

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

PAYMENTS TO ATHLETES AND TEAMS WHO DID NOT
PARTICIPATE IN THE 1980 MOSCOW OLYMPIC GAMES

Report of the House of Representatives
Standing Committee on Expenditure

May 1984

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Secretary: Mrs S M Harlow

1. The nominee of the Chairman of the Joint Committee of Public Accounts who, in accordance with Clause (2) of the Resolution of Appointment, is a member of the Expenditure Committee.

MEMBERS OF THE SUB-COMMITTEE:

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Members: Mr P J Baldwin, M.P.
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Mr A A Morris, M.P.
Mr J G Mountford, M.P.
Mr C W Tuckey, M.P.
Hon I B C Wilson, M.P.

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SUMMARY OF FINDINGS AND RECOMMENDATIONS

The objects of the inquiry were to ascertain -

- (i) the nature and purpose of the payments made to athletes and teams who did not participate in the 1980 Olympic Games in Moscow;
- (ii) whether these payments were properly funded, vetted, paid and accounted for;
- (iii) whether the payments were made through the proper channels; and
- (iv) whether all recipients were treated expeditiously and equitably.

It was not the Committee's intention to assess the merits of the payments themselves nor did it wish to judge the propriety of either the Government of the day in deciding to make the payments or the athletes and teams in accepting them.

Findings

The Committee found that -

- 1) Early in 1980 the Commonwealth Government made it clear that it was prepared to compensate teams and individuals who chose not to go to Moscow.
- 2) Payments were in the nature of grants to sporting organisations and individual athletes who chose not to participate in the 1980 Olympic Games in Moscow in response to or as a result of the calls of the Government for and Australian boycott.
- 3) The purpose of the grants was originally stated as providing assistance to athletes and teams 'to participate in alternative, high level international competition'. It was envisaged that alternative games to the Olympics would be conducted. This was changed later to alternative events for each sport to be conducted in various countries.
- 4) Although some of the alternative events occurred others did not and alternative competition for these sports was provided through the normal annual calendar of events of the international sports federations concerned.

- 5) The provision of alternative high level competition for the individual athletes who withdrew did not prove feasible either because of the difficulty of organising suitable events or because of the personal situation of the athletes who were psychologically let down or had stopped training and hence were not ready to compete.
- 6) After lengthy consideration the Government decided in December 1980 that a flat 'ex gratia' payment of \$6000 each would be made to individual athletes to be used for alternative international competition or to further their sporting career generally.
- 7) An amount of \$524 738.14 was paid to sporting organisations and individual athletes between June and December 1980. \$488 734.14 was paid to some seven national sporting organisations and \$36 000 to six athletes.
- 8) Although the Government had the authority to make such payments and to vary the purpose of the payments, it would appear that because of administrative oversight the payments to individual athletes were not properly authorised. An amount of \$500 000 was provided in Appropriation Act No 1, 1980/81 (the Estimates for Ordinary Annual Government Services) for the purpose of 'support towards participation in high level international sporting events' (Item 330-5-02). When the Government decided to extend the purpose of the payments to individual athletes, the then Department of Home Affairs sought and had approved an additional \$30 000 under the same appropriation item in the Appropriation Act No 3, 1980-81 (the Additional or Supplementary Estimates). Officers of the Department of Home Affairs and the Department of Finance did not question whether the existing appropriation item was sufficiently descriptive to permit the payments. In fact, a new appropriation item was required. Technically, the Department of Home Affairs Authorising Officer, in authorising the payments to individual athletes, may have contravened Section 34 of the Audit Act 1901.
- 9) This oversight was repeated in a written answer prepared by the then Department of Home Affairs and Environment in response to a question asked in the Senate Estimates Committee. On 27 April 1981 Senator Puplick asked for details of the expenditures made under appropriation item 330-5-02. The answer described the payments as 'funds distributed to teams and individuals who did not participate in the Moscow Olympics and who

competed in alternative competitions in lieu' and omitted any reference to furthering careers in sport.

- 10) Although the payments to individual athletes were described as 'ex gratia' payments they were not, in the terms of Section 34A of the Audit Act 1901, ex gratia or 'Act of Grace' payments but 'grants to individuals or organisations'. The Government had decided that the payments would not be 'Act of Grace' payments in the meaning of Section 34A. The decision was significant since different accounting procedures apply to 'Act of Grace' payments and grants to individuals.
- 11) Under the regulations 'Act of Grace' payments do not require acquittal, i.e. certification that the monies have been spent on the purposes for which they were made. At the time the payments to athletes were made acquittal was recommended though not mandatory for grants to individuals and organisations. (Grants to individuals and organisations, with some exceptions, are now required to be acquitted).
- 12) The Department of Home Affairs, apparently at the insistence of the Minister, accepted the payments to athletes as ex gratia payments and interpreted this as requiring no acquittal. In adopting this course of action, the Department did not breach the Department of Finance regulations. However, its action was curious given:
 - . the acquittal requirement it imposed on payment for teams;
 - . the earlier advice of the Department of Finance that all payments to athletes and teams be acquitted; and
 - . the decision that they not be, technically, 'Act of Grace' payments.
- 13) The different treatment of payments to individual athletes can be attributed, in some degree, to a lack of clarity in the description of Act of Grace payments in the regulations themselves which are the responsibility of the Department of Finance. However, given the acknowledged uncertainty about the nature of the payments and the required procedures to be applied, the Department of Home Affairs should have sought the advice of the Department of Finance.

The Committee considered that three aspects of the actual handling of payments to athletes and teams were unsatisfactory.

- 14) With one exception the relevant sporting organisations were not involved in the compensation arrangements between the Government and individual athletes. This was not only unsatisfactory in itself but direct compensation of individual athletes may have compromised their amateur status under the rules of the world Olympic bodies. Commonwealth assistance to athletes, for international competition and other purposes, is usually channelled through the appropriate national sporting organisations. Nevertheless, direct payments to athletes are provided under some Commonwealth sports programs, for example, the National Athlete Award Scheme, without apparent difficulty for athletes' amateur status.
- 15) In the Committee's view there was unjustified discrimination between athletes competing in 'individual' sports and athletes competing in 'team' sports. Participants in team sports who chose to withdraw from teams who competed in Moscow were considered ineligible. The Government has before it, a claim for compensation from a former member of the Australian water polo team who withdrew from the team which attended the Moscow Olympics.
- 16) Payments to teams which withdrew were made more expeditiously and on a more regular basis than payments to individuals. The very promptness and generosity of this response caused the Committee concern. Payments to some sporting organisations were made well before it was certain what Australian teams would have been eligible to compete in Moscow. The Committee does not suggest that any team in respect of which payment was made would not have been able to compete at Moscow. However, unlike payments to athletes, no apparent attempt was made to apply eligibility tests to payments to teams.

The Committee's inquiry brought to light shortcomings in a number of finance regulations and in their application. The Department of Finance advised the Committee that:

- 1) Finance Direction 13/13 governing payments in the nature of grants to individuals or organisations had been amended in August 1983 to make acquittal mandatory;
- 2) the Department would be issuing shortly a circular to all departments and authorities:

- (a) setting out the differences between Act of Grace and other ex gratia payments and the circumstances in which it is appropriate to use these descriptions; and
- (b) amending the 'Guidelines' accompanying the Finance Directions to better ensure that the purposes of particular expenditures are compatible with their description in the existing appropriation.

The Department of Finance indicated that this circular was being issued as a direct response to the inadequacies in procedures which had become apparent during the Committee's inquiry.

Recommendations

The Committee acknowledges that many of the circumstances surrounding the case were unique. However, the case has implications for present and future Commonwealth programs of assistance to sport, now administered by the Department of Sport, Recreation and Tourism.

The Committee recommends to the Department of Sport, Recreation and Tourism that:

- 1) in future, competitors in team sports who choose to withdraw from participation in recognised international competition as a consequence of Government policy should be entitled to similar compensation as is made to competitors in individual sports;
(paragraph 3.15)
- 2) in future, any similar compensation payments to individual athletes should be made in consultation with and through the appropriate national sporting organisation;
(paragraph 3.16)
- 3) in similar future cases, eligibility for compensation should be restricted to individual athletes and teams who can demonstrate that their withdrawal was a consequence of Government policy and appropriate eligibility tests should be applied;
(paragraph 3.17)
- 4) the principles of compensation underlying recommendations 1, 2 and 3 should be incorporated in a broader statement of Commonwealth policy towards international sporting ties and events affected by Government foreign policy actions.
(paragraph 3.18)

I. ORIGIN AND OBJECTIVES OF THE INQUIRY

Origin of the Inquiry

1.1 On 30 November 1983 the House of Representatives Standing Committee on Expenditure decided to extend the terms of reference of its inquiry into Commonwealth assistance for sport and recreation 'to examine payments made to athletes and teams who did not participate in the 1980 Olympic Games in Moscow'. The new reference was to be the subject of a separate report and the inquiry would be conducted by the Sub-committee appointed to conduct the sport and recreation inquiry. The Committee tabled its main report on Commonwealth assistance for sport and recreation, in Parliament on 8 December 1983.¹

1.2 The impetus to the further inquiry was the controversy which followed statements by Ms Raelene Boyle in the press in late November 1983. In extracts from her autobiography, Ms Boyle said that she received a cheque from the Department of Home Affairs for \$6000 on Christmas Eve 1980, 'the money I believe was a Federal Government pay-off for my withdrawal from the Australian team for the Moscow Olympic Games'.² Ms Boyle was unhappy with her treatment by the Government which, she believed, had the attitude towards her: 'here you are kid, take this money and shut up. It was only a small career and who cares anyway?'³

1.3 It was reported subsequently that some six athletes who had withdrawn from the Australian Olympic Team had received payments of \$6000 each. Payments had been made also in respect of teams which had withdrawn.⁴ Officials of the Australian Olympic Federation stated that they did not know of any compensation payments to athletes.⁵ The President of the Australian Olympic Federation, Mr Syd Grange, was reported as saying 'As far as the Australian Olympic Federation is concerned the Government made a grant and we were told that the money was to be utilised for the benefit of sport, not to be used for any purpose associated with Moscow...'.⁶ A spokesperson for the Department of Home Affairs said that 'the compensation was for the time and effort expended in training for the Games and to enable them to compete in other events overseas'.⁷

1.4 In late November 1983 the Committee was in the stages of concluding an inquiry into sport and recreation. The focus of the inquiry had been on the efficiency and effectiveness of Commonwealth programs of assistance for sport and recreation, the major proportion of which were directed towards high level, competitive sport. The Committee was concerned at the apparent secrecy and underhandedness of the payments and of their seeming variance with other forms of financial assistance towards international sporting competition.

Objectives of the Inquiry

- 1.5 The Committee decided to ascertain -
- 1) what were the nature and purpose of the payments;
 - 2) were the payments properly appropriated, vetted, paid and accounted for;
 - 3) were the payments made through the appropriate channels; and
 - 4) were all recipients treated expeditiously and equitably.

It was not the Committee's intention to assess the merits of the payments themselves or to judge the propriety of either the Government of the day in deciding to make the payments or the athletes and teams in receiving them. Rather, the object of the inquiry was to ascertain whether the payments, whatever they were, were properly and equitably made.

1.6 The inquiry represented a divergence from the Expenditure Committee's previous inquiries which have been concerned with investigating the efficiency and effectiveness of discrete expenditure programs and with examining the accountability of the Government for its expenditures as a whole. The present inquiry took its cue from public controversy concerning a specific item of expenditure and proceeded to call the administration to account. In short, the inquiry was conceived as an exercise in 'blowing the whistle' on the Executive. It is the Committee's intention that this report be the first of a series of short, sharp reports on apparent breaches of proper procedures by the Executive.

Conduct of the Inquiry

1.7 The Committee signalled its intention to inquire into the matter of payments to athletes and teams who did not participate in the 1980 Olympic Games in Moscow in press releases on 28 November and 7 December 1983. Evidence was taken in public hearings held in Canberra on 28 November and 7 December 1983 and in subsequent correspondence with the Department of Home Affairs and Environment, the Department of Sport, Recreation and Tourism, the Department of Finance, the Auditor-General's Office and the Australian Taxation office. A list of witnesses and an index of documents authorised for publication are included in Attachments A and B respectively. As is the usual Committee practice, the transcripts of the public hearings and other evidence authorised for publication have been incorporated in a separate volume, copies of which are available on request. (References to evidence in the text of this Report relate to page numbers of that volume).

II. DESCRIPTION OF PAYMENTS AND EVENTS

Summary Description of the Payments

2.1 Details of the recipients and amounts of payment are given in Table 1 below which is based on information supplied by the Department of Sport, Recreation and Tourism.

TABLE 1

DETAILS OF PAYMENTS TO ATHLETES AND TEAMS NOT PARTICIPATING IN 1980 MOSCOW OLYMPICS

<u>Recipients</u>	<u>Amount paid</u>
(a) <u>Teams</u>	\$
1. The Equestrian Federation of Australia	125 000
2. The Australian Yachting Federation	52 840
3. The Australian Hockey Association	90 374.14
4. The Australian Women's Hockey Association	45 740
5. The Amateur Boxing Union of Australia	13 784
6. The Australian Volleyball Federation Inc	120 000
7. The Australian Shooting Association Inc	<u>41 000</u>
Sub-total	<u>488 738.14</u>
 (b) <u>Individual Athletes</u>	
1. Raelene Boyle, MBE (athlete)	6 000
2. John Higham (athlete)	6 000
3. Mark Morgan (swimmer)	6 000
4. Terrence Reilly (archer)	6 000
5. Alexander Watson (modern pentathlete)	6 000
6. Tracey Wickham, MBE (swimmer)	<u>6 000</u>
Sub-total	<u>36 000</u>
<u>Total payments</u>	<u>524 738.14</u>

SOURCE Department of Sport, Recreation and Tourism, evidence, page 1684(f).

It should be noted that the payment made with respect of Mr Watson consisted of \$4000 paid on 17 July 1980 to the Amateur Modern Pentathlon Union of Australia and \$2000 paid on 22 December 1980 to Mr Watson directly.

2.2 The payments were made out of an appropriation of \$530 000 provided in 1980-81 to the Minister for Home Affairs under item 330-5-02 titled 'Australian Sporting Organisations - Support towards participation in high level international events'. An amount of \$500 000 had been provided initially for this purpose in Appropriation Bill No 1 (the Budget Estimates) and an additional \$30 000 was provided in Appropriation Bill No 3 (the Additional Estimates). An amount of \$5261.86 remained

uncommitted within the vote. The payments to teams were approved between June and July 1980. Payments to athletes were approved in December 1980. All were funded initially from the Advance to the Minister for Finance.

Chronology of Main Events

2.3 Early in 1980 the Commonwealth Government decided to support a United States sponsored boycott of the Summer Olympic Games due to be held in August 1980 in Moscow in response to the Soviet Union's invasion of Afghanistan in late December 1979.¹ During February and March the Government held discussions with representatives of the Australian Olympic Federation and individual national sporting organisations to outline the Government's policy and to seek support for an Olympic boycott. At the time it was envisaged that an alternative games would be hosted and the then Minister for Home Affairs, Mr R J Ellicott, MP, held discussions in March 1980 on alternatives to the Moscow Games with representatives of other countries which had indicated their support of an Olympic boycott.² During this time the Government made it clear that it would be prepared to assist financially teams and athletes who chose not to participate in the Moscow Olympics to attend alternative competition.³ Late in March 1980 the Australian Yachting Federation announced its decision to withdraw from the Moscow Games. Concurrently it was announced that the Commonwealth Government had agreed to grant the Federation \$45 000 towards the cost of the team's participation in alternative, high level international yachting competition. The announcement aroused a good deal of controversy at the time.⁴

2.4 After protracted deliberations the Australian Olympic Federation announced in late May that it would send an Australian Team to the Moscow Games. The decision to participate in the Australian Team was left to the respective National Olympic Committees for each sport and to individual athletes. In addition to the Yachting Federation, the equestrian, boxing, shooting, volleyball and men's and women's hockey associations announced that they had decided to withdraw from the Australian Team. During April, May and June a number of individual athletes also announced that they would not be competing at the Moscow Olympics.⁵

2.5 Following the Olympic Federation's announcement, the Minister for Home Affairs issued a press release in which he stated that the Government was prepared 'to assist athletes who would not be going to Moscow but who would be interested in attending alternative, high level international sporting events'.⁶ The Minister also wrote to all national sporting organisations urging them to reconsider their position.⁷ Discussions were commenced with those sporting organisations whose teams did withdraw to obtain an indication of the likely cost to the Government of compensating these sports.

2.6 Based on discussions with sporting organisations, the Minister for Home Affairs sought the approval of the Minister for Finance for up to \$500 000 on 20 June 1980. Final cost details were not known because much of the alternative competition was to be held in the Northern Summer. The Minister for Finance gave approval in a response dated 2 July 1980. Specific negotiations then proceeded with national sporting organisations including the Australian Yachting Federation regarding the funding of other members of the yachting team not included in the March decision.⁸ \$45 000 had been paid to the Yachting Federation on 30 June 1980. Grant approvals were advised to sporting organisations on 16 and 17 July 1980.⁹ Included in these approvals was an amount of \$4000 for the Amateur Modern Pentathlon Union of Australia in respect of the sole pentathlon competitor, Mr Alexander Watson.

2.7 Although it was hoped that an alternative games would be staged, this did not eventuate. It was decided instead to hold alternative events for each sport in various countries. Some of these events did take place while alternative competition for other sports was provided through the normal annual calendar of events of the international sporting organisations concerned.¹⁰ The seven national sporting organisations which received payments were required to acquit the payments by submitting an audited statement of expenditure on completion of the international competition.¹¹ Table 2 shows details of the international sporting events in which the teams assisted participated.

TABLE 2

ALTERNATIVE EVENTS TO THE 1980 MOSCOW OLYMPICS
DETAILS OF TEAMS ASSISTED

1. Equestrian	Tour to UK, France and the Netherlands 10 riders, 9 horses
2. Yachting	European tour 6 classes - 13 yachtsmen
3. Men's Hockey	European tour 16 players, 7 officials
4. Women's Hockey	US tour Total party of 20
5. Boxing	Kenya Tour 3 boxers, 2 officials
6. Volleyball	Tour to India and Hong Kong 24 players, 10 officials
7. Shooting	Tour to USA and Mexico Total party of 12

Source: Department of Sport, Recreation and Tourism,
evidence, pages 1762-1776

2.8 The Department of Sport, Recreation and Tourism stated that 'after the Australian Olympic Federation had decided that a team would go to Moscow and it was known which sports would be represented there, it became apparent that it was not easy to compensate individuals who had withdrawn. Some saw likely difficulty in finding suitable alternate competitions, were psychologically let down or had stopped training and hence were not ready to compete. Discussions at the time with athletes who had withdrawn confirmed that, with the exception of Mr Watson, none had immediate plans to compete in alternative events....'.¹² In the meantime, two athletes had approached the Government concerning possible assistance. An actual claim for compensation was received from one athlete. The claim was for material loss (salary foregone over four years' preparation for the Olympics and for future losses resulting from a disadvantageous position compared to his peers who had progressed while he opted to train) and for non-material loss (loss of fulfilment through not competing in an Olympics).¹³

2.9 On 13 June 1980 the Prime Minister announced principles on which the Government would consider claims for compensation arising from its actions against the Soviet Union and Iran. The principles were: (1) payments should relate to the necessary financial effects of Government policy/actions outside the control of individuals; (2) Government policy should have adversely affected well founded expectations or had disproportionate effects on different sections of the community; and (3) payment should be restricted to the financial consequences which are the direct result of Government policy/actions.¹⁴

2.10 The Department of Sport, Recreation and Tourism advised the Committee that 'after prolonged exchanges between Ministers over the period bridging the 1980 Federal Election, it was finally agreed that the guidelines established for considering more general claims (i.e. unrecouped expenditure) were inappropriate for athletes and a flat ex gratia payment of \$6000 to be used by athletes for alternate international competition or to further their sporting career, was agreed between Ministers acting under Cabinet authority'.¹⁵ The basis of the figure of \$6000 is not known but consideration had been given to a figure of \$7500.¹⁶ It was also decided that only athletes engaged in individual sports, who were considered not to be covered by compensation for team withdrawal, would be eligible for payment. Participants in team sports would not be eligible for payment.¹⁷ All of these decisions were taken on or about 8 December 1980. There appears to have been no public announcement of the decisions.

2.11 The Minister for Home Affairs and Environment wrote to individual athletes on 10 December 1980 advising the Government's decision and offering an 'ex gratia' payment of \$6000 'to be used by the athlete to engage in international competition in the particular sport or to further his or her career in sport'.¹⁸ In the case of Mr Watson, consideration was given to the \$4000

previously granted on his behalf to the Modern Pentathlon Union of Australia and an offer of the balance of \$2000 was made. Cheques were sent on 22 December 1980. In the letters accompanying payment the recipients were asked to acknowledge receipt. In contrast to the payments to teams the athletes were not asked to certify that the monies received had been expended on the purposes for which they were made. Acknowledgements of receipt were received from five of the six athletes.¹⁹

III. ASSESSMENT OF PAYMENT PROCEDURES AND EQUITY OF TREATMENT OF RECIPIENTS

3.1 The Committee was concerned about five aspects of the handling of the payments to athletes and teams:

- 1) the extension of the purposes to which the payments to athletes were to be put and the question of whether funds were legally available for these additional purposes;
- 2) uncertainty as to the nature of the payments to athletes and the appropriate accounting procedures that applied as a consequence;
- 3) the restriction of eligibility to individual athletes participating in individual as opposed to team sports;
- 4) the by-passing of national sporting organisation in the compensation arrangements with individual athletes; and
- 5) the lack of vetting of payments for teams.

Purpose of the Payments

3.2 It is a requirement for the payment of public monies that there be an appropriation by the Parliament for the purpose for which the approved expenditure can be met.¹ As noted previously the payments to teams which withdrew from the 1980 Moscow Olympics were made under appropriation item 330-5-02 which was described as 'Australian Sporting Organisations - Support Towards Participation In High Level International Competition'. \$500 000 was provided for this purpose in Appropriation Act (No 1) of 1980-81. When the Department of Home Affairs sought additional funding to enable payments to be made to individual athletes who chose not to attend the 1980 Moscow Olympics for the purposes of alternative international competition or to further their sporting careers, \$30 000 was provided for these purposes under division 330-5-02 in the Appropriation Act (No 3) of 1980-81. Through an oversight, acknowledged by both the Department of Home Affairs and Environment and the Department of Finance, no attempt was made to ascertain whether the existing appropriation item was sufficiently descriptive to permit the payments. The Department of Finance informed the Committee that current procedures require that this matter be considered by the responsible officers.²

3.3 The oversight was repeated by the then Department of Home Affairs and Environment in its response to a question asked in a Senate Estimates Committee on 27 April 1981. Senator Puplick asked for a break up of the amounts paid under division 330-5-02

in 1980-81. The Department's written response described the payments as funds 'distributed to teams and individuals who did not participate in the Moscow Olympics and who competed in alternative competitions in lieu'.³ The Secretary of the Department of Home Affairs and Environment told the Committee that 'the omission of any reference to furthering of sporting careers was inadvertent and there was no intention to mislead the Senate Estimates Committee.'⁴

3.4 In the opinion of the Committee a new appropriation item should have been sought for payments to individual athletes. It would appear that the Department of Home Affairs Authorising Officer in authorising the payments may have breached Section 34 of the Audit Act 1901 which requires that payments shall not be authorised unless monies are lawfully available for the payment. The Committee has no evidence that would suggest other than the provision of funds for individual athletes was sought and granted in good faith. The Department of Finance informed the Committee that, to reduce the possibility of any similar oversight by departments and authorities in the future, it was preparing an amendment to the Guidelines to the Finance Directions to emphasise to Departments and Authorities the need to ensure, where funds are sought under an existing appropriation, that the purposes of particular expenditures are compatible with the description of the appropriation.⁵ The Committee commends the prompt action of the Department of Finance and makes no recommendation on this matter.

The Nature of the Payments

3.5 The description of the payments to individual athletes as 'ex gratia' payments gave rise to some confusion at the time of the payments and subsequently. In the view of the Department of Finance, 'Although termed 'ex gratia' payments, that description is not significant, since they were no different in fact or law from payments made under the range of non-statutory schemes of financial assistance through which the Commonwealth disburses grants or contributions, gratuitous in character, to organisations or individuals in pursuance of its executive powers and to which spending departments are obliged to apply the 'accountability' provisions of the Audit Act and Finance Directions.'⁶ It would appear that the Department of Home Affairs chose to interpret the payments differently and to apply different accounting procedures.

3.6 Special provision is made under Commonwealth legislation for payments to be made where the Commonwealth has a moral rather than legal obligation to provide financial assistance. These payments are described as Act of Grace payments. According to the Department of Finance 'Act of Grace payments are payments approved pursuant to section 34A of the Audit Act 1901 by the Minister for Finance or an officer appointed by the Minister for the purpose... . Recourse to the Act of Grace power is sought in respect of a multitude of diverse

situations in which the Commonwealth is considered by the applicant to have a moral (as opposed to legal) responsibility to provide financial assistance or compensation. In such situations the Minister for Finance or authorised person is required to exercise the power specifically, having following certain processes required by section 34A'.⁷ Prior to the 1979 amendment of the Audit Act which inserted section 34A, the terms 'ex gratia' and 'act of grace' were used synonymously. The Department of Finance now discourages departments from using the term 'ex gratia' to describe an Act of Grace payment approved pursuant to Section 34A of the Audit Act.⁸

3.7 The payments to individual athletes were not nor were they intended to be made as Act of Grace payments within the terms of section 34A of the Audit Act. The Department of Sport, Recreation and Tourism informed the Committee that the action officers of the Department of Home Affairs at the time were not aware of the significance of the distinction between 'act of grace' and 'ex gratia' payments. However it was made clear at the time that the payments were not to be Act of Grace payments in terms of section 34A.⁹ The use of the term 'ex gratia' to describe the payments would appear to have been at the insistence of the then Minister for Home Affairs.¹⁰ It was accepted by the Department of Finance that 'occasions will arise where the term 'ex gratia' may well be an appropriate description of certain kinds of gratuitous payments approved by the Executive Government'.¹¹ Nevertheless, the Department of Finance informed the Committee that 'having regard to the confusion caused in the use of these descriptions of payments, it is intended to issue a Finance Circular to departments setting out the differences between payments of these kinds and the circumstances in which it is proper to use these descriptions'.¹² The Department of Finance issued the circular on 3 May 1984, a copy of which is included at Attachment C.

3.8 The payments to individual athletes were thus in the nature of grants to individuals. Now, where there is no legal or contractual requirement to make a payment, authority to make the payment requires that the Minister or his delegate within the Minister's department approve, pursuant to the inherent powers conferred by section 64 of the Constitution, that the particular expenditure be incurred and that the Parliament appropriate funds to an item covering that purpose. Once authorised the payments are subject to the accounting requirements of the Audit Act and Finance Directions.¹³ It has been noted that there was an error in the authorisation of the payments to individual athletes. The Committee received conflicting evidence as to whether the appropriate accounting or acquittal procedures were applied to the payments.¹⁴

3.9 The accounting or acquittance requirements applying to grants to individuals and organisations are set out in Finance Direction 13/13.¹⁵ At the time of the payments in question, the Direction required that grants 'should be made subject to the

condition that evidence is to be provided to show that the purposes for which the grant was made are being met'. It was not mandatory to impose acquittance as a condition for any grant. However, Finance Direction 13/13 was amended in August 1983 following a recommendation by the Senate Standing Committee on Finance and Government Operations to make it mandatory for acquittance to be obtained.¹⁶ It should be noted that acquittal is not required of 'Act of Grace' payments.

3.10 Although the Department of Home Affairs was not required to acquit the payments to athletes under the then accounting regulations, the Department of Finance informed the Committee that it had asked the Department of Home Affairs to acquit the payments. In a letter dated 17 July 1980 advising the approval of the Minister of Finance of the initial funding, the Department of Finance informed the Department of Home Affairs that 'the individuals and organisations involved will be required to provide audited statements of expenditure'.¹⁷

3.11 The Department of Sport, Recreation and Tourism responded that 'when the remaining payments direct to athletes (totalling \$32,000) were approved in December 1980 the Minister specifically referred to them as ex gratia payments and, ... the recorded understanding of the Department of Home Affairs action officers was that audited statements were not necessary for such payments'.¹⁸ In defence of this course of action, the Department argued that 'if vouching were ever envisaged it might have been thought at that time that there would be considerable difficulty in obtaining comprehensive evidence that the general purposes for which the payment was being made were actually met..., the alternative purpose, furthering a career in sport, was not specific, but more importantly (unlike the National Athlete Award Scheme later developed), the timescale was open-ended. Nor, given the history and circumstances, is it clear that the Government, in making an equal ex gratia payment to all six, would ever have envisaged that these 'compensation' payments (as distinct from a forward looking grant) were to be strictly accounted for in terms of their general purpose'.¹⁹ To these pragmatic considerations, the Department added that 'with the experience Department of Home Affairs officers had had in similar circumstances - salary reimbursement of certain government officials and the broader compensation issues relating to relations with the Soviet Union and Iran - together with the lack of clarity and apparent inter-changeability of the terms 'ex gratia' and 'act of grace', there was a belief that no acquittal of these six grants was necessary'.²⁰

3.12 The Committee does not question the authority of the then government to make 'ex gratia' payments to individual athletes, nor does it find that the legally required procedures of the day were not complied with. However, there were two features of the accounting of payments to individual athletes that appeared questionable:

- . the decision that the established procedures for 'Act of Grace' compensation, viz Section 34A payments, were not to be used; and
- . the decision of the Department of Home Affairs, to interpret the appropriate accounting procedures according to its own lights despite contrary advice of the Department of Finance and the fact that acquittal was required of payments to teams.

The former decision would appear to have been a policy decision of the Government of the day. The latter decision, in the Committee's view, reflected a shortcoming of Departmental administration. Given what was acknowledged subsequently as 'the very unusual if not unique circumstances' in which the Department of Home Affairs found itself,²¹ the Department should have approached the Department of Finance for their advice as to the appropriate accounting procedures. The Department of Home Affairs and Environment did not seek the advice of the Department of Finance. Although there was no legal requirement for a department to make such an approach, it is, according to the Department of Finance, 'a normal and common occurrence for (the Department of Finance) to be approached (either orally or in writing) by operational departments and authorities for interpretative guidance on a wide range of issues in the practical application of the Audit Act and its subsidiary legislation'.²²

3.13 The Committee believes that the recent amendment to Finance Direction 13/13 to make acquittal mandatory for grants to individuals and organisations and the decision of the Department of Finance, as a result of the Committee's inquiry, to issue a Finance Circular clarifying the differences between 'Act of Grace' and other 'ex gratia' payments will ensure that similar future compensation cases are treated consistently.

Administration of the Payments

3.14 There were three aspects of the actual handling of the compensation to either individuals or teams that appeared, to the Committee, unsatisfactory:

- (1) the restriction of compensation to individual athletes to those participating in individual sports;
- (2) the apparent by-passing of national sporting organisations in the government's dealings with individual athletes over compensation; and
- (3) the absence of any vetting of payments to teams.

3.15 Members of team sports who withdrew on an individual basis from participation in the Moscow Olympics but whose teams chose to compete were not eligible for compensation. This may be regarded as a policy decision of the Government of the day. However, in the Committee's view, the treatment of individual team athletes was inequitable in the light of the Government's own principles of compensation (see paragraph 2.9). These were that withdrawal was the consequence of Government policy and 'the need for equitable and sympathetic treatment of individual athletes not covered by team withdrawal'.²³ The Department of Sport, Recreation and Tourism informed the Committee that, on 13 December 1983, a claim for compensation had been received from Mr Ross Langdon, a former member of the Australian Water Polo team who withdrew from the team which attended the 1980 Moscow Olympics.²⁴ The Committee considers that it should not express a view on the merits of the claim which has been made by Mr Langdon. However, the Committee recommends that:

- (1) in future, competitors in team sports who choose to withdraw from participation in recognised international competition as a consequence of Government policy should be entitled to similar compensation as is made to competitors in individual sports.

3.16 A representative of the Australian Olympic Federation informed the Committee that the Government had not involved the Federation in the negotiations over compensation of individuals and teams.²⁵ However, in a press release dated 29 November 1983, the then leader of the National Party, Mr Anthony, said 'The Australian Olympic Federation raised with the Government, I think in May 1980, questions as to whether the Government would be prepared to indemnify the AOF against damages should legal action be taken against it, whether the Government would be prepared to compensate athletes who suffered losses, and whether the Government would be prepared to assist groups to attend alternative competitions. The Government's response to these questions was conveyed to the AOF but was not made public at the time'.²⁶ In the case of payments to individual athletes, with one exception, negotiations had been conducted directly between the Government and individuals and payments had been made direct to individuals. The Australian Olympic Federation expressed concern at the lack of consultation with national sporting organisations and at the implications of direct payments to individual athletes. In the view of the representative of the Federation, these payments may have breached the International Olympic Committee's charter by compromising the athletes' amateur status.²⁷ Commonwealth assistance to athletes for international competition and other purposes is generally channelled through the appropriate national sporting organisations. Nevertheless, some Commonwealth financial assistance is made direct to individual athletes, for instance, the National Athlete Award Scheme, without apparent difficulty for those athletes' amateur status.²⁸ The Committee accepts that relations between the

Government and the Australian Olympic Federation and other sporting organisations in 1980 were very sensitive but believes that negotiations on compensation for the individual athletes should have involved the Australian Olympic Federation and the appropriate national sporting organisations. The Committee recommends that:

- (2) in future, any similar compensation payments to individual athletes should be made in consultation with and through the appropriate national sporting organisations.

3.17 Although payments to teams were made more expeditiously and on a more regular basis than payments to individual athletes, the very promptness and generosity of this response caused the Committee concern. A financial commitment was made to the Australian Yachting Federation, for instance, in March 1980, well before it could have been certain what teams would have been eligible to compete in Moscow.²⁹ The Committee is not suggesting that any of the teams which withdrew and received assistance from the Commonwealth would have been ineligible or could not have expected to be included in the Australian team to the Moscow Olympics. However, the Committee considers that the eligibility tests which were applied to payments to individual athletes (namely that the athlete's withdrawal was a consequence of Government policy and not some other cause such as injury)³⁰ do not appear to have been applied in the case of payments for teams. Whether this situation was the result of Government policy direction or administrative oversight is uncertain. The Committee recommends that:

- (3) in similar future cases, eligibility for compensation should be restricted to individual athletes and teams who can demonstrate that their withdrawal was a consequence of Government policy and appropriate eligibility tests should be applied.

3.18 The Committee acknowledges that many of the circumstances surrounding this case were unique and the very experience has conveyed already its lessons to those involved. Nonetheless, the Committee hopes that its investigation and this report will be useful as a guide to future action. The Committee recommends that:

- (4) the principles of compensation underlying recommendations 1, 2 and 3 should be incorporated in a broader statement of Commonwealth policy towards international sporting ties and events affected by Government foreign policy actions.

ENDNOTES

CHAPTER 1

- 1 'The Way We P(l)ay : Commonwealth Assistance for Sport and recreation' Report of the House of Representatives Standing Committee on Expenditure, November 1983, AGPS, Canberra, 1983
- 2 Extracts from Raelene Boyle 'Rage Raelene, Run', Caribou Publications, Melbourne, 1983 in Sydney Morning Herald, 26 November 1983, page 9
- 3 ibid
- 4 'Sun-Herald' 27 November 1983, page 3
- 5 ibid
- 6 ibid
- 7 ibid

CHAPTER 2

- 1 This and the following narrative is based on evidence provided by the Department of Sport, Recreation and Tourism. See pages 1899 to 1901
- 2 Department of Sport, Recreation and Tourism, evidence, page 1777
- 3 Department of Sport, Recreation and Tourism, evidence, page 1900
- 4 Department of Sport, Recreation and Tourism, evidence, pages 1778, 1779
- 5 Department of Sport, Recreation and Tourism, evidence, pages 1780-1786
- 6 Department of Sport, Recreation and Tourism, evidence, page 1684(a)
- 7 Department of Sport, Recreation and Tourism, evidence, pages 1755, 1756
- 8 Department of Sport, Recreation and Tourism, evidence, page 1899
- 9 Department of Sport, Recreation and Tourism, evidence, pages 1905-1909
- 10 Department of Sport, Recreation and Tourism, evidence, page 1900
- 11 Department of Sport, Recreation and Tourism, evidence, pages 1905-1909
- 12 Department of Sport, Recreation and Tourism, evidence, page 1900
- 13 ibid
- 14 Department of Sport, Recreation and Tourism, evidence, pages 1910, 1911
- 15 Department of Sport, Recreation and Tourism, evidence, page 1900

- 16 Department of Sport, Recreation and Tourism,
evidence, pages 1750, 1751 and 1899
- 17 Department of Sport, Recreation and Tourism,
evidence, page 1751. See also pages 1757-1759
- 18 Department of Sport, Recreation and Tourism,
evidence, pages 1757-1759
- 19 Department of Sport, Recreation and Tourism,
evidence, page 1750

CHAPTER 3

- 1 Constitution of the Commonwealth of
Australia, Section 83.
- 2 Department of Sport, Recreation and Tourism,
evidence, pages 1900, 1901 and Department of
Finance, evidence, pages 1889, 1890
- 3 Department of Sport, Recreation and Tourism,
evidence, page 1684(f)
- 4 Department of Home Affairs and Environment,
evidence, pages 1753, 1754
- 5 Department of Finance,
evidence, page 1890
- 6 Department of Finance,
evidence, page 1888
- 7 Department of Finance,
evidence, page 1886
- 8 Department of Finance,
evidence, page 1887
- 9 Department of Sport, Recreation and Tourism,
evidence, page 1902
- 10 ibid
- 11 Department of Finance,
evidence, page 1887
- 12 ibid
- 13 Department of Finance,
evidence, page 1888
- 14 Department of Finance,
evidence, pages 1856-1859 and Department of
Sport, Recreation and Tourism,
evidence, pages 1901-1904
- 15 Department of Finance,
evidence, pages 1894, 1895
- 16 Department of Finance,
evidence, pages 1888, 1889
- 17 Department of Finance
evidence, page 1866
- 18 Department of Sport, Recreation and Tourism,
evidence, page 1903
- 19 ibid
- 20 Department of Sport, Recreation and Tourism,
evidence, page 1914
- 21 Department of Sport, Recreation and Tourism,
evidence page 1898
- 22 Department of Finance,
evidence, page 1915

- 23 Department of Sport, Recreation and Tourism,
evidence page 1751
- 24 Department of Sport, Recreation and Tourism,
evidence, pages 1751, 1904
- 25 Australian Olympic Federation,
evidence, pages 1600-1602
- 26 Department of Sport, Recreation and Tourism,
evidence, page 1752
- 27 Australian Olympic Federation,
evidence, pages 1602, 1603
- 28 Department of Sport, Recreation and Tourism,
evidence, page 1904
- 29 Department of Sport, Recreation and Tourism,
evidence, pages 1778, 1779 and 1899
- 30 Department of Sport, Recreation and Tourism,
evidence, page 1904

APPENDIX A

LIST OF WITNESSES

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<u>Canberra - Monday 28 November 1983</u>	
Mr John Dowling Coates Executive Board Member Australian Olympic Federation PO Box 284 South Melbourne, Victoria	1600
Mr Herbert Bruce MacDonald Secretary Department of Sport, Recreation and Tourism Canberra, Australian Capital Territory	1651
<u>Canberra - Wednesday 7 December 1983</u>	
Mr Herbert Bruce MacDonald Secretary Department of Sport, Recreation and Tourism Canberra, Australian Capital Territory	1748
Dr Donald Fred McMichael Secretary Department of Home Affairs and Environment Canberra, Australian Capital Territory	1748
Mr Graham Robert Dempster First Assistant Secretary Department of Sport, Recreation and Tourism Canberra, Australian Capital Territory	1748
Mr Paul Brettell Acting Executive Director Australian Institute of Sport Canberra, Australian Capital Territory	1848
Mr John L Griffin Chief Finance Officer Department of Finance Canberra, Australian Capital Territory	1856
Mr Graeme Lindsay Hope Chief Finance Officer Department of Finance Canberra, Australian Capital Territory	1856
Mr Douglas Stuart Lennie Assistant Auditor-General Auditor-General's Office Canberra, Australian Capital Territory	1874

APPENDIX B

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<u>Document No</u>		<u>Page</u>
1	Minister for Home Affairs, News Release, 'Olympic Decision' dated 25 May 1980	1684(a)
2	Treasurer, extract from Budget Speech, 19 August 1980	1684(b)
3	Minister for Home Affairs, 1980-81 Budget Information Paper	1684(c,d)
4	Department of Home Affairs, file copy of letter to athletes accompanying payment, no date	1684(e)
5	Department of Home Affairs, answer to question asked in Senate Estimates Committee hearing of 27 April 1981	1684(f)
6	Letter from R Boyle, athlete, to P Brettell, Department of Home Affairs dated 27 January 1981	1684(g)
7	Department of Sport, Recreation and Tourism, prepared statement to Committee	1750
7(a)	Department of Home Affairs and Environment, prepared statement	1753
7(b)	Department of Sport, Recreation and Tourism, attachments to prepared statement (Documents A - Z)	1755
8	Letter from J Hunter, Department of Finance to T Fowler, Department of Home Affairs dated 17 July 1980	1866
9	Department of Finance, extracts from Finance Directions	1878
10	Commissioner of Taxation, advice to the Committee dated 16 December 1983	1884

- 11 Department of Finance, prepared statement 1885
dated 21 December 1983 (plus Attachments A-C)
- 12 Department of Sport, Recreation and Tourism, 1896
further statement dated 25 January 1984
(plus Attachments 1-6)
- 13 Letter to Acting Deputy Secretary, Department 1912
of Finance from Chairman of Committee
dated 1 February 1984
- 14 Letter to Secretary, Department of Sport, 1913
Recreation and Tourism from Chairman of
Committee, dated 1 February 1984
- 15 Department of Sport, Recreation and Tourism, 1914
further statement, not dated
- 16 Department of Finance, further statement, 1915
dated 27 February 1984

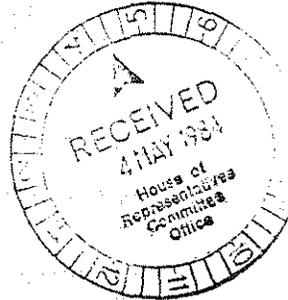
ATTACHMENT C



DEPARTMENT OF FINANCE

Newlands Street, Parkes, A.C.T. 2600
Telephone: Canberra 63 9111
Telex: 62639

Reference:
Contact Officer:
Telephone:



Mrs S. Harlow
Secretary
House of Representatives Standing
Committee on Expenditure
Parliament House
CANBERRA ACT 2600

Dear Mrs Harlow

Arising out of the Committee's examination of certain payments made to athletes who did not participate in the 1980 Moscow Olympic Games, and the consequent recognition of the need for Departments to observe precision in the use of terms referring to payments pursuant to section 34A of the Audit Act, I have arranged for the issue of a Finance Circular on the matter.

I attach a copy of the relevant circular (1984/9 of 3 May 1984) for your information.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'R.G. Humphry'.

for R.G. Humphry
First Assistant Secretary
Accounting and Supply Division

AUDIT ACT 1901, SECTION 34A: ACT OF GRACE PAYMENTS

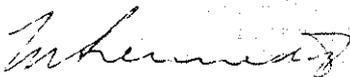
The purpose of this circular is to clarify the appropriate terminology and some of the administrative processes associated with act of grace payments and to promulgate material in those regards for inclusion in the Background segment to Section 34 of the Finance Directions. Its contents should be drawn to the particular attention of Authorizing and Certifying Officers, officers preparing estimates of expenditure, officers authorised by the Minister to approve expenditure and officers responsible for processing claims for act of grace payments. Also, this circular should be read in conjunction with Finance Direction 34/1, the relevant Background to Section 34 of the Finance Directions and Finance Circular No 1980/5.

The passage of section 34A of the Audit Act in 1979 codified the provision for amounts to be treated as properly payable, where they would not otherwise be payable in pursuance of a law, under a legal liability, or within the terms and conditions of a non-statutory scheme approved by Cabinet or a Minister and for which a relevant appropriation exists or is intended. The power to approve payments under section 34A lies exclusively with the Minister for Finance (or an officer authorized by him for that purpose), and such payments when they occur are to be provided for under a specific item titled "Payments pursuant to section 34A(1) of the Audit Act 1901" in the appropriations of the department responsible for the particular matter in respect of which the payment is being made. It is only payments dealt with in this manner that may properly be described as "act of grace payments".

It is apparent, however, that there remains some confusion within departments on the processes and terminology involved. Before section 34A of the Audit Act was introduced in 1979, the terms "act of grace" and "ex-gratia" were, by ordinary usage, regarded as synonymous. At that time, the terms were generally applied to payments made under the authority of the former sub-section 34(4) of the Act which was superseded by section 34A.

With the introduction of section 34A, however, given its heading in the Audit Act specifying a single term "Act of grace payments", it is considered no longer appropriate to refer to "ex-gratia payments" in the same context. If there is any need for the term "ex-gratia" to survive at all in Commonwealth Government usage, it would be only in a loose application to describe non act of grace payments that may also be made without legal liability eg Grants-in-Aid or other forms of financial assistance having no statutory backing, for which standing appropriations have been established. In that regard care needs to be taken to avoid any situation where misunderstanding might result in delineating between act of grace and non act of grace payments. It is suggested, therefore, that the use of the term "ex-gratia" be discouraged altogether. Conversely, the term "act of grace payments" should not be used other than to describe those made pursuant to section 34A of the Audit Act.

These matters are addressed in the attached additional paragraph to the Background to Section 34 of the Finance Directions. Replacement pages to the Finance Manual will be issued in due course.



for R.G. Humphry
First Assistant Secretary
Accounting and Supply Division
3 May 1984

SECTION 34

MISCELLANEOUS

BACKGROUND

ACT OF GRACE POWERS

Delete last sentence.

Insert additional paragraphs as follows:

"Act of grace payments are to be funded under a specific item titled "Payments pursuant to section 34A(1) of the Audit Act 1901" within the annual appropriations of the relevant department responsible for the particular matter in respect of which the payment is being made.

"Given the description in the heading of section 34A in the Audit Act (viz "Act of grace payments"), the use of the term "ex-gratia" in official Commonwealth documents and correspondence to describe such payments should be discouraged. This is to avoid any confusion or misunderstanding since the term "ex-gratia" is also capable of loosely describing any payment that is made without legal liability (eg Grants-in-Aid or other approved Government schemes of financial assistance that do not have specific statutory backing but which are made under ordinary standing appropriations). Conversely, the term "act of grace payments" should not be used other than to describe those made pursuant to section 34A of the Audit Act. If a department is in any doubt in these matters, advice should be sought from the Department of Finance."