have been presented to the Authority by Mr Pead on his overseas study visit as is normal Public Service and commercial practice.

7.25 Although a copy of Mr. Pead's itinerary was later prepared for the Committee, one should have been available for the Authority's Board prior to Mr. Pead's departure. The Committee would regard the presentation of this planning document as essential in estimating the cost and value to be gained from such travel.

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\* Letter dated 13 February 1980 from the Secretary Public Service Board to the Secretary, Public Accounts Committee, Committee File 1978/2

\*\* Minutes of Evidence p.223-224

\*\*\* Letter of 18 May 1979 Chief Auditor ACT to the Chairman, CCDA, Committee File 1978/2

\*\*\*\* Letter dated 10 September 1979 from the Secretary, Department of the Capital Territory to the General Manager, CCDA, Committee File 1978/2

7.26 The Committee also noted the Authority's costs in transporting members to Authority meetings or other business. Many members reside in Canberra, and the Committee was concerned to observe that almost \$2,500 has been spent on return fares from Perth for Mr. Pead, in addition to his other travel expenses.

#### Project Construction

7.27 The Mall was constructed by a fast-track method based on a construction management contract between the Authority and the joint-venture builders, O'Connor-Costain Ltd. In simple terms, this approach meant that the Authority was the prime contractor, paying for and selecting all contracts and supplies itself on the recommendation of the construction manager. Nearly all materials and on-site works were owned directly by the Authority, while the construction manager provided expertise in oversighting and directing work, certifying accounts and providing all support staff. Senior staff were appointed by the construction manager with the agreement of the Authority, and the Authority paid the salaries of other clerical and operations staff. This provided continuity in the event of any part of the management of the project failing.

7.28 It was alleged that the Mall itself was over-designed, and that excessive quantities of materials had been used in its construction. The Committee was also contacted by some dissatisfied contractors over alleged late payments by the Authority.

7.29 Examination of these allegations was beyond the Committee's resources, as it would have required complete site examination and detailed evaluation of designs and bills of quantity. Oral evidence alone would have been insufficient. The Chairman of the Authority has said that he considered the Belconnen Mall to be the best of its kind in Australia, and if he was able to guide the Authority with such an end in mind then quite possibly the Mall is a well-constructed complex for which no expense was spared. If such a situation occurred in a government department then a detailed examination would be justified, as it would indicate that the built in checks for construction projects had failed. These checks are primarily those of financial justification and come normally under the scrutiny of the Public Works Committee. However, as matters stand, the Authority, as a statutory body, is not subject to examination by that Committee.

## Conclusions

7.30 The Committee did not receive evidence whether this process involved any impropriety or undue advantage to any party. If any person or organisation has evidence on these matters which they believe can be substantiated, then this should be laid before the Minister or the Attorney-General. The Committee would then expect that a full and thorough investigation would be initiated.

7.31 Much of what was said before the Committee in this inquiry on the actual construction of the Mall remains at best unsubstantiated allegations. The Committee considers that no fault or impropriety can be attached to the Authority or its members as to the manner in which the Mall was constructed.

## Security of Tenders

7.32 It was reported that some tenders received by the Authority were removed from the site office of the Construction Manager, and later replaced. A further tender was subsequently received which, being lowest, was accepted by the Authority. The obvious inference was that the other tenders' prices were made available to the successful tenderer.

7.33 This is a serious allegation which, if substantiated would be a gross impropriety. The Committee examined the Authority on measures taken at that time for the letting and security of tenders, to ascertain whether conditions existed in which such a situation could have occurred.

7.34 The usual process was for the construction manager to call for tenders and make his recommendation to the Authority. The construction management agreement provided for detailed consultation between the construction manager, the project manager from the Authority's architects and the Authority itself. The Authority was not bound to accept the construction manager's recommendation.

7.35 In response to questions from the Committee, Mr. Calderood, former Executive Director of the Authority, stated that he had no reason to believe that proper procedures for the letting of contracts were not followed.\* He was later asked again:

"COMMITTEE MEMBER - I did say something about the security of tendering. You have been quite happy that it was secure and there were no problems with that process?"

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\* Minutes of Evidence p.245



"MR. CALDERWOOD - Nobody came to me and later complained. I think they would have done so. But the answer to that is yes."\*

7.36 There appears a discrepancy between these statements and other evidence. The Committee also noted the comments of the Auditor-General to the Minister on contract procedures, in which he says:

"The Authority was advised that tender procedures in operation during the construction of the Mall were considered inadequate as -

- . there were no formalised written tender procedures; and
- . a tender box was not always in use for the acceptance and security of tenders lodged."\*\*

#### Conclusions

7.37 The Committee believes that tender documents were not held securely. On that basis, and also in view of apparent discrepancies in evidence, the Committee recommends that the Attorney-General initiate a full investigation of this matter, examining the evidence given to this Committee, the witnesses, and any other persons or necessary documents to clarify and determine the truth of this allegation.

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\* Minutes of Evidence p.247

\*\* Letter of 11 October 1979 from the Auditor-General to the Minister for the Capital Territory.

## CHAPTER 8

### RELATIONSHIP BETWEEN AUTHORITY AND TENANTS

#### Leasing Procedures

8.1 Both the joint submission from the former employees and the submission from the Australian Association of Independent Businesses representing the tenants emphasised dissatisfaction with the leasing procedures adopted by the Authority and its leasing agent, Peter Howarth and Associates. The Committee also received evidence of friction between staff on the one hand and the Chairman and agents on the other over leasing procedures and the amount of information that was made available to the Authority.\*

8.2 The submission from the Australian Association of Independent Businesses gave considerable detail on variations in rent levels, outgoings, leases and tenants' dealings with the Authority including some friction between the tenants and the Authority.

#### Conclusions

8.3 The Committee understands that significant variation in rents can occur even though tenants occupy similar floor areas and/or locations. The desired retail mix and the retailer's ability to pay based on his particular type of operation are considered when assessing the level of rent. The Committee considers this to be a matter for negotiation between tenants and the Authority.

8.4 Dissatisfaction over leases is outside the concern of this Committee. If tenants are dissatisfied over the terms of their leases, or the amount of information on outgoings that the lessor requires to be supplied, then they have various means of redress including:

- . Renegotiate the lease;
- . Initiate legal action if the terms of the lease have been breached; or
- . Approach the Minister;

8.5 The Committee is conscious that the tenant has entered into in an agreement of his own free will and should have been aware of lease conditions before signing.

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\* Committee File 1978/2 .

8.6 While it is believed that the Chairman enjoyed a close relationship with the agents, the Committee has no reason to believe that his support for them was improperly motivated.

#### The Marketing Fund

8.7 In a retail development such as the Mall, the owners of the development levy a charge to pay for promotional activities undertaken on behalf of the retailers in the development. Traditionally, this has been controlled by a Merchants' Association, which is chaired by the owner and where he meets regularly with retailers to discuss and agree upon the outgoings which are levied.

8.8 The Authority decided instead to use a Marketing Fund. This is a relatively new concept which does not have the same dependence on retailer consensus but retains closer control in the hands of the owner. The AAIB drew attention to the relatively high level of outgoings and gave figures to show that they were not always related to floor area, which, on independent advice, the Committee understands to be the usual practice.\*

#### Conclusions

8.9 The Committee feels that the Authority's use of a Marketing Fund for promotions and other outgoings, as opposed to the more usual Merchants' Association, may have contributed to the problems being experienced by both the tenants and the Authority.

8.10 The Authority has established a small committee of retailers to make suggestions on marketing to officers of the Authority, and the Chairman of the Authority believes that this is working satisfactorily. The Committee trusts that the Authority will continue to seek to improve its relations with tenants.

8.11 It appeared from the evidence that the Authority's relations with its tenants started badly and failed to improve. The Committee does not believe that the blame for tenant complaints lies solely with the Authority, or that all complaints are well-founded. It considers, however, this is an indication of the Authority's unwillingness or inability to communicate effectively on matters that are of direct concern to it. When assessed with other evidence the Committee considers that it probably indicates poor management principles being applied by the Authority.

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\* Committee File 1978/2

## CHAPTER 9

### THE ROLE OF THE MINISTER AND THE DEPARTMENT OF CAPITAL TERRITORY

#### Background

9.1 The distinguishing characteristic of an authority is that it is established to execute the special and specific tasks set out in its enabling legislation. Such bodies are given varying degrees of independence in their operations. Compatibility between public responsibilities and managerial freedom lies in the extent to which a public body is made responsible to the Executive Government and Parliament in its constituting legislation through a system of accountability. The establishment therefore of an authority rather than a department of state, as the chosen instrument for the conduct of an enterprise or function implies, amongst other things, the intention that the authority should generally enjoy relative freedom from close political and Parliamentary control.

9.2 The respective legal powers and duties of the Minister for the Capital Territory and the Canberra Commercial Development Authority are set out in the Ordinance, and provide the Canberra Commercial Development Authority with considerable independence from Ministerial control. Continuous disregard by the Authority of those sections of its Ordinance which are designed to ensure the Authority complies with the legal requirements for accountability and behaves responsibly will inevitably lead to a closer control of its activities.

9.3 Initially, little information was sought on a regular basis by successive Ministers, other than that provided in the financial statements. At various times, Authority members would meet with the Minister to discuss progress or specific issues that may have arisen. In November, 1976, arrangements were made for an officer nominated by the Minister to peruse the Authority's minutes at its offices in Belconnen. The Authority preferred to retain possession of the minutes in the interests of confidentiality. This arrangement was endorsed by the Authority at a further Authority meeting on 30 August 1977, in response to another request from the Minister. It was not until May 1979, after the Committee's inquiry had commenced, that the Authority agreed to provide the Minister with copies of the minutes on a regular basis, and monthly cash flow statements.\*

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\* Minutes of Evidence, p.175 and Minutes of the Authority, Committee File 1978/2

9.4 Section 29(a) of the Authority's Ordinance states that the Authority should provide the Minister with such information as he requires. It is at the Minister's discretion to decide what use will be made of the information provided or the degree to which he will seek his Department's advice, and no doubt the extent to which it has been done has varied with each successive Minister.

9.5 The Committee asked the Department to provide a statement setting out its responsibilities to the Minister in respect of the Canberra Commercial Development Authority. The Department responded:

"In relation to the Canberra Commercial Development Authority, the Department of the Capital Territory has proffered advice to Ministers on matters in which the Minister has a specific responsibility and on matters of a more general nature.

The Department's role in providing advice to the Minister has been determined by reference to the following:

- the Department has no statutory relationship with the Authority;
- there may be certain matters on which the Minister may not seek advice from the Department;
- the Auditor-General, as the auditor appointed by the Minister for Finance, has specific responsibilities in reporting upon the operations of the Authority;
- the Authority has a direct relationship with the Public Service Board on staffing matters;
- having regard to the nature of the Authority as a commercial trading body in direct competition with the private sector, the degree of departmental involvement and interference in the management of the Authority should be minimised except where overriding public interest factors are involved.

Apart from the above specific responsibilities which are interwoven with those of the Department, the Minister would seem to have an overriding responsibility in relation to the Canberra Commercial Development Authority, and other statutory authorities. Whilst the role of the Minister is not clearly laid down, it would seem to be tempered by the following;

- the establishment of a statutory authority to conduct a business undertaking implies an intention that the Authority should enjoy a measure of freedom from political direction and control;

- because of the need to promote business efficiency and flexibility, the degree of Ministerial accountability in respect of a statutory authority is less than that in respect of a Department of State;
- Ministerial control over a statutory authority should be restricted to matters of general policy and principle, and should not extend to the details of management.

It is generally accepted practice that the Minister is entitled to look to his Department for advice on the exercise of reserve powers in relation to statutory authorities in his portfolio (RCAGA paragraph 4.4.23)."

9.6 The Committee had hoped for a statement which would have been more informative on actual practice. The Committee does not dispute theory or accepted practice, but was concerned whether and how the Department maintained access to the Authority and its operations so that it would be in position to proffer advice if the Minister sought it. While the Department has no statutory responsibilities in respect of the Authority, it has certain practical responsibilities to maintain close liaison so that it can function properly in advising the Minister.

9.7 The Minister is empowered to assess the profitability of the Authority for an appropriate return to the Government, and is responsible for certifying borrowings. If the Department is to be in a position to advise the Minister then it needs to have a continual flow of information on the Authority's finances. While the Department has no legal power to require such information directly from the Authority, it appears to the Committee that it has no wish to monitor the Authority's operations in order to keep its Minister informed. The Department is dependent firstly upon the degree to which the Minister will seek and make information available and secondly upon the compliance and willingness of the Authority to co-operate.

9.8 The Committee noted several examples of requests from the Minister that certain practices be followed. The Authority's minutes of a meeting on 24 October 1977 record that it received a letter from the Minister querying the permanent staffing structure of the Authority, and the Authority's response that the matter was still undecided. At the same meeting it was resolved that the permanent staffing structure be determined as soon as possible so that Public Service Board approval could be sought, yet in January 1980 the Authority had still not sought approval to a common set of terms and conditions of employment.

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\* Letter of 7 August 1979 from the Secretary, Department of the Capital Territory to the Secretary Public Accounts Committee, Committee File 1978/2

9.9 At another meeting on 25 May 1977, a letter dated 20 April 1977 from the Minister was tabled, without indication of the tenor of a reply. The minutes record that the Minister asked:

"that the Authority use ACT professional and technical resources where applicable."

9.10 The Committee noted that in response to a similar request from the ACT Law Society the minutes of the meeting of 24 October 1977 record a resolution that the Acting Chairman should reply pointing out:

- "a) that stimulating the economy of the ACT is not an objective of the Authority; and
- b) the Authority's choice of Solicitors was based on proven ability and experience in the particular activity."

9.11 Whatever the wisdom of such a reply, the final choice of consultants rested with the Authority. Since the Minister's letter of 20 April, 1977, the Authority has employed other consultants making its selection from Sydney-based firms.

#### Conclusions

9.12 The Committee's experience with the Canberra Commercial Development Authority clearly demonstrates there are major difficulties for Ministers and Departments in monitoring authorities' practices and ensuring they adhere to government policies and their enabling legislation. In the case of the CCDA the factors which combined to bring about the current situation were:

- it has considerable independence under its Ordinance, but has not demonstrated willingness to observe its provisions;
- the Department's capacity to advise the Minister is restricted by customary practice and its access to information;
- the Minister's power to seek information and the use he makes of it is limited by the advice he can receive or chooses to seek;
- the Minister's power to directly intervene is limited, short of recommending removal of the board members of the Authority.

9.13 The Committee considers that, as the Ministers' principal advisor on matters pertaining to his portfolio the Department of Capital Territory adopted a less than responsible attitude in not keeping itself well informed of the affairs of the Authority. The Authority was established by Ordinance and receives limited scrutiny by Parliament; it was an experiment, a pioneering effort in a specialised field; it was, and is very controversial; and it has been the subject of continued unfavourable comment by its appointed auditor, the Auditor-General. All of these factors should have made the Department aware of potential difficulties. Instead it chose to stand back from providing hard advice to the Minister and in so doing condoned the Authority's actions.

9.14 The Committee recommends that more effective control by the Minister over the Authority's affairs be effected by amending its ordinance to permit the appointment of the Permanent Head of the Department of the Capital Territory, or his departmental nominee, as a permanent member of the Authority.

9.15 At the conclusion of the current period of office of members of the CCDA, the Minister should consider restructuring the Authority and those who were subject to criticism in this report not be reappointed.



## CHAPTER 10

### CONFLICT OF INTEREST OF AUTHORITY MEMBERS

#### Background

10.1 In response to a question of whether he was aware of the letting of any contract which could have been in the interest of any members of the Authority Mr Pead said:

"I think I could categorically say no to that."\*

10.2 During the course of its inquiry the Committee later found that:

- The Authority had made a payment of \$1800 to Mr. A. Byrne, an Authority member, for services rendered as a consultant.
- The Authority had retained the services of Mangaroo Pty Ltd, a company owned by the family of David Elsworth, the Deputy Chairman of the Authority, and chaired in an executive capacity by Mr. Elsworth himself.

#### Payment to E. Byrne

10.3 In a letter of 18 May 1979 to the Authority, the Chief Auditor of the ACT drew attention to payments to Mr E. Byrne and Mr Elsworth made during the period August/December 1979 and invited the Authority's comment. At that time the remuneration specified in the Remuneration Ordinance 1976 was as follows:

	<u>Full Day</u>	<u>Less than 3 hours</u>
• Sitting Fee - Chairman	\$90	\$45
• - Member	\$72	\$36
Plus		
• Engaged in } - Chairman	\$90	\$45
Authority } - Member	\$72	\$36
business }		
Plus		
• Travelling Allowance	\$49	per day

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\* Minutes of Evidence pp.4,5

10.4 However, Mr. Byrne was paid \$300 per day for 6 days between 2 September and 31 October 1978, during which he was engaged on Authority business.\*

10.5 The General Manager of the Authority, told the Committee that:

"Mr. Byrne was originally appointed as an alternative member of the Authority during the absence overseas of Mr. Keehn. One of the reasons for the appointment of Mr. Byrne was his undoubted expertise in retail marketing and promotions. During his time on the Board he formed and chaired a promotions committee which was to set out the basic marketing policies of the Authority. When Mr. Keehn returned from overseas there were certain unfinished programs for this group and it was agreed by the Authority that in the interests of concluding that unfinished work Mr. Byrne would be engaged on a consulting basis. Before it was finally concluded Mr. Byrne was reappointed to the Board in his own right as a permanent member so this applied only for an interim period."\*\*

#### Conclusions

10.6 The Committee accepts that this is a reasonable basis for payment to Mr. Byrne for his services while he was not a member, and has noted that the amount paid to him was reduced following a further exchange of correspondence between the Authority and the Chief Auditor.\*\*\*

#### Payments to Mangaroo Pty Ltd

10.7 The Authority also paid a total of \$41,000 to Mangaroo Pty Ltd a company owned by the family of Mr. David Elsworth, the Deputy Chairman of the Authority. Mr. Elsworth is the Executive Chairman of Mangaroo Pty Ltd and personally carries out the work of the company. This work took the form of providing management services to the Authority, initially during a period when the Authority's Executive Director was overseas and then later for specialist tasks. Altogether, the Authority has used Mangaroo's services on seven occasions between August 1978 and June 1979, at a fee of \$300 per day.

10.8 The Committee queried whether these services provided by Mr. Elsworth on behalf of Mangaroo were exceptional to the normal expertise and services that he could be expected to provide in his capacity as Deputy Chairman of the Authority. In response, the Authority

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\* CCDA Board Minutes 31.10.78, Item 3.

\*\* Minutes of Evidence, p.215

\*\*\* Letters of 12 June and 3 October 1979 from the General Manager CCDA to the Chief Auditor, ACT. Letter of 30 August 1979 from the Chief Auditor ACT to the General Manager CCDA.

advised the actual expertise provided by Mr. Elsworth was the same (i.e. retail development experience) as that which prompted his appointment as Deputy Chairman. His services, however, were provided "almost on a continuing basis for an extended period of time."\*

10.9 Mr. Elsworth later said that although Mangaroo is not a well-known firm he has provided consultant services to other companies, and that his normal charge was \$400 per day.

10.10 He explained that as Deputy Chairman of the Authority he makes policy decisions but that as consultant he provided specialist executive skills which were not otherwise available to the Authority. This included preparation of long term cash flow projections and management reports and negotiations with major tenants. Mr. Elsworth and the Authority maintained that it was accepted commercial practice for companies to retain consulting firms in which their directors may have an interest.

#### Conclusions

10.11 The Committee concedes that this practice is generally accepted in commercial circles, but queries whether in such cases the director of the company concerned is also the actual person who directly provides the services. In the Committee's experience where individuals are directors of several companies, and a director's company may be retained, it is not normal for the director himself to be personally involved in the actual performance of the work.

10.12 The Committee noted that section 9 of the Ordinance was observed and that Mr. Elsworth declared his interest in Mangaroo and did not vote on its appointment. Mr. Elsworth also informed the Minister and the Secretary for the Department of the Capital Territory of Mangaroo being retained and was advised in writing that there was no legal objection to Mangaroo's appointment.\*\*

10.13 On this basis, the Committee is satisfied that no impropriety attaches to the use of Mangaroo by the Authority.

10.14 However, it believes that there were very strong practical and ethical reasons against Mr. Elsworth's remaining as Deputy Chairman while he was simultaneously providing consultant services to the Authority on behalf of Mangaroo.

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\* Minutes of Evidence pp.217,251-260

\*\* Minutes of Evidence pp.217-218 and undated letter from Secretary, Department of the Capital Territory to Mr. D.L. Elsworth.

10.15 On a practical basis, the Authority has left itself open to undesirable rumour and speculation, understandable because the general public does not have all the facts at its command, and sees only that a company 'owned' by the Deputy Chairman is receiving considerable amounts of money from the Authority. No Commonwealth Authority should allow itself to be put in a position where it can afford to court such speculation.

10.16 On an ethical basis, there is still potential for a conflict of interest to occur. This was recognised in 1976, when the then Minister for the Capital Territory advised Mr. Elsworth that the tender of E.A. Watts Pty Ltd for construction of the Mall, would not be considered while Mr. Elsworth remained on the Board of E.A. Watts.\* As a result, Mr. Elsworth resigned from the Authority and retained his position on E.A. Watts' Board. Mr. Elsworth was reappointed to the Authority after E.A. Watts' tender was rejected.

10.17 The Committee sees this principle as identical to the relationship to Mangaroo Pty Ltd, and considers that the same action should have been followed. If the services provided by Mangaroo were indispensable and unobtainable elsewhere, then Mr. Elsworth should not have retained his position as Deputy Chairman and member of the Canberra Commercial Development Authority during the period in which services were being provided by Mangaroo.

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\* Source: Minutes, pp. 251-252.

## CHAPTER 11

### FORM OF FINANCIAL STATEMENT

#### Background

11.1 Under section 24(1) of its ordinance "the Authority shall prepare and furnish to the Minister ... a report together with financial statements ... in such form as the Minister for Finance approves."

11.2 In his report of 29 April 1980 the Auditor-General criticised the Authority's 1977-78 financial statement in the following terms:

"Authority's accounting policy - In outlining the accounting policies adopted, the Authority stated that until the construction stage was completed, a statement of receipts and payments was the more appropriate format to reflect correctly the development expenditure and that it had adopted the principle of capitalising all expenditure net of any income up to 8 November 1978.

The effect of the above accounting policy is that the financial statement does not:

- distinguish between capital and revenue transactions;
- match income with related expenses;
- disclose the profit or loss derived during the year even though a significant area of the Belconnen Mall was opened on 28 February 1978; nor
- disclose the true cost of construction to the extent that the difference between income and related operating expenditure has been capitalised."

#### Capitalisation of Net Income

11.3 At the hearing of 19 April 1979 the Committee expressed its concern at the inordinate delay of the Authority in presenting to the Minister for the Capital Territory its 1977-78 financial statement. Mr Taylor\* for the Authority explained that a set of financial statements had been forwarded to the Auditor-General, while a copy had been also tabled at a meeting with representatives from the Departments of the Capital Territory and Finance, and the

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\* Minutes of Evidence p.34

Auditor-General's Office. However as explained by Mr Rose\* an observer from the Auditor-General's Office, the statements could not be approved by the Auditor-General until the Minister for Finance had approved the format.

11.4 The Department of Finance observer informed the Committee that a request for approval to the format had been received in March 1979.\*\* His Department had then sought further advice from the Auditor-General.

11.5 Mr Calderwood, Executive Director of the Authority, when questioned as to why the Authority had delayed until March 1979 in seeking the approval of the Minister for Finance to the format of its financial statement, argued that:

- . the Authority had initially assumed the approval for the year 1976-77 also covered subsequent years; and
- . there was a disagreement between the Authority and the Department of Finance over whether all expenditure net of income incurred during the period 28 February to 30 June 1978 should be capitalised. \*\*\*

11.6 The Committee sought further advice from the Authority and the Department of Finance on the second matter, particularly the practice followed by similar Statutory Authorities.

11.7 In a letter dated 8 June 1979 the Department of Finance advised that the Pipeline Authority, which is responsible for the construction and operation of the Moomba-Sydney natural gas pipeline, including a number of branch lines, was the only recent example of an Authority similar to the CCDA. The Department stated that the income earned by and expenses attributable to the operation of the Moomba-Sydney pipeline have been included in the Pipeline Authority's profit and loss statements since December 1976 when the pipeline was completed. Payments in respect of the branch lines have been and will continue to be capitalised until such time as each branch line is completed and operations commence.

11.8 The Department of Finance also considered that while it was useful to draw analogies with other bodies of a similar nature such as the Pipeline Authority in deciding the form of a particular set of financial statements, the overriding consideration was whether or not the proposed statements met the information needs of potential users. In this regard the Department of Finance considered it was desirable for the Authority to report on its trading activities from the earliest opportunity for the following reasons:

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\* Minutes of Evidence p.35

\*\* Minutes of Evidence p.35

\*\*\* Minutes pp.36,37

- . Parliament should be fully informed of the net worth and profitability of the Authority;
- . because of the small capital base of the Authority (\$1m in Commonwealth equity compared to \$40m in public borrowings) it was important the Authority should keep track of its profit performance from the earliest opportunity and to report this to its owners; and
- . to provide a satisfactory picture of the net worth of the Authority, financial statements ought to disclose fairly what that body owns and what it owes - the practice of capitalising certain costs could lead to the inclusion in the accounts of intangible items of conjectural value which could lead to an overstatement of net worth.

11.9 The Committee was also advised that, while the Department of Finance considered it was in the public's best interest for the Authority to report trading performance from the commencement of operations, the Department had reluctantly agreed, on the grounds of practical expediency, to recommend to the Minister for Finance the 1977-78 accounts provide for the capitalisation of net operating results up to 30 June 1978 for the following reasons:

- . the decrease in usefulness of financial statements with the passage of time
- . the small amount of revenue involved, approximately 7% of anticipated annual rentals
- . to afford the Authority an opportunity to concentrate its efforts on the production of trading statements for 1978-79.

11.10 In a supplementary submission, the Authority contended that under its ordinance it was required to keep accounts and records

"in accordance with the accounting principles generally accepted in commercial practice".\*

11.11 The Authority maintained that the normal commercial practice of property developers was to capitalise net expenses during an establishment period until the property became income earning. In the case of rental and similar developments by commercial operators this frequently extended for a considerable time after completion of the building until reasonable income rates were achieved, the degree of capitalisation and the period involved being a matter for the commercial judgement of directors.

11.12 The Authority further contended that not only was this its preferred method, but was in fact the required method under section 23 of its Ordinance.

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\* Committee File 1978/2

11.13 The Authority also stated:

- information on whether or not its capital was being maintained is clearly contained in its balance sheet where, inter alia, the amount of net operating, administrative, and financial cost capitalised for the period involved is shown as a specific and separate item.
- the degree of risk to which the Commonwealth Government, as guarantor, is exposed is not affected by the decision to capitalise operating results for a limited period and for 1978/79 total trading results could be ascertained by combining the trading results capitalised and the results for the balance of the period as disclosed in the Profit and Loss Account.
- a misleading view of the Authority's profit performance could easily be given if it was judged on the capacity of the income earned by the partially opened section (capital value \$8m) to carry the interest burden and overhead expenses of the total capital expenditure to that time of approximately \$20 to \$25 million.

11.14 It appears to the Committee the Authority is unaware of the statutory constraints on "commercial practice". The Authority asserts that the degree of capitalisation and associated disclosure are matters for the "commercial judgement of directors". This suggests that "commercial practices" are seen largely as a matter of what the management of the Authority require. In fact the room for exercising managerial discretion when reporting what has happened is clearly limited not only by company law but also by section 24(1) of its Ordinance.

11.15 While the "Uniform" Companies Acts clearly places responsibility for the preparation of accounts with directors, they also require these accounts give a "true and fair view" (Section.162) and require directors to "ascertain whether any non-current asset is shown in the books at an amount ... that it would have been reasonable for the company to spend to acquire that asset at the end of the financial year" (Section. 162 (7)(C)). Directors are therefore under a clear obligation not to overstate assets whether tangible or intangible.

11.16 The Committee also examined the Authority's 1977/78 annual report to see, if as the Authority claimed, the net operating, administrative and financial costs capitalised, were shown as a specific and separate item, but was unable to find any such item. While it may well be the Authority's intention to disclose such information in its 1978/79 annual report, in the Committee's experience, compliance to such undertakings is sometimes only achieved by direction.



11.17 The Committee considers even if it will be possible to ascertain total 1978/79 operating results by combining the trading results capitalised and the results for the balance of the period as disclosed in the Profit and Loss Account, this still will not overcome the basic problem whereby the Authority's financial statements will not show the true cost of construction. Furthermore the Committee believes the Authority should have more consideration for the reader of its annual statement.

11.18 Finally, the Committee does not accept the Authority is justified in capitalising all expenditure net of income merely, as it appears to the Committee, to avoid potential criticism of its profit performance. The Committee would not expect a commercial enterprise of this nature to be profit earning immediately after commencing operations. On the other hand the first operating year of most commercial enterprises tends to be the most critical, and it is therefore of the utmost importance for full and frank disclosure in order that any necessary remedial action may be taken at an early stage.

11.19 The Committee believes the following evidence presented in 1979 by Professor R.C. Olson, President of the Australian Institute of Management, to the Joint Committee on Publications Inquiry into the Annual Reports of Commonwealth Departments and Statutory Authorities is most appropriate:

"I honestly think that in this country both public and private enterprise have been too restrictive in releasing information. I often hear statements that people do not want to let their competitors know this that or the other about them. It is an interesting thing that the very people who do know about your business are your competitors because it is their business to find out. So who are we hiding it from".

#### Financial Statement 1978-79

11.20 In relation to the year 1978-79 the Minister for Finance approved the form of the Authority's financial statement on 9 November 1979. Yet 10 months later the Authority had still not published its accounts for that period.

11.21 Besides its disagreement over capitalisation of net expenditure, the Authority disagreed on a number of other matters all of which have been resolved except the amount of detail required to support the item Note 11 - General and Administrative Expenses. The Authority has informed the Committee that:

this item includes its contributions to the Mall promotion fund and the advertising/promotions budget of any shopping centre is generally one of the most closely guarded commercial secrets; and

- as the proportion of the Authority's contribution to tenants' contributions is set out in lease documents, details of which are available from the Registrar General, the divulging of the Authority's contribution will enable the total to be readily ascertained.

11.22 An examination of Note 11 of the form of accounts as approved by the Minister for Finance, a copy of which has been reproduced at Appendix 4, indicates there is no specific requirement for the Authority to publish such a figure. While the Miscellaneous category at Note 11 could be expected to include the Authority's promotion contribution it is not the same as publishing total expenditure. In this regard the Committee is once more cognisant of Professor Olsen's statement and does not doubt the Authority's competitors could make an educated guess as to the approximate amount included in General and Administrative Expenses for promotion. The Committee believes that the information required to be disclosed is consistent with "commercial practice" - and this the Authority does not dispute - and accordingly does not support the Authority's position.

### Conclusions

11.23 The Committee considers the Department of Finance's view that the Authority's accounts should clearly show total revenue for the accounting period 1978-79 is not inconsistent with section 23 of the CCDA Ordinance.

11.24 The Committee cannot determine conclusively whether or not the normal commercial practice of developers is to capitalise all expenditure net of income until such time as a building is reasonably or fully occupied. Even if this was the normal practice the Committee is of the view that the format of the accounts of comparable publicly listed developers are not wholly relevant as they tend towards minimal disclosure of operational results.

11.25 In the Committee's view it is incumbent on a Statutory Authority, particularly one engaged in a commercial undertaking and the recipient of Commonwealth Government benefits to adopt a high standard of disclosure. If such a high standard could be shown to be to the detriment of the Authority, then a case could perhaps be made for following practices which have been adopted by private enterprise developers. However the Authority has been unable to demonstrate to the Committee in what manner inclusion of revenue earned during the period 1 July to 8 November 1978 in its Profit and Loss Account would be to its commercial disadvantage.

11.26 The Committee also noted the practice followed by the Pipeline Authority (and others such as the Snowy Mountains Hydro-Electric Authority) of including revenue in its Profit and Loss Account as soon as each stage of its operations was completed and earning revenue.

11.27 The Committee understands a substantial amount of revenue was earned during the period 1 July to 8 November 1978. In July 1978 the Mall was about 50% occupied being fully occupied by November 1978. Revenues earned in that period, therefore, could have been as high as 25% of annual revenues.

11.28 Accordingly the Committee is of the view that all revenue earned during the period 1 July to 8 November 1978 should be included in the Profit and Loss Account. In relation to the period 18 February to 30 June 1978 the Committee notes that the Department of Finance reluctantly agreed to recommend approval of the Authority's accounts resulting in the capitalisation of net expenditure incurred during that period. The Committee does not approve of the practice adopted and considers the Authority should have, as initially requested by the Department of Finance, published such revenue in a Profit and Loss Statement.

11.29 In relation to the 1978/79 annual report the Committee is disturbed that the Authority has not at the date of this report published its financial statements although the form of its accounts was approved on 9 November 1979.

11.30 The Committee notes the Senate Standing Committee on Finance and Government Operations in its report of January 1980\* recommended that the following time limits should be imposed by an Annual Reports Act to ensure satisfactory accountability in the presentation by Statutory Authorities of Annual Reports to Parliament.

- . for Business Authorities - 6 months after end of financial year;
- . for other Authorities - 9 months after end of financial year.

11.31 Where these limits cannot be complied with the Committee recommended an interim report should be presented containing an explanation for the delay and informal financial statements.

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\* Statutory Authorities of the Commonwealth, Third Report, Senate Standing Committee on Finance and Government operations, 1978-79, January 1980, Parliamentary Paper No. 1980/2

11.32 The Committee does not accept the Authority's contentions concerning the information to be included in its financial statements. The Committee agrees the Authority should keep accounts in accordance with generally accepted commercial practice (section 23). It does not however see section 23 as being incompatible with section 24(1) which requires the Authority to prepare financial statements "... in such a form as the Minister for Finance approves". If the Minister for Finance were to require the disclosure of information which was clearly of advantage to the Authority's competitors and not in accordance with commercial practice, then the Authority could have a valid case. However in the opinion of the Committee the information which the Department of Finance has requested should be disclosed has not been shown to be either to the commercial disadvantage of the Authority or not in accordance with generally accepted commercial practice.

11.33 The Committee finds the reasons for the Authority's failure to publish its report as a further example of its tendency to ignore its Ordinance and demands that it publish its annual report forthwith.

## CHAPTER 12

### FURTHER REFERENCES BY THE AUDITOR-GENERAL

#### Background

12.1 In his report of 29 April 1980, the Auditor-General commented upon other aspects of the Authority's 1977-78 accounts in the following terms:

. Terms and Conditions of Employment:

Salaries and allowances for certain staff had been paid without the approval of, or in excess of terms and conditions approved by, the Public Service Board under section 17(2) of the Ordinance

. Bank Accounts:

The Authority's bank accounts were overdrawn during 1977-78 on a number of occasions without the approval of the Treasurer required by section 20(1) of the Ordinance

. Approved Form of Finance Statements:

The Authority has not disclosed details of operating and administrative expenses in the notes to the statements as required by the determination of the Minister for Finance

. Authority's Accounting Policy:

In outlining the accounting policies adopted, the Authority stated that until the construction stage was completed, a statement of receipts and payments was the more appropriate format to reflect correctly the development expenditure and that it had adopted the principle of capitalising all expenditure net of any income up to 8 November 1978. The effect of the above accounting policy is that the financial statements do not:

- distinguish between capital and revenue transactions
- match income with related expenses
- disclose the profit or loss derived during the year even though a significant area of the Belconnen Mall was opened on 28 February 1978

- disclose the true cost of construction to the extent that the difference between income and related operating expenditure has been capitalised

### Conclusions

12.2 In order to avoid further delay in the publication of this report, the Committee has not sought additional submissions on the above matters, some of which have been discussed earlier in this report. However, the Committee has decided to monitor the Authority's performance and may examine these aspects at a later date.

12.3 The Committee notes with concern that matters raised in the Auditor-General's report on the Authority's 1976-77 accounts (with which this report is mainly concerned) appear to have been repeated in 1977-78. The Committee, for example, notes the Auditor-General's comments that salaries and allowances had been paid without the approval of, or in excess of terms and conditions approved by, the Public Service Board under Section 17(2) of its Ordinance. The Committee is most disturbed that despite the fact that the Authority's attention was drawn to this non-compliance in the 1976-77 Auditor-General's report, it should continue the same policies.

DUTIES OF JOINT PARLIAMENTARY PUBLIC ACCOUNTS COMMITTEE

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

8(1) Subject to sub-section (2), the duties of the Committee are:

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

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

- "(2) The duties of the Committee do not extend to -
- (a) an examination of the financial affairs of the Northern Territory or of the Administration of an External Territory (including the financial affairs of the Administration of an External Territory) contained in any of the accounts and financial statements referred to in paragraph (a) of sub-section (1); or

- (b) an examination of a report of the Auditor-General that relates to, or insofar as it relates to -
- (i) the financial affairs of the Northern Territory or of the Administration of an External Territory (including the financial affairs of the Administration of an External Territory) contained in any of the accounts and financial statements referred to in paragraph (a) of sub-section (1); or
  - (ii) the results of an efficiency audit of operations of the Administration of an External Territory.
- "(3) For the purpose of this section, an authority of the Commonwealth to which this Act applies is -
- (a) a body corporate or an unincorporated body established for a public purpose by, or in accordance with the provisions of, an enactment, not being an inter-governmental body;
  - (b) a body established by the Governor-General or by a Minister otherwise than in accordance with an enactment; or
  - (c) an incorporated company over which the Commonwealth is in a position to exercise control.
- "(4) Where the parties to an agreement relating to the establishment of an inter-governmental body consent to the examination, by the committee, of the financial affairs of that body, the Minister shall notify the fact that they have so consented in the Gazette and the body shall thereupon become an inter-governmental body to which this Act applies.
- "(5) Where a party to an agreement relating to the establishment of an inter-governmental body (being an inter-governmental body which, by virtue of sub-section (4), is an inter-governmental body to which this Act applies) withdraws its consent to the examination, by the Committee of the financial affairs of that body, the Minister shall notify the fact that that party has withdrawn its consent in the Gazette and the body shall thereupon cease to be an inter-governmental body to which this Act applies.



- "(6) In this section unless the contrary intention appears - 'enactment' means -
- (a) an Act;
  - (b) an Ordinance of the Australian Capital Territory; or
  - (c) an instrument (including rules, regulations or by-laws) made under such an Ordinance;

'inter-governmental body' means a body corporate or an unincorporated body established by, or in accordance with the provisions of, an agreement between the Commonwealth and a State or States or between the Commonwealth and the government of another country or the governments of other countries;

'State,' includes the Northern Territory."

COPY OF DEPARTMENT OF CAPITAL TERRITORY INTERNAL MEMORANDUM

Mr P. O'Clery  
A/g Assistant Secretary  
Land Marketing

I note that the Authority has advertised recently for people to fill positions of Shopping Centre Manager, Construction Administration and Accountant. The Public Service Board has advised the Department that under the Ordinance establishing the Authority terms and conditions of persons employed by the Authority are subject to the approval of the PSB. I presume that the Authority is taking appropriate action.

J.A. Turner  
Assistant Secretary  
E&ADP  
5.11.76

REPRODUCTION OF OPINION BY ACTING DEPUTY CROWN SOLICITOR

5 July 1978

The Executive Director  
Canberra Commercial Development Trust  
P.O. Box 78  
Jamison Centre ACT 2614

Attention : Mr H.G. Calderwood

Dear Sir,

Canberra Commercial Development Authority Ordinance  
1974 - Payments Made to Members of Staff

"1. I refer to your letter dated 12 June 1978 with which you enclosed copies of a letter dated 26 May 1978 from the Auditor-General's office to the Authority and the Authority's reply of the same date. You seek my advice on the following questions raised by the Auditor-General's office:-

- (1) Are payments to staff, made prior to approval by the Public Service Board of the terms and conditions of their employment, made in accordance with the Canberra Community Development Authority Ordinance?
- (11) If not, does the approval of the Public Service Board of terms and conditions of employment have the effect of regularising payments made to staff prior to the date of approval?

"2. My short answers to these questions, for the reasons that appear below, are as follows:-

- (1) No.
- (11) No.

"3. For the purpose of carrying out its functions under the Ordinance the Authority has employed a number of persons either under contract of service or as temporary employees. With the exception of the Executive Director and two steno-secretaries Grade 11 these persons seem to have been employed without the approval by the Public Service Board of the terms and

conditions of their employment. This approval is required under section 17(2) of the Ordinance and the power of the Authority to employ staff under section 17(1) is qualified by section 17(2). I consider that the employment of persons on terms and conditions not approved by the Board is a breach of the Ordinance.

- "4. The Authority is authorised by section 22 to make certain payments, including the payment of remuneration and allowances payable to members and employees of the Authority (Section 22(1)(b)). I do not think that, in the absence of Public Service Board approval, that remuneration and allowances are properly payable under this subsection. I doubt also that payments are authorised under section 22(1)(c) as this subsection refers to 'making payment in accordance with this Ordinance'. The payments are certainly a discharge of obligations incurred by the Authority (section 22(1)(a)) although it is arguable the Authority has no power to enter into such obligations without the consent of the Public Service Board. There is no doubt that the payments are not recoverable, even if the obligations were incurred other than in accordance with the Ordinance as the payments were made under a mistake of law.
- "5. By its letter dated 31 March 1978 the Public Service Board did not raise any objection to the terms and conditions of employment of certain persons and this letter, in my opinion is an approval of the employment of those persons from that date. Consequently any payment made to those persons after the date of approval is made in accordance with the Ordinance. I note that the Authority in its letter of 7 March 1978 sought approval of its actions to date. The Board's reply of 'does not wish to raise any objection' could be construed as such approval. Section 17(c) of the Ordinance provides however 'the terms and conditions ... shall be' and I am not able to give a retrospective construction to the section. Consequently I am of the opinion that payments made after 31 March 1978 to persons employed under section 17(1) and approved by the Board in accordance with section 17(2) are made in accordance with the ordinance whereas payments made before that date to persons other than the Executive-Director and two steno-secretaries are not.

- "6. I have noted the contention of the Authority that it is required by section 16, to 'carry out its functions, in accordance with the principles of sound commercial practice'. This section must be read in conjunction with section 17(2) with which it is not, in law, incompatible.(sic)
- "7. Since persons have been employed and payments made, other than in accordance with the Ordinance, the Auditor-General, who is, I assume, the auditor referred to in section 24(2) of the Ordinance, has a duty to report to the minister that moneys have been expended other than in accordance with the Ordinance. The auditor might be inclined to note that although the payments were not made in accordance with the Ordinance, there seems little doubt that had applications been made to the Board before the payments were made the terms and conditions of employment would have been approved and the payments would then have been in accordance with the Ordinance."

Yours faithfully

(A.F. Hiscock)  
Acting Deputy Crown  
Solicitor (ACT)

FORM OF ACCOUNTS

CANBERRA COMMERCIAL DEVELOPMENT AUTHORITY

CANBERRA COMMERCIAL DEVELOPMENT AUTHORITY ORDINANCE 1974

I, Anthony Stuart Blunn, First Assistant Secretary, Defence and Work Division, Department of Finance, do hereby certify that, pursuant to the powers conferred by Section 24(1) of the Canberra Commercial Development Authority Ordinance 1974, the Minister for Finance approved, on 5 November 1979, the attached form of financial statements for the Canberra Commercial Development Authority for the 1978-79 financial year and subsequent financial years.

Dated this 9th day of November 1979

A.S. Blunn

CANBERRA COMMERCIAL DEVELOPMENT AUTHORITY  
BALANCE SHEET AS AT 30 JUNE 197-

	NOTES	CURRENT YEAR	PREVIOUS YEAR
		\$	\$
<b>AUTHORITY'S FUNDS</b>			
Capital Provided by Commonwealth Reserves - (specify)	2	xx xx	xx xx
Unappropriated profits/(Accumulated losses)		<u>xx</u>	<u>xx</u>
		<u>xx</u>	<u>xx</u>
These funds are represented by:			
<b>NON-CURRENT ASSETS</b>			
Belconnen Mall - Project Development Costs	3	xx	xx
Fixed Assets	4		
Office Furniture		xx	xx
Equipment		xx	xx
Plant and Motor Vehicles		xx	xx
(Other headings as required)		<u>xx</u>	<u>xx</u>
		<u>xx</u>	<u>xx</u>
<b>CURRENT ASSETS</b>			
Cash on hand and at bank		xx	xx
Mall debtors	5	xx	xx
Pre-paid expenses		xx	xx
Sundry debtors and accruals		xx	xx
Investments	6		
Bank interest bearing deposits		xx	xx
Bank bills		xx	xx
Short term deposits		xx	xx
(Other headings as required)		<u>xx</u>	<u>xx</u>
		<u>xx</u>	<u>xx</u>
<b>TOTAL ASSETS</b>			
<b>LESS: CURRENT LIABILITIES</b>			
Sundry creditors and accruals		xx	xx
Tenants deposits including security bonds		xx	xx
Retention moneys		xx	xx
Provisions			
Holiday and sick pay		xx	xx
Deferred payment to Construction Manager	7	xx	xx
Long service Leave		xx	xx
Taxation	8	xx	xx
(Other headings as required)		<u>xx</u>	<u>xx</u>
		xx	xx
<b>LESS: NON-CURRENT LIABILITIES</b>			
Private Loan(s)	9	xx	xx
Public Loan(s)		xx	xx
(Other headings as required)		<u>xx</u>	<u>xx</u>
<b>TOTAL LIABILITIES</b>		<u>xx</u>	<u>xx</u>
<b>NET ASSETS</b>		<u>xx</u>	<u>xx</u>

CANBERRA COMMERCIAL DEVELOPMENT AUTHORITY  
 PROFIT AND LOSS STATEMENT FOR YEAR ENDED 30 JUNE 197-

	NOTES	CURRENT YEAR	PREVIOUS YEAR
		\$	\$
<b>REVENUE</b>			
Rent and associated revenue		xx	xx
Interest		xx	xx
Other revenue (specify)	10	xx	xx
<b>TOTAL REVENUE</b>		<u>xx</u>	<u>xx</u>
<b>EXPENSES</b>			
Wages, salaries, employee benefits		xx	xx
Debt servicing charges		xx	xx
Lease rental - Mall site		xx	xx
Rates		xx	xx
General and administrative expenses 11		xx	xx
Insurance and security		xx	xx
Repairs and maintenance		xx	xx
Depreciation		xx	xx
Other (specify)		<u>xx</u>	<u>xx</u>
<b>TOTAL EXPENSES</b>		<u>xx</u>	<u>xx</u>
		xx	xx
<b>OPERATING PROFIT/(LOSS) BEFORE INCOME TAX</b>		xx	xx
Less Provision for income tax		<u>xx</u>	<u>xx</u>
<b>OPERATING PROFIT</b>		xx	xx
Extraordinary items (net of income tax) 12		<u>xx</u>	<u>xx</u>
<b>NET PROFIT (LOSS)</b>		xx	xx
Unappropriated Profits (Accumulated Losses) at 1.7.197-		<u>xx</u>	<u>xx</u>
<b>TOTAL UNAPPROPRIATED PROFITS (ACCUMULATED LOSSES)</b>		xx	xx
Transfer to Reserves (specify)		<u>xx</u>	<u>xx</u>
		xx	xx
<b>UNAPPROPRIATED PROFITS (ACCUMULATED LOSSES) AT 30.6.197-</b>		<u>xx</u>	<u>xx</u>



CANBERRA COMMERCIAL DEVELOPMENT AUTHORITY

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

(Suitably worded explanatory notes, cross referenced to the statements are to be provided in respect of items listed below. Notes containing quantitative data should include comparative figures for the previous period. Other notes may be added as necessary to achieve an appropriate level of disclosure and the sequence of notes varied accordingly).

NOTES

1. STATEMENT OF ACCOUNTING POLICIES

- indicating accounting policies that have been significant in preparing and presenting the statements.
- setting out any departures from full accrual accounting and the reasons for such departures. Departures from Accounting Standards should also be stated eg a decision not to depreciate buildings as required under DS 5.

2. CAPITAL PROVIDED BY COMMONWEALTH

- explaining nature of these funds.

3. BELCONNEN MALL - PROJECT DEVELOPMENT COSTS

- detailing composition of costs, including details of expenses capitalised during the period and amortisation applicable.

4. FIXED ASSETS

- indicating valuation basis of assets and depreciation policy adopted. Current year's provision for depreciation, accumulated depreciation and net book value of assets should be shown for each class of asset.

5. MALL DEBTORS

- indicating action taken to provide for doubtful debts, the level of any provision for doubtful debts and bad debts written off during the year.

6. INVESTMENTS

showing nature of investments and

(a) amount of cost or valuation

- (b) aggregate amount written off since acquisition or valuation
  - (c) written down value.
7. PROVISION FOR DEFERRED PAYMENT TO CONSTRUCTION MANAGER :
- detailing basis of provision and showing movements in provision during period.
8. PROVISION FOR INCOME TAX
- explaining principles adopted and giving details of movement in provision during period.
9. LOANS
- giving details separately for Public and Private Loans, and indicating those which are Commonwealth Government guaranteed.
  - include an estimate of maturity dates
    - (a) not later than two years
    - (b) later than two years but not later than five years; and
    - (c) later than five years
10. OTHER REVENUE
- disclosing all items falling into this category including
    - profit on sale of fixed assets                      xx
    - miscellaneous    xx
    - xx
11. GENERAL AND ADMINISTRATIVE EXPENSES
- disclosing all items falling into this category including:
 

audit fees	xx
Board sitting fees and other emoluments	xx
loss on sale of fixed assets	xx
provision for doubtful debts	
. Mall	xx
. Sundry	xx
Miscellaneous	xx
	xx
12. EXTRAORDINARY ITEMS
- giving details and setting out income tax effect.

13. LEASE WITH COMMONWEALTH GOVERNMENT

- giving details of arrangement covering land occupied by the Authority at Belconnen.

14. CAPITAL EXPENDITURE CONTRACTED FOR

- giving details of outstanding commitment

15. OTHER CONTINGENT LIABILITIES

- *stating general nature and so far as practicable the maximum amount, or an estimate of the maximum amount for which the Authority could become liable.*

16. DIRECTORS EMOLUMENTS

LIST OF WITNESSES AND OBSERVERSWitnesses

CALDERWOOD, H.D. ESQ	Executive Director Canberra Commercial Development Authority P.O. Box 78 Jamison Centre ACT 2614
ELSWORTH, D.L. ESQ	Deputy Chairman Canberra Commercial Development Authority P.O. Box 78 Jamison Centre ACT 2614
FRASER, G.J. ESQ	Director Policy and Legislation Dept of the Capital Territory CANBERRA ACT 2600
HAMILTON, C.S. ESQ	Director Programs and Budgets Dept of the Capital Territory CANBERRA ACT 2600
LALOR, D.R. ESQ	Assistant Secretary Finance and Supply Dept. of the Capital Territory CANBERRA ACT 2600
LANDER, D. ESQ	Acting First Assistant Secretary Legislation and Policy Co-ordination Division Dept of the Capital Territory CANBERRA ACT 2600
LAWRENCE, W.E. ESQ	Assistant Secretary Urban Affairs Dept of the Capital Territory CANBERRA ACT 2600
McGRATH, E.N., ESQ	First Assistant Secretary Management Services Dept. of the Capital Territory CANBERRA ACT 2600
McDONALD, C.W. ESQ	4 Spencer Street TURNER ACT 2601

O'CLERY, P.S. ESQ	Assistant Secretary Business Leases Dept of the Capital Territory CANBERRA ACT 2600
PARKER, E.J. ESQ	Former Employee Canberra commercial Development Authority P.O. Box 333 ELTHAM VIC 3095
PARSONS, D.D. ESQ	Former Employee Canberra Commercial Development Authority P.O. Box 333 ELTHAM VIC 3095
PEAD, J.R., MBE, MLA	Chairman Canberra Commercial Development Authority P.O. Box 78 Jamison Centre ACT 2614
ROBERTSON, H.A. MS.	27 Lyttleton Crescent COOK ACT 2614
TAYLOR, P.M. ESQ	General Manager Canberra Commercial Development Authority P.O. Box 78 Jamison Centre ACT 2614

Observers

ALFREDSON, R. ESQ	Auditor-General's Office
BARRITT-EYLES, D. ESQ	Public Service Board
BOWDEN, J. ESQ	Auditor-General's Office
CALLAN, D. ESQ	Public Service Board
CLARK, B. ESQ	Public Service Board
COOPER, P. ESQ	Auditor-General's Office
FINCH, A.M. ESQ	Department of Finance
HOPE, G. ESQ	Department of Finance
KOYMANS, M. ESQ	Department of the Treasury
MOREY, E. MS	Department of the Treasury

POPPLE, K. ESQ  
RAY, A. ESQ  
RITCHIE, R. Ms.  
ROSE, R. ESQ  
SWEENEY, R. ESQ

Department of the Treasury  
Department of Finance  
Department of Finance  
Auditor-General's Office  
Auditor-General's Office

# AUSTRALIAN CAPITAL TERRITORY

No. 40 of 1974

## AN ORDINANCE

To Establish the Canberra Commercial Development Authority.

I, THE GOVERNOR-GENERAL of Australia, acting with the advice of the Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1973*.

Dated this first day of October, 1974.

JOHN R. KERR  
Governor-General.

By His Excellency's Command,

GORDON M. BRYANT  
Minister of State for the Capital Territory.

### CANBERRA COMMERCIAL DEVELOPMENT AUTHORITY ORDINANCE 1974

#### PART I—PRELIMINARY

1. This Ordinance may be cited as the *Canberra Commercial Development Authority Ordinance 1974*.<sup>\*</sup> Short title.

2. In this Ordinance, unless the contrary intention appears— Definitions.

"approved bank" means a bank approved by the Treasurer for the purposes of the provision in which the expression occurs;

"Authority" means the Canberra Commercial Development Authority established by section 3;

"Chairman" means the Chairman of the Authority;

"Deputy Chairman" means the member holding office under sub-section 6 (1);

"lease" includes sub-lease;

"member" means—

(a) the Chairman; or

(b) a member of the Authority other than the Chairman;

"Public Service Board" means the Public Service Board constituted under the *Public Service Act 1922-1973*.

<sup>\*</sup> Notified in the *Australian Government Gazette* on 3 October 1974.  
10963/74—Recommended retail price 10c

PART II—THE CANBERRA COMMERCIAL DEVELOPMENT AUTHORITY

Establishment of Authority.

3. (1) There is hereby established a body to be known as the Canberra Commercial Development Authority.

(2) The Authority—

- (a) is a body corporate;
- (b) shall have a seal; and
- (c) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Authority affixed to a document and shall presume that it was duly affixed.

Membership of Authority.

4. (1) The Authority shall consist of—

- (a) the Chairman of the Authority; and
- (b) not less than 4 or more than 6 other members.

(2) Of the members other than the Chairman, one member shall be a member of the Legislative Assembly nominated, as occasion requires, by the Assembly.

(3) The members shall be appointed by the Governor-General.

(4) A member other than the member referred to in sub-section (2) holds office for such period, not exceeding 5 years, as is specified in the instrument of his appointment.

(5) The member referred to in sub-section (2) holds office until the first meeting of the Legislative Assembly held after the election of members of the Assembly next following his appointment as a member of the Authority.

(6) A member is eligible for re-appointment.

(7) The performance of the functions, or the exercise of the powers, of the Authority is not affected by reason of there being a vacancy or vacancies in the membership of the Authority.

Remuneration and allowances.

5. (1) A member shall be paid remuneration at such rate as is prescribed.

(2) A member shall be paid such allowances (not including an annual allowance) as are prescribed.

Deputy Chairman.

6. (1) The Authority shall appoint a member to be the Deputy Chairman of the Authority.

(2) The member appointed as Deputy Chairman holds office until the expiration of his term of office as a member that is current at the time of his appointment, but ceases to be the Deputy Chairman if he ceases to be a member or resigns his office of Deputy Chairman.

(3) The member appointed as Deputy Chairman may resign his office of Deputy Chairman by writing under his hand delivered to the Chairman or, if the office of Chairman is vacant or the Chairman is absent from the Territory, to the Minister.



(4) A member is eligible to be re-appointed as Deputy Chairman.

7. A member may resign his office of member by writing under his hand delivered to the Governor-General. Resignation of members.

8. (1) The Governor-General may remove a member from office on the ground of misbehaviour or physical or mental incapacity. Dismissal of members.

(2) If a member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) is absent without leave of the Authority from 3 consecutive meetings of the Authority; or
- (c) without reasonable excuse, fails to comply with his obligations under section 9,

the Governor-General shall remove him from office.

9. (1) A member who is directly or indirectly interested in a contract made or proposed to be made by the Authority, otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Authority. Disclosure of interests in contracts.

(2) A disclosure under sub-section (1) 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.

10. If the member referred to in sub-section 4 (2) ceases to hold office as a member of the Legislative Assembly, the Governor-General shall remove him from office as a member of the Authority. Vacation of office.

11. The Authority may grant leave of absence to a member upon such terms and conditions as the Authority determines. Leave of absence.

12. (1) Where a member is, or is expected to be, unable (whether on account of illness or otherwise) to attend meetings of the Authority, or a member has ceased to hold office before the expiration of his term of office, the Governor-General may appoint a person to act as a member during that inability or until a person is appointed to that office, and the person so appointed to act has all the powers and functions of a member. Acting appointments.

(2) The Governor-General may, at any time, terminate an appointment made under this section.

(3) The validity of an act or decision of the Authority shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment under this section had ceased to have effect.

(4) A person shall not be appointed under this section to act as the member referred to in sub-section 4 (2) unless he is a member of the Legislative Assembly.

Meetings of Authority.

13. (1) The Authority shall hold such meetings as are necessary for the performance of its functions but so that not more than 3 months elapse between any 2 successive meetings.

(2) The Chairman, or if for any reason the Chairman is not available, the Deputy Chairman—

- (a) may convene meetings of the Authority; and
- (b) shall, on receipt of a written request signed by 2 members, convene a meeting of the Authority.

(3) The Chairman and Deputy Chairman shall comply with any directions of the Authority with respect to the convening of meetings.

(4) The Chairman shall preside at all meetings of the Authority at which he is present.

(5) At a meeting of the Authority at which the Chairman is not present the Deputy Chairman shall preside.

(6) At a meeting of the Authority—

- (a) if the number of persons holding office as members is 7—4 members, of whom one is the Chairman or the Deputy Chairman, constitute a quorum; and
- (b) if the number of persons holding office as members is less than 7—3 members, of whom one is the Chairman or the Deputy Chairman, constitute a quorum.

(7) Questions arising at a meeting of the Authority shall be determined by a majority of the votes of the members present and voting.

(8) At a meeting of the Authority, the member presiding has a deliberative vote and, in the event of equality of votes, also has a casting vote.

#### PART III—FUNCTIONS, POWERS AND DUTIES OF THE AUTHORITY

Functions of Authority.

14. The functions of the Authority are—

- (a) to construct and conduct a shopping centre in the District of Belconnen;
- (b) to carry on such other undertakings related to that shopping centre as the Minister approves; and
- (c) to provide community facilities related to the conduct of that shopping centre.

15. (1) Subject to this Ordinance, the Authority has power to do all things necessary or convenient to be done for or in connexion with, or as incidental to, the performance of its functions under this Ordinance and, in particular, has power—

Powers of Authority.

- (a) to acquire, hold and dispose of real or personal property;
- (b) to enter into contracts;
- (c) to erect buildings;
- (d) to give security for the purpose of a borrowing by the Authority; and
- (e) to grant leases.

(2) The Authority shall not carry out, or join in carrying out, works on land other than land of which the Authority is the lessee, except with the permission in writing of the Minister.

16. It is the duty of the Authority to carry out its functions in accordance with the principles of sound commercial practice in so far as those principles are not inconsistent with the public interest.

Duties of Authority.

#### PART IV—STAFF

17. (1) The Authority may employ such persons as it thinks necessary for the purposes of this Ordinance.

Employment of staff.

(2) The terms and conditions of employment of persons employed under sub-section (1) shall be as determined by the Authority with the approval of the Public Service Board.

#### PART V—FINANCE

18. The capital of the Authority at any time is the sum of the amounts paid to the Authority by the Treasurer for the purpose of providing capital for the Authority, less the sum of any amounts of capital repaid to Australia by the Authority.

Capital of Authority.

19. (1) The Authority shall pay to Australia, out of the profits for a financial year, such amount as the Minister, in consultation with the Treasurer, determines.

Payments to Australia.

(2) The Authority shall repay the capital of the Authority to Australia at such times and in such amounts as the Minister, in consultation with the Treasurer, determines.

(3) In the making of a determination under sub-section (1) or sub-section (2), regard shall be had to any advice that the Authority has furnished to the Minister in relation to the financial affairs of the Authority.

20. (1) The Authority may, with the approval of the Treasurer, borrow moneys from time to time in such amounts as the Minister certifies are, in his opinion, necessary for the exercise of its powers or the performance of its duties or functions under this Ordinance.

Borrowing by the Authority.

(2) The Authority may borrow from Australia, at such rate of interest and on such other terms and conditions as the Treasurer determines, moneys that the Authority is authorized to borrow under subsection (1).

(3) The Authority may give security over the whole or any part of its assets for the repayment of amounts borrowed under this section and the payment of interest on amounts so borrowed.

(4) The Treasurer may, on behalf of Australia, guarantee the repayment by the Authority of amounts borrowed under this section otherwise than from Australia and the payment of interest on amounts so borrowed.

Bank  
accounts.

21. (1) The Authority may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

(2) The Authority shall pay all moneys of the Authority, including moneys borrowed by the Authority, into an account referred to in this section.

Application  
of moneys.

22. (1) The moneys of the Authority may be applied by the Authority—

(a) in payment or discharge of the costs, expenses or other obligations incurred by the Authority in connexion with the performance by the Authority of its functions under this Ordinance;

(b) in payment of remuneration and allowances payable to members and employees of the Authority; and

(c) in making payments in accordance with this Ordinance, but not otherwise.

(2) Moneys of the Authority not immediately required for the purposes of the Authority may be invested—

(a) on fixed deposit with an approved bank;

(b) in securities of Australia; or

(c) in any other manner approved by the Treasurer.

Proper  
accounts to  
be kept.

23. The Authority shall cause to be kept proper accounts and records of the transactions and affairs of the Authority in accordance with the accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Authority and over the incurring of liabilities by the Authority.

Annual  
report.

24. (1) The Authority shall, as soon as practicable after the end of each financial year, prepare and furnish to the Minister a report of the operations of the Authority during that year, together with financial statements in respect of that year in such form as the Treasurer approves.

(2) Before furnishing the financial statements to the Minister, the Authority shall submit them to an auditor appointed by the Treasurer who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with those accounts and records and show fairly the financial transactions and the state of affairs of the Authority;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Authority during the year have been in accordance with this Ordinance; and
- (d) as to such other matters arising out of the statements as the auditor considers should be reported to the Minister.

25. (1) The auditor referred to in sub-section 24 (2) shall inspect and audit the accounts and records of the financial transactions and affairs of the Authority and the records relating to assets of, or in the custody of, the Authority and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection that is, in the opinion of the auditor, of sufficient importance to justify his so doing. Audit.

(2) The auditor referred to in sub-section 24 (2) shall report to the Minister the results of the inspection and audit carried out under sub-section (1).

(3) The auditor referred to in sub-section 24 (2) is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Authority relating directly or indirectly to the receipt or payment of moneys by the Authority or to the acquisition, receipt, custody or disposal of assets by the Authority.

(4) The auditor may make copies of, or take extracts from, any such accounts, records, documents or papers.

(5) The auditor may require any person to furnish him with such information in the possession of the person or to which the person has access as the auditor considers necessary for the purposes of this section, and the person shall comply with the requirement.

(6) A person who contravenes sub-section (5) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

26. The Authority shall pursue a policy directed towards securing revenue sufficient to meet all its expenditure properly chargeable against revenue, and to permit the payment to Australia of a reasonable return on the capital of the Authority. Financial policy of Authority.

27. (1) For the purposes of this Ordinance, the profits of the Authority for a financial year are the amount (if any) remaining after deducting from the revenue received or receivable in respect of that financial year the expenditure, and provision for expenditure, properly chargeable against that revenue. Profits of Authority.

(2) The profits of the Authority for a financial year shall be applied in the first place in payment of the amount determined under sub-section 19 (1) and the balance (if any) shall be applied in such manner as the Minister, in consultation with the Treasurer, determines.

28. The Authority shall pay all rates, taxes and charges under any law of the Territory.

Liability of  
Authority  
to pay rates,  
&c.

PART VI—MISCELLANEOUS

29. The Authority shall—

Reports to  
Minister.

(a) from time to time inform the Minister concerning the general conduct of its operations; and

(b) furnish to the Minister such information relating to those operations as the Minister requires.

Regulations.

30. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters that are required or permitted by this Ordinance to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

MR PRESIDENT,

I PRESENT THE 181ST REPORT FROM THE JOINT PARLIAMENTARY  
COMMITTEE OF PUBLIC ACCOUNTS.

MR PRESIDENT, I MOVE THAT THE REPORT BE PRINTED.

(WHEN MOTION HAS BEEN AGREED TO)

MR PRESIDENT, I SEEK LEAVE TO MAKE A SHORT STATEMENT.

(WHEN LEAVE HAS BEEN GRANTED)

THE COMMITTEE'S 181ST REPORT REFERS TO AN INQUIRY INTO THE CANBERRA COMMERCIAL DEVELOPMENT AUTHORITY. OUR FINDINGS WERE THAT THE AUTHORITY HAS DELIBERATELY DISREGARDED PROVISIONS OF ITS ORDINANCE.

- . FAILED TO SEEK THE TREASURER'S APPROVAL FOR INVESTMENT IN BANK BILLS. EVEN AFTER BEING FORMALLY ADVISED OF THE NEED FOR APPROVAL IT DELAYED FOR A FURTHER TWO MONTHS.
- . MISREPRESENTED THE NATURE OF OVERSUBSCRIPTIONS ON A \$10M PUBLIC LOAN, AND ACTED CONTRARY TO THE PUBLIC INTEREST AND LOAN COUNCIL PRACTICE.
- . DELIBERATELY CONTRAVENED SECTION 17 OF ITS ORDINANCE BY NOT SEEKING THE PUBLIC SERVICE BOARD'S APPROVAL TO THE TERMS AND CONDITIONS OF EMPLOYMENT, AND
- . FAILED TO OBSERVE SECTION 22(1)(C) BY MAKING PAYMENTS THAT WERE NOT IN ACCORDANCE WITH ITS ORDINANCE.
- . FAILED TO PUBLISH ITS 1978-79 ANNUAL STATEMENT BECAUSE, IN THE BELIEF OF THE COMMITTEE, IT WISHES TO CAPITALISE ALL EXPENDITURE NET OF INCOME FOR THE PERIOD 1 JULY TO 9 NOVEMBER 1978. THE PAC HAS DEMANDED THAT THE AUTHORITY PUBLISH ITS STATEMENT IN THE FORM APPROVED BY THE MINISTER FOR FINANCE FORTHWITH.



WHILE THE COMMITTEE IS CONSCIOUS OF THE NEED OF A TRADING AUTHORITY FOR SOME INDEPENDENCE FROM POLITICAL CONTROL, IT NEVERTHELESS RECOMMENDS THAT THE PERMANENT HEAD OF THE DEPARTMENT OF THE CAPITAL TERRITORY, OR HIS DEPARTMENTAL NOMINEE, SHOULD BE APPOINTED TO THE BOARD OF THE AUTHORITY.

THE COMMITTEE IS SO DISSATISFIED WITH THE PAST ADMINISTRATION OF THE AUTHORITY IT RECOMMENDS THAT AT THE CONCLUSION OF THE CURRENT PERIOD OF OFFICE OF MEMBERS OF THE CCDA, THE MINISTER FOR THE CAPITAL TERRITORY SHOULD CONSIDER RESTRUCTURING THE AUTHORITY AND THOSE WHO ARE SUBJECT TO CRITICISM IN THE COMMITTEE'S REPORT NOT BE REAPPOINTED.

WE BELIEVE THE AUTHORITY HAS LEFT ITSELF OPEN TO ACCUSATIONS OF PATRONAGE IN SELECTING ITS EMPLOYEES AND RECOMMEND IT ADOPT A POLICY OF ADVERTISING FOR EACH STAFF POSITION.

THERE WAS EVIDENCE THAT CONDITIONS FOR SECURITY OF TENDERS WERE INADEQUATE DURING THE PERIOD OF THE MALL'S CONSTRUCTION. THE COMMITTEE RECOMMENDS THE ATTORNEY-GENERAL INITIATE A FULL INQUIRY INTO THIS MATTER.

THE COMMITTEE SHARES THE CONCERN OF THE PARLIAMENTARY PUBLIC WORKS COMMITTEE THAT STATUTORY BODIES SHOULD BE SUBJECT TO EXAMINATION BY THAT COMMITTEE. WE RECOMMEND THAT THE PUBLIC WORKS COMMITTEE ACT BE AMENDED TO BRING ALL STATUTORY AUTHORITIES WITHIN ITS AMBIT.

AS POINTED OUT IN THE COMMITTEE OF PRIVILEGES REPORT TABLED ON 11 SEPTEMBER THE PUBLIC ACCOUNTS COMMITTEE ACT IS ONE OF THE FEW ACTS WHERE PARLIAMENT HAS DECLARED ITS PRIVILEGES.

NOTWITHSTANDING THE POWERS CONTAINED IN SECTION 18 OF THE PUBLIC ACCOUNTS COMMITTEE ACT - PENALTY OF 5 YEARS IMPRISONMENT FOR WILLFULLY GIVING FALSE EVIDENCE - THE CAPACITY OF PARLIAMENT TO INSTITUTE PROCEEDINGS UNDER SECTION 21(4) OF THE ACT DEPENDS UPON THE CONSENT OF THE ATTORNEY-GENERAL.

THE COMMITTEE BELIEVES THAT PROVISIONS OF THIS TYPE ACTUALLY LIMIT THE POWERS OF PARLIAMENT TO PROTECT ITS RIGHTS OF PRIVILEGES AND APPEARS TO BE INCONSISTENT WITH TRADITIONAL DIVISION OF POWERS BETWEEN THE EXECUTIVE AND LEGISLATURE.

THE COMMITTEE BELIEVES THAT THE PARLIAMENT SHOULD BE SERVED BY ITS OWN LEGAL COUNSEL RESPONSIBLE FOR ADVISING ON THE RIGHTS AND OBLIGATIONS OF PARLIAMENT. WE UNDERSTAND THAT THIS IS THE CASE IN CANADA.

MR SPEAKER, I COMMEND THE REPORT TO HONOURABLE MEMBERS.

MR PRESIDENT, I COMMEND THE REPORT TO HONOURABLE SENATORS.