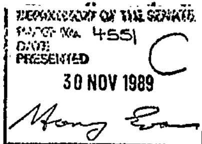

REVIEW OF AUDITOR-GENERAL'S EFFICIENCY AUDITS - DEPARTMENT OF DEFENCE: SAFETY PRINCIPLES FOR EXPLOSIVES AND RAAF EXPLOSIVES ORDNANCE

REPORT

303

JOINT COMMITTEE OF PUBLIC ACCOUNTS

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

NOVEMBER 1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE OF PUBLIC ACCOUNTS

REPORT 303

REVIEW OF AUDITOR-GENERAL'S EFFICIENCY AUDITS - DEPARTMENT OF DEFENCE: SAFETY PRINCIPLES FOR EXPLOSIVES AND RAAF EXPLOSIVE ORDNANCE

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Canberra

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DUTIES OF THE COMMITTEE

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

> 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 the 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 inquiry 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.

PREFACE

This report outlines the findings of the Committee's review of the Auditor-General's efficiency audit of the Department of Defence's safety principles for explosives. The Auditor-General's report was tabled in Parliament on 19 April 1988.

The objective of the efficiency audit was to evaluate the administrative effectiveness of the Department's procedures and practices regarding its explosives storage and handling operations. Audit's analysis concentrated on the arrangements in force within the Department of Defence to lessen the impact of an accidental explosion. Audit adopted the approach of examining the relevant departmental instructions and then assessing the level of compliance with those instructions.

The Audit report found serious weaknesses in the Department's application of NATO Safety Principles and in its administrative arrangements concerning the processing of waiver applications for approval by the Minister. In particular, the Auditor-General revealed that the Minister's approval had not been sought for several non-compliant operations, and there had not been a concerted or co-ordinated effort to implement the new principles until well after the deadline the Department had set itself. The report also identified weaknesses in the instructions that governed the Safety Principles, and made several recommendations to clarify those perceived inadequacies.

The Committee concurred with the majority of Audit's findings, and considered that although most of Audit's recommendations had been implemented, some had taken a long time to be addressed. Among the concerns of the Committee was the time taken to issue the revised draft instruction on the application of the NATO Safety Principles and the level of consultation between Defence and local councils was not at all satisfactory. The Committee was particularly concerned that the Minister's approval had not been sought or granted for numerous situations where explosives operations increased the level of risk to the public. The issue of the revised instruction and the recommendations of this report will, it is hoped, rectify the inadequacies that both Audit and the Committee discovered.

The Committee is grateful to the Department of Defence for the co-operation and assistance extended to it throughout the review. The Committee also thanks its Secretariat for the support given to the Inquiry.

For and on behalf of the Committee.

R E Tickner, MP
Chairman
28 November 1989

CONTENTS

	Preface	(vii)
	Summary of Recommendations	(xi)
	List of Abbreviations	(xiii)
1.	INTRODUCTION	1
2.	AUDITOR-GENERAL'S EFFICIENCY AUDIT INTO DEPARTMENT OF DEFENCE: RAAF EXPLOSIVE ORDNANCE	7
3.	THE SAFETY PRINCIPLES INSTRUCTION	11
4.	THE WAIVERS INSTRUCTION	29
5.	PROCESSING OF WAIVERS	39
6.	APPROVAL BY GOVERNMENT	45
7.	SAFEGUARDING	51
8.	DEFENCE SCIENCE AND TECHNOLOGY ORGANISATION (DSTO)	63
9.	OFFICE OF DEFENCE PRODUCTION (ODP) AND MARIBYRNONG	65
10.	RAN SYDNEY OPERATIONS	71
11.	RAAF BASES	77
12.	COSTS OF IMPLEMENTING THE DEPARTMENT'S SAFETY PRINCIPLES FOR EXPLOSIVES	81
13.	REPORT REFERENCES TO MINISTERS NOT BEING INFORMED AND REQUISITE MINISTERIAL APPROVAL BEING SOUGHT	85

14. TRANSPORT OF EXPLOSIVES 93

15. CONCLUSION 95

APPENDIXES

1. Auditor-General's Efficiency Audit into Department of Defence: safety principles for explosives - Summary of Recommendations 101

2. Submissions received 105

3. Conduct of the Inquiry 107

SUMMARY OF RECOMMENDATIONS

The Committee has made a number of recommendations which are listed below, cross-referenced to their location in the text.

The Committee recommends that:

1. For instances where the Joint Committee of Public Accounts is undertaking an inquiry into a Auditor-General's restricted report subject to an Attorney-General's certificate under s.48F(5) of the Audit Act 1901, information necessary for the conduct of the inquiry should be made available to the Committee. Where confidential documents that the Committee considers relevant to an inquiry are required, they should be provided on a restricted and in-camera basis. (Paragraph 2.12)

2. The safety principles instruction provide for individual notification to all landholders and residents who are affected in any way by any outside quantity distance emanating from the storage of explosives, whether or not a Public Risk Waiver is required. (Paragraph 3.24)

3. Audits conducted by the Explosives Storage and Transport Committee should be undertaken at random and not advertised as proposed in the draft Instruction on monitoring and auditing of Defence Explosives safety practices and procedures. (Paragraph 4.11)

4. All Australian Ordnance Council audit reports on adherence to Departmental Instructions be sent in the first instance to the Chief of the Defence Force and the Secretary. (Paragraph 4.15)

5. Independent audits of adherence to Department Instructions commence immediately. (Paragraph 4.19)

6. The Instructions relating to processing of waiver submissions be amended to provide for a strict timetable of four weeks from the date a Public Risk Waiver (PRW) requirement is first identified to the time it reaches the Minister. (Paragraph 5.15)

7. Safeguarding maps be prepared and distributed to local councils and affected landholders surrounding Defence establishments containing stored explosives, and that the maps reflect as far as possible long term interests of Defence. (Paragraph 7.25)

8. The Department examine more closely the option of acquiring land and leasing it back to the previous owner where the land is affected by outside quantity distances in order to ensure control over its explosives storage operations. (Paragraph 7.30)

9. Regulations be made under the Defence Act 1903, similar to the proposed Defence Area's Control Regulations, to ensure that no incompatible development adjacent to Defence establishments is allowed to occur that would affect Defence's operational capability and that landholders affected by the Regulations are adequately compensated for any adverse effect to their land. (Paragraph 7.37)

10. The Australian Defence Industries (ADI) Instruction be amended to clarify the reference concerning the approving authority for a Public Risk Waiver. (Paragraph 9.9)

11. A master plan for the effective co-ordination of explosive operations at Maribyrnong be produced without further delay. (Paragraph 9.15)

12. The revised Instruction be amended to provide for the Australian Ordnance Council (AOC) to be consulted where confusion exists as to the application of the NATO Safety Principles. (Paragraph 11.7)

LIST OF ABBREVIATIONS

ACLOG	Assistant Chief of Logistics
ADI	Australian Defence Industries
AOC	Australian Ordnance Council
CLD	Chief of Logistics Development
CPB	Commonwealth Property Boundary
DI(G) SUP 20-1	Defence Instruction (General) SUPPLY 20-1 - the Safety Principles Instruction Issued May 1981
DI(G) SUP 20-2	Defence Instruction (General) SUPPLY 20-2 - the Waivers Instruction Issued September 1984
DRW	Departmental Risk Waiver
DSTO	Defence Science and Technology Organisation
EFM	Explosives Factory, Maribyrnong
ESTC	Explosives Storage Transport Committee
NATO	North Atlantic Treaty Organisation
PRW	Public Risk Waiver
RAAF	Royal Australian Air Force
RAN	Royal Australian Navy

CHAPTER 1

INTRODUCTION

- History of safety principles
- Overview of Auditor-General's Efficiency Audit Report
- Conduct of the Inquiry

History of safety principles

1.1 The Department of Defence (hereafter referred to as 'the Department') operates more than 1 000 sites for the storage and handling of explosives at over 40 establishments in Australia and overseas, with the estimated value of these facilities in the order of several hundred million dollars.[1] To protect their investment and to ensure that explosives are stored, handled, transported and used in the safest manner possible, the Department has developed procedures and policies over a number of years.

1.2 From the early 1920s until the late 1970s Australia followed safety principles for the storage and handling of explosives developed by the United Kingdom (UK).[2] In 1976 the North Atlantic Treaty Organisation (NATO) (of which the UK is a member) undertook a review of Western military storage procedures which resulted in the publication of the NATO Principles for the Storage and Transport of Ammunition and Explosives.[3] These Principles incorporate the United Nation's (UN) classification system for explosives and are based on the results of large scale explosive assessment trials conducted by NATO.[4] The NATO Principles are continually reviewed to accommodate changing safety expectations and technologies.[5]

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1. Australia, Auditor-General 1988, Efficiency Audit Report: Department of Defence: safety principles for explosives, April 1988, AGPS, Canberra, p.1. (Henceforth, Efficiency audit report: safety principles for explosives.)
2. Efficiency audit report: safety principles for explosives, p.1.
3. PAC file 1988/4 B(23): Letter from Department of Defence dated 25 August 1989, p.3.
4. Ibid.
5. Ibid.

1.3 The UN classification system for explosives was developed following the establishment in 1953 of the UN Committee of Experts on the Transport of Dangerous Goods.[6] The UN Committee's recommendations formed the basis for uniform international regulations between countries, by commonly defining and classifying commercial dangerous goods into groups based on their risk characteristics.[7] However, as the UN Committee's recommendations were primarily aimed at uniform procedures for dangerous goods destined to be sold or used commercially, the NATO Principles focused on gaps not addressed by the UN Committee, particularly in the areas of storage and handling.[8] The NATO Principles include the classification, nomenclature, testing criteria, placarding, labelling, packaging and general safe handling precautions for explosives.[9]

1.4 The Department adopted the NATO Safety Principles for Explosives in May 1981 when it issued a Defence Instruction. The Instruction was issued under the authority of Section 9A of the Defence Act 1903 and was approved and signed by the Secretary, and the Chief of Defence Force Staff, positions which were then held by Mr W B Pritchett and Sir A M Synnot respectively. The aim of the NATO Safety Principles was to promote the safe storage and handling of explosives in order to prevent the possibility of an accidental explosion. The new safety principles classified explosives according to their potential hazard, coded the compatibility of different types of explosives for storage or transport together, and set out as storage qualities required and minimum distances permitted between explosives storehouses and other facilities, people and property boundaries.[10] The new principles did not greatly differ from the previous safety requirements.

1.5 The reason for the adoption of the new safety principles was largely due to other nations particularly Australia's closest allies, adopting them. The Committee was told the rationale behind the decision was because:

> ... the nations with which we deal in these matters were adopting the NATO procedures, principally Britain and the United States. It was done not only for the sake of standardisation but also in terms of co-operation in the procurement, storage and handling of ordnance.[11]

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6. PAC file 1988/4 B(23): Letter from Department of Defence dated 28 August 1989, p.1.
7. Ibid, p.2.
8. Ibid.
9. Ibid.
10. Efficiency audit report: safety principles for explosives, p.1.
11. Evidence, p.133.

Other countries that have adopted the NATO Safety Principles include Belgium, Canada, Italy, Norway, Portugal, West Germany, France, New Zealand and Papua New Guinea.[12]

1.6 In May 1981 the Department issued Defence Instruction (General) SUP 20-1 (the Safety Principles Instruction) pursuant to the Defence Act 1903. This Instruction marked the formal adoption of the UN Classification System and the NATO Principles.[13] The Instruction set a timetable for the Principles to be gradually implemented for a transitional period and to be completely operational by the targeted time of December 1983.

Overview of Auditor-General's Efficiency Audit Report

1.7 Audit's review of the Department's implementation and operation of explosives safety principles began in late 1985 as part of a general audit review of the Department. Later, in December 1986, the review was formally designated as an efficiency audit with a draft report being provided to the Department on 3 February 1987.[14] The report was tabled in Parliament on 19 April 1988 after consultation with the Department.

1.8 The Audit report found major inadequacies with the administration of the safety principles. Among its findings were the following:

- the Department failed to meet its December 1983 target date for the implementation of the new safety principles, with no evidence of a concerted and co-ordinated effort to implement them until around 1986 and 1987;
- by early 1988 there were still many locations at which the explosives-related operations did not comply with the adopted principles;
- waivers (temporary dispensations to allow continuation of activities which do not meet the requirements of the safety principles) numbering over 100 had been issued or were pending approval, implying that departmental operations were being conducted in a manner that imposed a level of hazard to the public, facilities and departmental personnel that was greater than the level acceptable under the safety principles;

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12. Exhibit 31, p.1.
13. Efficiency audit report: safety principles for explosives, p.9.
14. Ibid, p.4.

- in several situations such as Royal Australia Navy (RAN) operations in Sydney Harbour and Office of Defence Production explosive sites, non-compliant situations continued without the necessary waiver approval;

- at the time of adoption of the new safety principles, the Department gave little consideration to the cost implications, and, despite advice from the Attorney-General that government approval should have been sought, adopted the new principles without seeking Government endorsement; and

- despite the fact that the Department had adopted a system involving the provision of safeguarding maps to local government planning authorities, Audit found that these maps were not being provided.

1.9 The Audit Report made a total of 21 recommendations, with the Department accepting all but three of them. Audit's recommendations are at Appendix 1.

Overview of Inquiry

1.10 Paragraph 8(1)(ab) of the Public Accounts Committee Act 1951 empowers the Committee 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 Parliament. The Committee resolved on 20 April 1988 to undertake an inquiry into the Auditor-General's Efficiency Audit Report on the Department of Defence: safety principles for explosives, incorporating matters raised in the Auditor-General's Efficiency Audit Report on the Department of Defence: RAAF explosive ordnance.

1.11 The Committee adopted the following terms of reference for the Inquiry:

1. To examine matters raised in the Auditor-General's Reports on safety principles for explosives and RAAF explosive ordnance.

2. To examine the adequacy of responses by the Department of Defence to these reports.

1.12 The Committee held seven public hearings during the course of the Inquiry, with one being held in Sydney and the remainder in Canberra. The Committee also inspected the Navy ammunition pipeline in Sydney Harbour from Kingswood to the Man of War Anchorage off Garden Island.

1.13 A list of the organisations and individuals who provided written submissions to the Committee as well as details of the Committee's hearings are at Appendix 2 and 3 respectively.

CHAPTER 2

AUDITOR-GENERAL'S EFFICIENCY AUDIT INTO DEPARTMENT OF DEFENCE: RAAF EXPLOSIVE ORDNANCE

2.1 The Committee undertook as part of its Inquiry a review of the Auditor-General's Efficiency Audit into Department of Defence: RAAF explosive ordnance. The Audit was commenced in 1986 with the objective of evaluating the adequacy and effectiveness of procedures and practices relating to the procurement, inspection, storage, handling and use of explosive ordnance within the Royal Australian Air Force.[1]

2.2 The audit examined highly confidential material relating to the defence of Australia. Audit access to such classified material is done through the issue of a certificate from the Attorney-General. The relevant section of the Audit Act 1901 states that:

> (5) The Attorney-General may issue to the Auditor-General a certificate certifying that the disclosure of information concerning a specific matter, or the disclosure of the contents of a specified document, would be contrary to the public interest -
>
> (a) by reason that the disclosure would prejudice the security, defence or international relations of the Commonwealth.

2.3 The Audit Act 1901 further provides that when a certificate has been sought and granted from the Attorney-General, the Auditor-General may prepare a restricted report on the results of the audit and send it to the Prime Minister, the Minister for Finance, the Minister with portfolio responsibility and the Public Service Board (now Commission). When a restricted report is prepared, the Auditor-General is obliged, by s.48F (6) of the Audit Act 1901, to prepare a separate report of the results of the

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1. Australia, Auditor-General 1987, Efficiency Audit Report: Department of Defence: RAAF explosive ordnance, December 1987, AGPS, Canberra, p.1. (Henceforth, Efficiency audit report: RAAF explosive ordnance.)

audit that does not contain information that is subject to the Attorney-General's certificate. The unrestricted report is tabled in Parliament.

2.4 The Minister for Defence, having regard to the nature of the material being examined in the course of the audit, sought and obtained a certificate from the Attorney-General under sub-section 48F (5) of the Audit Act 1901 on the basis that disclosure of certain information contained in the report would prejudice the security and defence of Australia.[2]

2.5 Because of the provisions of s.48F of the Audit Act 1901, the Committee has only been provided with the unrestricted efficiency audit report relating to RAAF explosives ordnance. The Committee has, during the course of the Inquiry, explored with the Department various methods by which the Committee could be provided with a copy of the restricted report. At the public hearing on 16 December 1988 the Committee discussed whether a copy of the restricted report could be made available to the Committee and was told that:

> ... in preparation for hearings before the Committee, a legal opinion was sought from the Department's legislation branch about the effect the Attorney-General's certificate may have on the release of information to the Committee, that notwithstanding the provisions of the Public Accounts Committee Act that allow taking evidence in-camera, the advice, ... goes generally to the fact that information may not be released while the certificate is in place, and that no action has been initiated by Defence to have it removed or modified.[3]

2.6 On 5 June 1989 the Department sought legal advice from the Attorney-General's Department on three issues relating to the restricted report:

1. the legal effect of the Attorney-General's certificate restricting publication of the report;
2. whether material that is contained in the restricted report can be disclosed to the Committee; and
3. how to proceed to make the report available to the Committee without contravening legislation.[4]

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2. Efficiency audit report: RAAF explosive ordnance, p.1.
3. Evidence, p.793.
4. PAC file 1988/4 B(23): Letter from Department of Defence dated 17 July 1989, p.1.

2.7 The Attorney-General's Department responded on 22 June 1989, stating that:

> For the reasons set out below, and in the absence of any objection by your Department (ie Defence), the restricted report may be made available to the Joint Committee of Public Accounts in so far as it is relevant to the inquiry by the Joint Committee of Public Accounts in the performance of its duties under s.8 of the Public Accounts Committee Act. The procedure set out in s.11 (2) and (3) of the Public Accounts Committee Act should be adopted.[5]

2.8 The Committee then asked the Department at its next public hearing of the Inquiry on 24 August 1989 for a copy of the restricted report to be provided. The Department replied that the report would not be available to the Committee for national security reasons and offered the following explanation for its refusal to provide a copy:

> The report contains information on Air Force stock holdings of ammunition. It gives locations for that ammunition. We believe that that information would be of significant interest to people outside Australia and that it would also give a clear indication of our Air Force's capability to react in certain situations. That being the case, it is a matter of national security.[6]

2.9 Section 8 (ab) of the Public Accounts Committee Act provides for the Committee 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 Parliament. As the restricted report was not tabled in either of the Houses of Parliament, the Committee is therefore unable to examine it. However, the Public Accounts Committee Act also provides in s.11 (2) for confidential evidence, whether oral or documentary, to be given in-camera. The Act further states (s.11(3)) that any evidence given in-camera shall not be disclosed by the Committee without the consent in writing of the witness.

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5. PAC file 1988/4 B(23): Letter from General Counsel Division, Attorney-General's Department to Department of Defence, dated 22 June 1989, p.2.
6. Evidence, p.1039.

2.10 The Committee is concerned that, by the Department objecting to the release of the restricted report, the Parliament is being denied the opportunity to examine matters of public administration when it is the Parliament to which the Department is accountable. Parliamentary committees often receive evidence which is confidential and yet are still able to report on such matters without breaching that confidentiality.

2.11 As the current Audit Act prescribes that restricted reports subject to an Attorney-General's certificate under s.48F not be tabled in Parliament, only the Executive is able to take action on issues the Auditor-General examines and on which he makes recommendations. This, in the Committee's view, is not appropriate as the Parliament should be able to review all reports of the Auditor-General.

2.12 **The Committee recommends that:**

- **For instances where the Joint Committee of Public Accounts is undertaking an inquiry into a Auditor-General's restricted report subject to an Attorney-General's certificate under s.48F(5) of the Audit Act 1901, information necessary for the conduct of the inquiry should be made available to the Committee. Where confidential documents that the Committee considers relevant to an inquiry are required, they should be provided on a restricted and in-camera basis.**

CHAPTER 3

THE SAFETY PRINCIPLES INSTRUCTION

Audit findings and recommendations

3.1 Audit noted that, in addition to issuing the Safety Principles Instruction in May 1981, the Department was also affected in its application of the NATO Safety Principles by the Department's acceptance of a Commonwealth Ombudsman's recommendation. In January 1980 the Ombudsman issued a report on his investigations regarding a landholder who lived adjacent to HMAS Albatross and who was concerned about the intrusion of outside safety distances onto his property and whether such an intrusion restricted his ability to develop his land.[1]

3.2 After examining the case the Ombudsman recommended that:

> Defence should conduct a thorough review of all explosives storage areas in the Commonwealth to determine those installations where outside safety distances extend beyond Commonwealth property, to ensure that any landholders so affected are appropriately notified and special agreements made, and to ensure as far as practicable that outside safety distances are confined within Commonwealth property.[2]

3.3 The Department accepted the Ombudsman's recommendations and drafted the Safety Principles Instruction to take account of them. This is shown in paragraphs 10 and 11 of the Instruction which states:

> 10. Unless other clearly demonstrable specific conditions apply (and are likely to apply in the future), the Outside Quantity Distance to be used in determining the distance from the potential explosion site to the Commonwealth land boundary is that applicable to structures and facilities in Group IV as defined in D/ESTC/10 Leaflet No.6, Part 1, Appendix 1.

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1. Exhibit 30.
2. Ibid.

> 11. Under those circumstances where specific conditions do not apply and it is not possible to contain Quantity Distances within the boundaries of Commonwealth land, advice is to be furnished to the Chief of Supply, who will co-ordinate any further action necessary in association with the Service concerned and other relevant Defence Central Divisions.

3.4 Audit found that the Instruction did not provide for affected landholders to be advised when one of the outside quantity distances, the major facilities distance, extended beyond the Commonwealth Property Boundary (CPB), and found no evidence that the Department had notified or intended to notify affected landholders.[3] Audit therefore recommended that, to accord with the Ombudsman's recommendation which it had accepted, the Department ensure that where any outside quantity distances extend beyond the CPB, affected landholders be appropriately notified and special agreements made (Recommendation No.1).

Department's response

3.5 In October 1987 the Department advised Audit that it accepted the recommendation, and that there was a need to notify landholders affected by outside quantity distances, and that this would be incorporated when the Safety Principles Instruction was re-issued.[4]

3.6 The Committee was advised at the commencement of its Inquiry that, as at 3 June 1988, the requirement to notify affected landholders had been incorporated into a draft revised Instruction, but that no procedures to notify landholders had yet been determined, although it was anticipated that notification could be achieved through local councils.[5] The Department also advised that no costs had been identified for this process, that the requirement to notify affected landholders would be formally advised when the revised Instruction was issued in the latter half of 1988, and that in the meantime appropriate procedures for notifying the affected landholders would be developed.[6]

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3. Efficiency audit report: safety principles for explosives, p.9.
4. Ibid.
5. Department of Defence submission dated 8 June 1989, Annex A.
6. Ibid.

3.7 Later, towards the end of the Inquiry, the Committee asked the Department for an update on the progress of its implementation of Audit's recommendations. On 31 July 1989 the Department again advised that the requirement to notify landholders had been incorporated into a draft revised Defence Instruction which was being reviewed by the Minister.[7] The Committee was also provided with a copy of the draft Instruction which outlined the requirement to notify affected landholders. On 10 November 1989 the revised Instruction was finally issued.

3.8 Significantly, however, the Department told the Committee that, as at 31 July 1989, no affected landholders had been notified pending the Minister's endorsement of the revised Instruction.[8]

Committee findings

3.9 The Committee spent a considerable amount of time examining the Department's implementation of Recommendation No.1 of the Auditor-General. It was clear that there existed a great deal of confusion within the Department as to the practical effect of implementing both the Ombudsman's and the Auditor-General's recommendations.

3.10 Much of the confusion lay in the interpretation of the wording of the Ombudsman's recommendation, particularly with the phrase '... where outside safety distances extend beyond Commonwealth property, to ensure that any landholders so affected are appropriately notified, and special agreements made ...' (emphasis added).[9]

3.11 Outside safety distance is a technical term indicating the distances where people and property would be affected in the event of an accidental explosion. The term was replaced by outside quantity distances, which were divided into three categories:

1. minor public traffic route distance, where the public should not be permitted; represented by a green safeguarding line;
2. inhabited building distance where houses and major traffic routes should not be permitted; represented by a yellow safeguarding line; and

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7. PAC file 1988/4 B(23): Letter from Department of Defence dated 18 August 1989, Attachment 2.
8. Ibid.
9. Exhibit 30.

3. major facilities distance, where facilities where large numbers of people may congregate should not be permitted; represented by a purple safeguarding line.

3.12 Because of the change in terminology, there is some debate as to what the Ombudsman's recommendation meant. The Department appears to have concentrated on the words 'safety' and 'affected' so as to construe the recommendation to mean that only landholders who are affected by safety considerations should be notified. As one Defence witness pointed out:

> The only time, from my reading of the Instructions, that there is a requirement from the point of view of safety to notify people is when there would actually be that Group V risk within the purple line, not if there is a housing estate because that is not defined as a major facility.[10]

Therefore, Defence considered that only landholders who were affected by the yellow safeguarding line needed to be notified.

3.13 To show the effect of this interpretation in practical terms, Figure 1 shows an example of an explosive storage facility for which the safeguarding lines extend beyond the Commonwealth Property Boundary (CPB) and thus affects the adjoining landholders property. In this example, only the purple line (the major facilities distance) is affecting the landholder, as the yellow line (inhabited building distance) is contained within the CPB. The NATO Safety Principles state that no Group V buildings should be built between the yellow and purple lines (eg a multistorey building with a configuration of large glass windows). In such a situation, based on the Department's interpretation with no Group V building between the yellow and purple line, there is no unacceptable risk to the landowners according to the NATO Safety Principles, and accordingly, there is no requirement to notify them. This was suggested to the Committee in the following terms:

> ... if they {ie landholder} are building in an area which is outside that yellow zone - between the yellow and the purple - and they are not building one of the major facilities but are in a normal housing estate, then the risk they are being subjected to, or the level of hazard in which they are involved, is lesser than that which is inherent in the system.[11]

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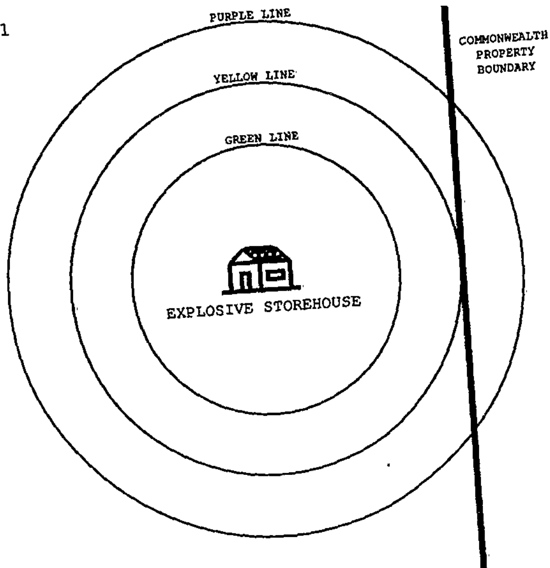
10. Evidence, p.96.
11. Evidence, p.47.

FIG 1



3.14 Later in the course of the Inquiry the Department restated its interpretation that:

> *If, in fact, there is no Group V risk just outside our boundary, the landholder is not affected within the bounds of the NATO Storage Principles and does not need to be notified from the point of view of safety.*[12]

3.15 The Department also sought to distinguish between Audit's Recommendation No.1 and Audit's Recommendation No.14 on whether landholders should be notified. The latter recommendation referred to Defence's need to ensure control of the land surrounding its facilities so as not to constrain its explosives operations. When it was suggested to the Department that the Ombudsman's recommendation could be interpreted as meaning any quantity distances should apply, not just the inhabited building distance, then landholders should be notified, Defence replied that:

> We are really talking about two different recommendations of the Auditor-General. Recommendation No.1 is a safety-related recommendation where we have an outside quantity distance problem in that the ammunition we are storing will bring to a greater degree of risk the people on the outside. Recommendation No.14 covers the circumstance you are describing, that is where there is some restriction on surrounding land use required for the long-term viability and development of the establishment. At that stage the Department should seek either to acquire the landholding or ensure that those restrictions are enforced. The enforcing of those restrictions may well entail the notification by the local council of the restrictions we would like to see placed on the land, and so on.[13]

3.16 The Committee does not agree with Defence's interpretation of the Ombudsman's Recommendation, nor does it make the same distinction between Audit Recommendation No.1 and Audit Recommendation No.14. The Committee considers that the Ombudsman meant landholders who are affected in any way by outside quantity distances should be notified by Defence.

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12. Evidence, p.1157.
13. Evidence, p.165.

3.17 The Committee was told by Defence that, even if a glass fronted multistorey building was not erected between the yellow and purple lines, the landholder would still be affected. At a public hearing it was put to Defence that between the yellow and purple lines:

> What he (ie affected landholder) is being submitted to is non-serious structural damage to his building; he is unlikely to die, but he could suffer less serious injuries.[14]

To which a Departmental officer replied:

> That is fair comment, within the system.[15]

3.18 The Committee then sought to ascertain how many landowners were affected by any outside quantity distances. While the Committee accepts that the majority of affected land surrounding defence establishments is vacant or uninhabited, and the risk of injury to persons is extremely small, it did note some areas where quite a number of metropolitan dwellers had been affected. They are listed as follows:

Location	Dwellings affected
Ammunition Factory, Footscray	Prescribed safety distance extended over nine residences and a doctor's surgery.
	Prescribed safety distances extends over 183 residential units of accommodation, seven houses and a number of roads.
Munitions Filling Factory, St Mary's	Prescribed safety distance extends over seven hectares of land, including five private dwellings and a public road.
RAAF Williamtown, NSW	Prescribed safety distance extends over Hunter District Water Board land where few employees are present at any one time.

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14. Evidence, p.97.
15. Evidence, p.97.

Graytown, Vic	Prescribed safety distance extends over 54 hectares of State Forest Land, including a picnic site used infrequently on weekends.
Man of War Anchorage, Sydney Harbour	Prescribed safety distance extends over Clark Island and Garden Island Dockyard, as well as shipping channels and ferry routes.
Newington Wharf, Parramatta River	Prescribed safety distance extends through sections of the George Kendall Reserve and Auburn Tip, as well as sections of the Parramatta River.
Spectacle Island, Sydney Harbour	Prescribed safety distance envelopes Snapper Island, Spectacle Island, Cockatoo Island and Pulpit Point, including ferry routes and public waterways.[16]

3.19 The Committee considers that, while many landholders have not been affected in terms of their safety or of their property's safety, they have nevertheless a right to know whether the location of stored explosives nearby affects them in <u>any</u> way. The Committee considers that this is what the Ombudsman meant when he recommended that those landholders affected by outside safety distances should be appropriately notified. It is therefore apparent that Defence has interpreted the Ombudsman's Recommendation incorrectly and consequently failed to fully implement his recommendation to notify affected landholders. The Chief of Logistics Development, Air Vice-Marshall Heggen, agreed with the Committee's interpretation when he stated:

> I think it will be apparent to you, as it is to me, that there has been some variance of interpretation of the recommendation. Let me say that, as the person responsible for the new Defence Instruction, that it has and will be my intention that the mechanisms for advising, and the advising will be with respect to the yellow line and the purple line because I agree with your interpretation, that it is pointless waiting until somebody proposed to

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16. Exhibit 59, Attachment A.

> build a high-rise building before making the local authorities - and I really do not care what goes on at present, or what has gone on previously ... it makes no sense to have determined ... those limits, and not to notify authorities that they exist.[17]

3.20 The Committee therefore concludes that the Department has been extremely remiss in failing to notify landholders affected by outside safety distances as recommended by the Ombudsman in 1980. Landholders living adjacent to Defence establishments may still not be aware that their land and property are within safeguarding lines. Citizens or companies may have bought such land over the last ten years not knowing the possible constraints that Defence may want to impose on future development of the land, or the effects upon them in the event of an accidental explosion.

3.21 The Committee examined the revised draft Instruction to ensure that the provisions contained no ambiguity on this point and that Air Vice-Marshall Heggen's guarantee on the matter was reflected in the revised draft Instruction. The Committee found, however, that even after the issue was raised at public hearings during the Inquiry, there was still no requirement in the draft Instruction to notify <u>all</u> landholders affected by outside quantity distances.

3.22 Annex C, paragraphs 13 and 14 of the draft Instruction contain the directions to notify affected landholders. The paragraphs state, inter alia, that in situations involving a Public Risk Waiver (PRW), all persons and property holders affected are to be formally advised of the details, and that the method of notification is to be by separate memorandum to each affected person and property owner. However, a PRW situation in relation to a purple safety arc means that a Group V risk must exist before landholders are notified. In situations where there is no Group V risk and thus no PRW is required, according to the draft Instruction, no landholder has to be notified. This is the very situation the Ombudsman, the Auditor-General and the Committee have sought to rectify.

3.23 *The Committee concludes that Audit Recommendation No.1 has not been satisfactorily implemented.*

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17. Evidence, p.172.

3.24 **The Committee recommends that:**

- **The Safety Principles Instruction provide for individual notification to all landholders and residents who are affected in any way by any outside quantity distance emanating from the storage of explosives, whether or not a Public Risk Waiver is required.**

3.25 In addition to Recommendation No.1, seven of the Auditor-General's recommendations relate to rewriting the two Instructions covering the safety principles for explosives. The revised Instruction, which replaces the two previous Instructions, was issued after a long delay on 10 November 1989. This is despite the fact that the Department accepted all of the recommendations relating to the rewriting in February 1988. Recommendation No.1 was accepted even earlier, in October 1987.

3.26 The Committee considers that too much time has been taken by Defence to rewrite the Instruction. Defence initially advised the Committee in June 1988 that it was expected that the redrafted Instruction would be issued in the latter half of 1988. Later the Committee was told:

> It will not be issued in late 1988. The Minister will need to consider it. I would say that we will have it with the Minister early next year, and then it will be up to the Minister to decide what he does with it.[18]

3.27 In defending the length of time required to redraft the Instruction the Department argued that the Instruction was being examined very closely by senior officers of the Department, including the Secretary and the Chief of the Defence Force, and that it would then be forwarded to the Minister.[19] It was also put forward that:

> ... there were suggestions that we did not handle the first Instruction very brilliantly, and so far as my judgement is concerned, if it means waiting a few more weeks to get a good Instruction this time it is better to err on the side of delay.[20]

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18. Evidence, p.789.
19. Evidence, p.452.
20. Evidence, p.452.

3.28 The Committee agrees that the redrafting of the Instructions should have been done carefully and methodically in light of the Auditor-General's criticisms of the previous Instructions. However, the Committee considers that almost two years is easily long enough for this action to occur, and is most concerned at the delay that occurred in issuing the revised Instruction. Because of the delay, the old Instructions of 1981 and 1984 respectively were still in force for a considerable length of time, despite the fact that their contents have been heavily criticised by the Auditor-General. Evidence was received which indicated the Department was holding back implementing the new procedures recommended by the Auditor-General simply because the Instruction had not been issued. For example, when asked about the provision of safeguarding maps and notifying affected landholders Air Force stated:

> We were really waiting for the issue of the Defence Instruction and the establishment of mechanisms for notifying landholders.[21]

The Department's notification of affected landholders has also been held up pending approval of the new Instruction.[22]

3.29 The Committee also examined the effect of the Department accepting another 1980 recommendation from the Commonwealth Ombudsman which effectively equated the CPB with a Group IV risk.[23] The Ombudsman's recommendation and the Department's acceptance of it effectively meant that the application of the NATO Safety Principles was more restrictive than for any other country using the NATO Principles. This meant that safety distances were more stringent than that prescribed under the NATO Safety Principles, thus limiting the amount of explosives that could be stored in the area and affecting the operational capability of most Defence bases.

3.30 The Committee heard evidence that, in hindsight, the decision to accept this particular recommendation would not have been made.[24] As Mr Woodward, then a Deputy Secretary of Defence, stated:

> ... on reflection, I think that there was some aspects of our initial decision that I would now question, including the acceptance of the Ombudsman's report and the implications of that because, in fact, that has led to the potential for great cost.[25]

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21. Evidence, p.180.
22. Evidence, p.1156.
23. Exhibit 30.
24. Evidence, p.446.
25. Evidence, p.784.

3.31 Following the conclusion of public hearings in late August 1989 the Committee was told that the Department's interpretation of the Ombudsman's recommendation relating to equating a Group IV risk to the CPB was to be discontinued due to the considerable expenditure required to comply with it.[26] The Department noted that the practice resulting from the Ombudsman's recommendation had unnecessarily created non-compliant situations.[27]

3.32 The confused history of the Department's handling of this matter is of some concern. The Department accepted the Ombudsman's decision in 1980 with little apparent thought as to the operational impacts it may have. It then inserted an interpretation of the decision into the Defence Instruction on Safety Principles which, in some cases, Audit found was not being complied with after several years of operation. Then in 1985-86 Audit noted an increased effort to comply with the Instruction. Then followed a realisation of the potential costs it may involve. Finally, in 1989 the Department decided that the Ombudsman's recommendation should not be applied as its application unnecessarily created non-compliant situations requiring considerable expenditure to remedy.

3.33 The Committee considers that the Department has mismanaged the whole matter relating to the acceptance of the Ombudsman's recommendation. Had it considered the possible implications when the decision was first accepted in 1980, it may well have been able to avoid the situation whereby for eight years it attempted to put into practice a costly and unnecessary constraint in terms of compliance with the NATO Safety Principles. It also raises the question of how much money was spent in order to comply with the now obsolete recommendation.

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26. PAC file 1988/4 B(23): Letter from Department of Defence dated 15 September 1989, Attachment 1.
27. Ibid.

Implementation timetable – Safety Principles Instruction – Audit findings

3.34 The Safety Principles Instruction issued by the Department in May 1981 set a phasing-in period for the progressive introduction of the NATO Safety Principles, with a deadline for completion of action of December 1983. Audit found that the Department failed to meet this deadline and concluded that it appeared the timetable was overly optimistic with there being no evidence of a concerted and co-ordinated effort to fully implement the new principles until 1986 and 1987.[28] The Auditor-General also found that at the end of 1986 there were numerous situations where the new principles were not being complied with, and that even by early 1988, although some progress had been made, there were still many locations at which the explosives-related operations did not comply with the new principles.[29]

Department's response

3.35 The Department disputed Audit's assertion that there was no concerted effort to implement the principles until 1986. In its supplementary submission to the Inquiry the Department commented that substantial achievement in implementing the Principles was made by most elements of the Department.[30] The submission provided documentation detailing achievements within the Department which, in the Department's view, demonstrated a concerted effort was being made at all times to adhere to the new safety principles.[31] The Department pointed out that there was no doubt that the timetable was optimistic. At best it was an estimate in the absence of detailed information upon which to develop realistic milestones for implementation.[32]

Committee's findings

3.36 The Committee examined the material provided by the Department which purported to show that the implementation timetable was substantially achieved. Table 3.1 compares a summary of the information to the Instruction timetable.

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28. Efficiency audit report: safety principles for explosives, p.1.
29. Ibid.
30. Department of Defence supplementary submission, dated 30 September 1988, p.3.
31. Ibid.
32. Ibid.

TABLE 3.1

IMPLEMENTATION

9. In order to facilitate planning and co-ordination, the following actions are to be taken by the Services and DSTO, within the anticipated time frames provided:

		Summary of documents provided to the Committee		
ACTION	TIME FRAME	NAVY	ARMY	AIR FORCE
a. Reclassify explosives seeking advice where necessary from the Australian Ordnance Council Explosives Storage Committee (ESC) and provide details to CETC.	Up to December 1981	October 1984	December 1981	November 1985
b. Inform all local firefighting authorities of the introduction of the UN Classification System for Service explosives.	Prior to the display of new fire fighting signs	Not formally advised	Completed	Not shown
c. Prior to transporting reclassified items, the items are to be labelled with the old and new systems, (until the appropriate publications and regulations are amended).	Up to December 1983	February 1985	Completed	December 1983
d. Compile and distribute amendments to publications for implementation.	Up to December 1983	October 1984 May 1987	September 1983	November 1985
e. Produce storage plans based upon: (1) existing facilities (2) reclassification, and (3) new quantity distance tables.	Progressively to December 1983	2 in 1985 1 in 1986 1 in 1987	December 1983	January 1984
f. Locate explosives and ammunition in accordance with the storage plans.	Progressively to December 1983	From 1985 to 1988	December 1983	Not shown
g. Ensure that planning for new works takes cognisance of the UN System, NATO Principles and the requirements of paragraph 10	Now (May 1981)	Not provided	Completed	Completed

Source: Attachment 1 to Defence supplementary submission dated 30 September 1988

3.37 The Department provided no documentation to indicate whether the Defence Science and Technology Organisation (DSTO) had complied with the implementation timetable. Similarly, some documentation was provided for the Office of Defence Production but it related mainly to the provision of safeguarding maps and did not indicate whether the Office had complied with the timetable. RAAF also indicated that their management efforts towards the planning and implementation of the new system commenced about August 1979 with two staff assigned full time from January/February 1982 for varying periods.[33]

3.38 Audit commented that, while the information provided to the Committee demonstrated a series of actions that had been taken by individual elements of the Department in respect of safety principles, it did not deal with the issue of whether those actions were concerted and co-ordinated and whether those actions achieved the implementation of the principles.[34] Audit commented further:

> The assertion within the Departmental comment that the timetable was at best an estimate should have been supported if this was the case by statements by the Department showing the revision of timetables and the feedback to management in a co-ordinated fashion as to failure to achieve a timetable, ie the continuous redevelopment of realistic milestones for implementation as mentioned in the submission comment.[35]

3.39 In evidence given at public hearings the Department suggested that Audit was not able to evince any evidence that there was no determined effort to implement the principles within the timeframe.[36] However, later in the course of the Inquiry one Defence witness admitted:

> ... just looking at the papers, that criticism may be valid, but I am not 100 per cent sure.[37]

3.40 The Department also stressed to the Committee that the timetable was optimistic, and that with the benefit of hindsight, a longer period would have been allowed and more resources would have been put towards implementing the new system.[38]

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33. Department of Defence supplementary submission dated 30 September 1988, p.99.
34. Exhibit 22, p.1.
35. Ibid.
36. Evidence, p.190.
37. Evidence, p.446.
38. Evidence, p.775.

3.41 The Committee also discovered that when the Safety Principles Instruction was amended in 1987, the dates to comply with the implementation of the new timetable were omitted. The Department admitted that the revision of the Instruction was:

> ... what I might describe as a quick and dirty job, mainly to pick up the fact that the Office of Defence Production had found its way back into the Defence arena.[39]

3.42 The evidence thus indicates that while Army, and to a lesser extent RAAF, had substantially complied with the implementation timetable, other areas of the Department ie Navy, DSTO and later ODP had not. The Department told the Committee in August 1989 that complete compliance with the NATO Principles would not be achieved until the end of 1989.[40]

3.43 As to the issue of whether there was a concerted and co-ordinated effort to implement the safety principles within the timeframe set out in the Instruction, the evidence clearly indicates there was no such action. It appears that once the Instruction was issued, there was little, if any, action to monitor the situation to see whether the timetable in the Instruction was met. Even when the Instruction was revised in 1987 and it was clear that the 1983 deadline had not been fully met, there was no revised timetable which would indicate that consideration had been given to the issue and a new deadline set. The Committee concludes that the implementation timetable for the Safety Principles Instruction was not fully met. There is no evidence to indicate a concerted and co-ordinated effort to implement the new safety principles until well after the 1983 deadline.

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39. Evidence, p.482.
40. Evidence, p.1235.

Compatibility mixing rules - Audit findings

3.44 Audit found that the principles did not clearly define which explosives were compatible in terms of whether they could be safely stored or transported together, and, as a result, differing interpretations were made within the Department.[41] Audit also found that the Australian Ordnance Council (AOC), a Departmental body set up to advise on safety aspects of explosives, had produced a set of compatibility group mixing guidelines for storage of explosives, but none had been produced for transport of explosives.[42] The status of the guidelines was unclear as they had not been formally adopted by the Department. Accordingly, Audit recommended that priority be given to the formal adoption by the Department of compatibility mixing rules for explosives, based on the UN system.

Department's response

3.45 The Department responded that during the period of the Audit a set of rules produced by UK authorities had been promulgated, and, as they were not dissimilar to those produced by the AOC, they were adopted in September 1987.

Committee's findings

3.46 The Committee sought to ensure that as well as being formally adopted, the compatibility rules were circulated and known to the individual Services and DSTO. The Department advised that the rules were included in the draft Instruction as references or base documents to which officers of the Department could refer to check on the compatibility rules. Therefore the Committee concludes that the Auditor-General's second recommendation has been implemented.

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41. Efficiency audit report: safety principles for explosives, p.14.
42. Ibid.

CHAPTER 4

THE WAIVERS INSTRUCTION

Background

4.1 The Waivers Instruction (Defence Instruction General SUP 20-2) was issued in September 1984 and was designed to allow the Minister to approve or, in less serious cases, to be notified of waivers authorising departures from the Safety Principles Instruction which might increase the degree of risk of, or hazard from, an explosion.[1] Waivers were categorised into Public Risk Waivers (PRW), where the departure from the Safety Principles Instruction would increase the hazard beyond the Defence-owned CPB, and Departmental Risk Waivers (DRW), where the hazard was increased within Defence-owned property.[2] The Instruction also provided for approving authorities for waivers. Where there was a risk to the public from an accidental explosion, the Minister's approval of a PRW was required.

Adequacy of the Instruction – Audit Findings – Recommendations 3 to 8

4.2 Audit found a number of inadequacies with the Instruction and made several recommendations in order to rectify them. It found that the potential effect of these inadequacies would be to severely curtail explosives operations as most of them did not comply with the Instruction, and thus if operations were allowed to continue because they were essential or could not be stopped the personnel involved would be at legal risk especially should an accident occur.[3] Audit also found that there was no requirement to report when the need for a waiver was identified and preparation of a submission to report it began, which had the effect of denying the Department prompt advice of specific and overall instances of non-compliance and which could lead to a tendency to adopt hastily conceived solutions.[4]

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1. Efficiency audit report: *safety principles for explosives*, p.16.
2. Ibid.
3. Ibid, p.17.
4. Ibid.

4.3 In light of these perceived inadequacies, Audit made five recommendations to improve the Instruction. The recommendations were that the Safety Principles Instructions and the Waivers Instruction be revised to:

(i) clarify the reference in the Safety Principles Instruction to '... other clearly demonstrable specific conditions' and the authority responsible for determining whether they apply (Recommendation No.3);

(ii) provide for verification of adherence to departmental instructions for the storage and processing of explosives by a body independent of the management responsible for conducting the explosives operations (Recommendation No.4);

(iii) clarify the applicability of the instructions to all ammunition and explosives held by the Department (Recommendation No.5);

(iv) require prompt reporting of non-compliant situations when identified (Recommendation No.6); and

(v) provide a means for the controlled continuation of non-compliant activities while proposals for waivers and remedial action are prepared and considered, so that personnel are not put in the position of having little or no choice but to continue operations which are non-compliance (Recommendation No.7).

4.4 Audit also recommended that, because these amendments would take some time to implement, the Department bring non-compliant operations within the provisions of the existing Waivers Instruction forthwith, either by the cessation of non-compliant operations or by issue of waivers (Audit Recommendation No.8).

Recommendation No.3 – Department's response

4.5 The Department accepted Recommendation No.3 and advised that the reference in the Waivers Instruction to when certain quantity distance situations would apply and who the responsible authority was had been clarified.[5] Later the Department advised that clarification had been achieved in the revised draft Instruction by removing any reference to equating the CPB to a Group IV risk (that is an inhabited building) which was a stricter safety imposition than was recommended in the safety principles.[6]

Recommendation No.3 – Committee's findings

4.6 The Committee concurs with Audit's view that the relevant phrase in the Waivers Instruction is misleading in that it makes it unclear when the outside quantity distance is to apply to a potential explosion site as a Group IV risk. This part of the Safety Principles was originally included only to cover the acceptance by the Department of the Ombudsman's recommendation. As stated in Chapter 3 (see paragraph 3.31), this requirement has since been deleted, and therefore the revised Instruction makes no reference to it. The Committee notes however, that the Department had been advised long before Audit's report was completed that the reference was misleading. On 12 December 1983 the Department was told by the Attorney-General's Department in relation to the Instruction that:

> I find the references to the presence or absence of 'specific conditions' in paragraphs 10 and 11 extremely vague and would see advantage in a more explicit Instruction.[7]

4.7 Despite this advice the paragraphs were not amended. The Committee considers that the offending paragraph created some confusion as to what was required by the Services. The Committee notes that as the reference has been deleted from the draft revised Instruction the Audit recommendation is no longer valid.

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5. Department of Defence submission dated 8 June 1988, Annex A.
6. PAC file 1988/4 B(23): Letter from Department of Defence dated 18 August 1989, Attachment 2.
7. Department of Defence supplementary submission dated 30 September 1988, p.118.

Recommendation No.4 – Department's response

4.8 The Department informed the Committee that it accepted Audit's Recommendation No.4 to provide verification by a body independent of the management responsible for explosive operations,[8] and that the revised draft Instruction provided for such a body. It subsequently elaborated that a separate Defence Instruction to provide guidance on the conduct of independent audits of explosives-related safety throughout the Department was in preparation, along with action to supplement the staff of the Australian Ordnance Council (AOC) who had been nominated to conduct the audits.[9]

Recommendation No.5 – Committee's findings

4.9 The Committee considers that this recommendation is very important because, if correctly implemented, it should ensure that the Department is complying with the NATO Safety Principles and thereby reducing the possibility of an accident occurring in relation to the storage and handling of explosives. The revised draft Instruction at paragraph 10 provides for this recommendation where it states that monitoring and auditing of the Instruction is, in the first instance, up to individual elements of the Department and is to be conducted by appropriate technical staff who are independent of the licensing and management authority immediately responsible for the relevant explosives facility.[10] It also states that the AOC will conduct independent audits once appropriate staffing arrangements have been made.[11]

4.10 The Committee welcomes the new role of the AOC in monitoring adherence to the Instructions. However, one provision of the draft Instruction relating to monitoring and auditing of defence explosives of safety practices and procedures has given cause for concern. Paragraph 13 of the proposed new Instruction outlines the procedure for external audits to be conducted by the Explosives Transport and Storage Committee (ESTC) (which reports to the AOC), and proposes that each February the ESTC will publish an audit program for the following inspection year.[12] The Committe is concerned that, by advertising its proposed audit program, the monitoring process will be severely diminished. By placing some explosive establishments on notice that they will be audited, the ESTC is unlikely to find any non-compliance as it will allow time for any lack of adherence to the Instruction to be rectified in

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8. Department of Defence submission dated 8 June 1988, Annex A.
9. PAC file 1988/4 B(23): Letter from Department of Defence dated 18 August 1989, Attachment 2.
10. PAC file 1988/4 B(23): Letter from Department of Defence dated 4 April 1989, Attachment 12.
11. Ibid.
12. Exhibit 72.

time for the programmed audit. Conversely, those establishments which are not to be audited may place less effort in adhering to the Instruction.

4.11 The Committee recommends that:

- **Audits conducted by the Explosives Storage and Transport Committee should be undertaken at random and not advertised as proposed in the draft Instruction on monitoring and auditing of Defence Explosives safety practices and procedures.**

4.12 The Committee wishes to ensure that ESTC's role of verifying adherence to Defence Instructions is indeed truly independent and is not just simply a toothless tiger if it does find examples of non-adherence. The Department assured the Committee that this was the case, by pointing out that all recommendations of the AOC have been implemented and none of the advice had been rejected.[13] The Department also stated that the AOC had direct access to the Chief of the Defence Force and had no direct line of management responsibility to any individual Service Chief of Staff[14]. Should a functional area ignore the AOC's advice therefore, the President of the AOC could report the matter direct to the Chief of the Defence Force. However, no instances where this had been done were provided to the Committee.

4.13 However, when questioned further on the independent role of the AOC the Committee was told that, after conducting an audit, the recommendations on the inconsistencies or deficiencies found would then be sent to the Assistant Chief of Logistics (ACLOG).[15] This system has its failings, as a member of the Committee put it:

> By reporting to him (ie ACLOG), are you not really reporting to him on his own negligence? ... He (ACLOG) is clearly in a conflict of interest situation, having responsibility for making sure things happen and yet being reported to that there may well be a substantial problem in the administration of his responsibilities.[16]

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13. Evidence, p.1224.
14. Evidence, p.1142.
15. Evidence, p.1164.
16. ibid.

4.14 The Committee was not satisfied that the recommendations of the AOC will be given sufficient consideration to ensure its independent role. While it is reassuring to know that in the past all of the recommendations of the AOC have been implemented, it does not necessarily mean that the recommendations are being considered as promptly as they could be. For instance, the Committee noted that the AOC recommended in AOC Proceeding 4/84 that the Navy submit applications for waivers to cover non-compliant situations in Sydney Harbour. As will be seen later in the report, this was not done until November 1985, and the PRW's were not approved until 1988, some three years later. Thus, while an AOC recommendation had been implemented, it took four years for it to come to fruition. The AOC had the option of going to the Chief of the Defence Force to help ensure its recommendations were heeded, but this was apparently not done in this case. The Committee considers that, by reporting directly to the authority responsible for managing the safety principles, the AOC is not as independent as it could be.

4.15 **The Committee recommends that:**

- **All Australian Ordnance Council audit reports on adherence to Departmental Instructions be sent in the first instance to the Chief of the Defence Force and the Secretary.**

4.16 The Committee considers that this will help to ensure that the implementation of the independent audit reports' recommendations will not be delayed, as has happened in the past, by informing higher authorities within Defence of any inadequacies in the management of the safety principles for explosives.

4.17 Despite accepting the Auditor-General's recommendation for independent verification of adherence to departmental instructions for the storage and processing of explosives in February 1988, no audits had yet been conducted, nor had the staff required to conduct these audits been appointed as at late August 1989, some 19 months later. The Committee considers Audit Recommendation No.4 as being vital to the proper management of defence explosives establishments, and is dismayed that it is taking so long to implement. The Committee also noted that staffing arrangements in the AOC have not always been satisfactory, as demonstrated in the AOC's 1986-87 annual report which stated:

> This years' efforts were once again marred by staffing turbulence.[17]

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17. Australian Ordnance Council Annual Report 1986/87, p.3.

4.18 The Committee would like to see the commencement of independent audits as soon as possible given the state of non-compliance found by the Auditor-General in his efficiency audit.

4.19 The Committee recommends that:

- Independent audits of adherence to Department Instructions commence immediately.

Recommendation No.5 – Department's response

4.20 The Department responded that the draft revised Instruction clarifies the applicability of that Instruction to all explosive ordnance storage, manufacturing, and processing activities within Defence.[18]

Recommendation No.5 – Committee's findings

4.21 The Committee concludes that Recommendation No.5 has been incorporated within the revised Instruction.

Recommendation No.6 – Department's response

4.22 The Department responded that the draft revised Instruction requires that non-compliant activities be reported to appropriate authorities as a matter of priority as soon as a non-compliant or prospective non-compliant situation is identified.[19]

4.23 The appropriate authorities to be notified when a non-compliant situation is identified is as follows:

For Departmental Risk Waivers:

1. Chief Defence Scientist
2. Assistant Chief of Logistics
3. Deputy Chief of Naval Staff
4. Deputy Chief of the General Staff

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18. Department of Defence submission dated 8 June 1988, Annex A.
19. Ibid.

5. Deputy Chief of the Air Staff

6. Force Commander (2 Star) for major exercises.

For Public Risk Waivers:

Minister for Defence, or, in the absence of the Minister, the Minister for Defence Science and Personnel. In emergency situations when neither Minister is contactable, the Chief of Defence Force or the Secretary may approve a PRW informing the Minister of their action at the earliest opportunity.[20]

Recommendation No.6 – Committee's findings

4.24 The Committee concludes that Recommendation No.6 has been incorporated in the revised Instruction.

Recommendation No.7 – Department's response

4.25 The Department responded that the draft revised Instruction makes provision for essential non-compliant activities to proceed on an interim basis, pending the preparation, submission and approval of a waiver.[21] The Department further advised in August 1989 that all non-compliant operations are subject to an approved waiver.[22]

Recommendation No.7 – Committee's findings

4.26 The Committee concludes that Recommendation No.7 has been incorporated in the draft Instruction.

Recommendation No.8 – Department's response

4.27 The Department advised that the recommendation was not accepted at this stage as it was subject to legal advice.[23] It added that it did not consider it appropriate to cease essential non-compliant activities, or to issue 'skeleton' waivers pending the revision of the Waivers Instruction, and that a concerted effort was being made to process outstanding waivers.[24]

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20. Defence Instruction (General) SUP 20-1, Dated 10 November 1989.
21. Department of Defence submission dated 8 June 1988, Annex A.
22. PAC file 1988/4 B(23): Letter from Department of Defence dated 18 August 1989, Attachment 2.
23. Department of Defence submission dated 8 June 1988, Annex A.
24. Ibid.

Recommendation No.8 – Committee's findings

4.28 The circumstances surrounding the acceptance and implementation of this recommendation has since been overtaken by events. Currently, all non-compliant situations are subject to an approved waiver, and thus the terms of the recommendation have been met. The Committee notes with interest, however, the accurate prediction by Audit that:

> In Audit's opinion it is probable that amendments to those Instructions to implement the above Audit recommendations will similarly take time.[25]

4.29 The Committee concludes that Recommendation No.8 has been implemented.

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25. Efficiency audit report: safety principles for explosives, p.18.

CHAPTER 5

PROCESSING OF WAIVERS

Public Risk Waivers – Audit findings and recommendations

5.1 Audit found that a considerable length of time was being taken to process waivers. It noted that as at the end of 1986, more than two years after the introduction of the Waivers Instruction, no Public Risk Waiver (PRW) submissions had been sent to the Minister and the Minister had not been advised of any PRW's approved by the delegate responsible, the Chief of Supply.[1] This resulted in the Minister not having the opportunity to determine whether the non-compliant activities should cease or continue, and the decision to accept a degree of risk greater than accepted under departmental policy being taken at a level less than the Minister deemed to be appropriate.[2] Audit also found evidence indicating submissions which could have been sent to the Minister were delayed deliberately for many months in order that other unrelated submissions would be the first to reach the Minister.[3]

5.2 In order to rectify these deficiencies, Audit made a number of recommendations to ensure timely consideration of PRW submissions. It recommended that prompt action be taken to expedite the consideration of outstanding PRW requests at the Chief of Supply or ministerial level as appropriate (Recommendation No.9), and that action be taken to ensure that any further instances requiring PRWs be processed in a timely manner (Recommendation No.10).

5.3 Audit also found that the submissions making application for a waiver did not give sufficient detail in regard to possible alternatives, or the possible consequences should a PRW not be approved.[4] Accordingly, Audit recommended that future waiver submissions provide comprehensive details of alternative proposals and the effects on operations that would result if a waiver was not granted (Recommendation No.11).

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1. Efficiency audit report: safety principles for explosives, p.19.
2. Ibid.
3. Ibid.
4. Efficiency audit report: safety principles for explosives, p.20.

Recommendations Nos 9, 10 and 11 – Department's response

5.4 Recommendation No.9 was noted by the Department, and the Committee was told that since the time that Audit had made its findings a number of situations requiring approval of PRWs had been identified and action taken to expedite the processing of outstanding PRW applications.[5] Procedures to ensure prompt action is taken in processing waiver submissions had been incorporated in the draft revised Instruction.

5.5 The Department accepted Recommendation No.10 and stated that the revised draft Instruction had been amended to include the following paragraph:

> 10. In the event that an existing, and essential activity is identified as being non-compliant, the details must be reported as a matter of priority to the appropriate authority at paragraph 5 above, who may authorise a continuation of that non-compliant activity pending the submission of a formal DRW or PRW approval request. Alternatively if the non-compliant activity is not approved the activity is to cease immediately. Details of authorised non-compliant activities requiring approval of a PRW are to be notified to the Chief of Logistics Development who will advise the Minister of the circumstances involved pending the formal application for a PRW.[6]

5.6 The Department also accepted Recommendation No.11, and advised that the requirement had been incorporated in the draft revised Instruction.[7] In the meantime, PRW applications received prior to the issuing of the Instruction would be assessed in terms of the recommendation, and where necessary, additional supporting information sought.[8]

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5. Department of Defence submission dated 8 June 1988, Annex A.
6. Exhibit 59, Attachment 12, Annex C, p.2.
7. Department of Defence submission dated 8 June 1988, Annex A.
8. Ibid.

Recommendations Nos 9, 10 and 11 – Committee's findings

5.7 The Committee spent some time examining the reasons for the considerable delays that Audit found had occurred in the Department's processing of waiver submissions. Instances where the Minister was not fully informed or his approval not obtained are examined in Chapter 13.

5.8 When queried by the Committee as to why the submissions were delayed, and the Minister not informed, the Department postulated that the Instruction required examination of all possible alternatives to the PRW before it was submitted to the Minister. Paragraph 9 of the Waivers Instruction outlines the process to be followed:

> 9. In making application for a waiver, all options must be examined, including alternative locations, relocation, reconstruction or operation with reduced quantities of explosives.[9]

5.9 The interpretation of this paragraph adopted by the Department was summed up as:

> ... by definition you do not seek a Public Risk Waiver from the Minister until you have taken all the necessary measures or all measures reasonably possible to eliminate the need for that Public Risk Waiver, and it is sought on the condition that measures will be taken ultimately to eliminate those circumstances.[10]

5.10 This interpretation of the Instruction meant, according to the Department, that:

> ... the requirement was to reduce the risk to the minimum extent possible and then seek the Public Risk Waiver.[11]

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9. Evidence, p.80.
10. Evidence, p.418.
11. Evidence, p.459.

5.11 However, this interpretation misses the whole point of the Waivers Instruction. It should be reiterated that a PRW is designed to cover situations where operations cannot comply with the NATO Safety Principles, and therefore increase the degree of risk to the public should an explosion occur. The Waivers Instruction was designed to allow the Minister to authorise the continuation of explosives operations involving increased risk to the public. However, the Department, interpreting the Waivers Instruction in an irregular manner, purported to be more concerned with examining options to the PRW rather than seeking the Minister's approval. The confusing nature of the situation was described by one member of the Committee in the following terms:

> ... I want to understand why the procedures involved in obtaining public risk waivers are such that it is better not to have a waiver in relation to a more serious problem of a temporary nature than it is to have a waiver for a lesser problem that results when you have, in fact, taken steps to minimise the risk. Logically it is just incomprehensible.[12]

5.12 Another member of the Committee summed up the possible ramifications of this situation when he pointed out that:

> If a tragedy had occurred, would it not have been expected that the Minister would have assumed responsibility for that tragedy on the basis that he had been properly advised and informed of all the repercussions that may have flowed from any degree of inadequacy?[13]

5.13 Given the well documented delays that were involved in the processing of waiver submissions and the ill-founded interpretation of the relevant paragraphs in the Instruction, the Committee sought to ensure that a regime was put in place by the new Instruction that would not repeat the delays that had been experienced. The Department gave a guarantee that the new Instruction would require that where a PRW situation is identified the Minister's approval would be sought at the same time the alternatives are examined and implemented.[14] The Committee examined the relevant paragraphs of the revised draft Instruction and noted that paragraph 10 requires reporting of non-compliant activity to the appropriate authority as a matter of priority and

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12. Evidence, p.463.
13. Evidence, p.463.
14. Evidence, p.494.

that the authority will then authorise continuation of the non-compliant situation, or if not approved, cease the operation immediately.[15] Paragraph 7 of the revised draft Instruction sets out the requirements for a PRW submission:

> 7. A PRW application is to be submitted to the Minister only after the need for the non-compliant activity has been confirmed; other options such as alternative storage locations, modified storage and modified licence arrangements must be considered beforehand.[16]

5.14 The Committee considers that there is still scope for potential delays to occur using the revised draft Instruction. The emphasis in the first instance should be on receiving the necessary approval from the Minister should a PRW be required. The Committee can envisage under the proposed draft Instruction a repeat of the situation whereby the actual approval of the PRW submission is held up due to action being undertaken by the Department to obviate the need for the PRW. Therefore, some time, limit should apply from the time a PRW requirement is first identified to the time it reaches the Minister. In searching for a suitable timeframe the Committee was guided by evidence given by Air Vice-Marshall Heggen that a reasonable time from the preparation of a submission to its going forward to the Minister and the Minister approving would be a matter of a few weeks.[17]

5.15 **The Committee recommends that:**

- ***The Instructions relating to processing of waiver submissions be amended to provide for a strict timetable of four weeks from the date a Public Risk Waiver (PRW) requirement is first identified to the time it reaches the Minister.***

5.16 Audit also found that the Department did not have a centralised record of the extent of Departmental Risk Waivers and recommended that such a record be established to provide for an overall awareness of the situation of non-compliance within the Department (Audit Recommendation No.12).[18]

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15. Exhibit 59, Attachment 12, Annex C, p.2.
16. Exhibit 59, Attachment 12, Annex C.
17. Evidence, p.418.
18. Efficiency audit report: safety principles for explosives, p.21.

5.17 The Department accepted the recommendation and advised the Committee that a central record had been established.[19] The Committee concludes that Audit's recommendation No.12 has been satisfactorily implemented.

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19. Department of Defence submission dated 8 June 1988, Annex A.

CHAPTER 6

APPROVAL BY GOVERNMENT

Approval by Government – Audit findings and recommendations

6.1 Audit found that, following the approval of the Safety Principles Instruction by the Secretary and the Chief of Defence Force in 1981, advice was received from the then Attorney-General that a decision to endanger the public is one which should be made by the Government.[1] It also found that the Department had received advice from the Department of Administrative Services in June 1980 that Government endorsement of the adoption of the NATO safeguarding distances should be sought in respect of all explosives manufacturing and storage facilities.[2] Despite the advice, Audit could find no reason of why the Department had not sought Government endorsement, and accordingly recommended that approval be sought from the Government for the acceptance of the level of risk to the public which is inherent in the Safety Principles Instruction (Audit Recommendation No.13).[3]

6.2 The Department responded in February 1988 that it did not accept the recommendation pending legal advice. Audit considered that this and other legal issues where the Department had relied on its own legal interpretations were inadequately supported.[4] Audit cited three examples of the Department's legal view:

- compliance with its Defence Instructions (General) was not mandatory for Service and civilian personnel but that these instructions were in the nature of guidelines, implying that they need only be followed where considered suitable or convenient;

- the continuation of explosives activities in the knowledge that they did not comply with the Department's instructions did not affect the legal position in criminal or civil proceedings of its employees responsible for that decision if an accident occurred; and

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1. Efficiency audit report: safety principles for explosives, p.25.
2. Ibid.
3. Ibid.
4. Ibid.

- upon issue of the Waivers Instruction, there was no requirement for explosives-related operations that did not comply with the Instruction to be discontinued.[5]

6.3 Audit requested that the Department obtain further legal advice from the Attorney-General's Department on these matters. However, at the time the efficiency audit was tabled, only one of these matters had been sent to the Attorney-General's Department for advice.[6]

Department's response

6.4 In its first submission to the Inquiry the Department responded to Recommendation No.13 by stating that consideration was being given to whether or not the revised Defence Instruction should be referred to Cabinet for endorsement.[7] It later advised the Committee that although the recommendation was initially not accepted, it was later acknowledged that this matter should be addressed by the Minister for Defence, and that this was why the revised draft Instruction had been forwarded to the Minister for his consideration.

Committee's findings

6.5 The Committee noted that the Department had changed its stance on the issue of Government approval from when the Inquiry first commenced. In one of its earlier submissions to the Inquiry the Department had argued that government endorsement was not necessary, as the acceptance of the NATO Safety Principles required the Australian Defence Force to apply more stringent measures on the storage and handling of explosive ordnance that had previously been in place. The Department considered that by adopting the new standards it reduced the inherent level of risk to the public.[8] This assertion contradicted later evidence given to the Committee that in general terms the pre and post-NATO standards were essentially the same.[9]

6.6 The Department seemed to indicate at public hearing that they had accepted the Auditor-General's recommendation as they were considering referring the revised Instruction to Cabinet. The Department commented on why the referral to Cabinet was considered necessary:

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5. Efficiency audit report: safety principles for explosives, p.25.
6. Ibid, pp.25-6.
7. Department of Defence submission dated 8 June 1988, Annex A.
8. Department of Defence supplementary submission dated 30 September 1988, p.27.
9. Evidence, p.794.

> We feel that will be a very major step because it would *then not only give* the Minister the responsibility to ensure it is complied with, but also give Government the opportunity to examine whether the waivers, and the way Defence looks after those particular interests, are satisfactory to the Government.[10]

6.7 At a later public hearing the Department's position on this matter had changed yet again. The Department, when asked whether Cabinet consideration was still being sought, replied:

> No, I would not envisage that the Minister would be referring it to Cabinet. At this stage it really does impact only on the Defence portfolio ...[11]

6.8 It is a matter of interpretation as to whether the words 'approval by Government' means approval by Cabinet or simply the Minister. The Department conceded that approval of neither Cabinet nor the Minister was sought when the Safety Principles were adopted in 1981. The Department admitted that this should have been done:

> Obviously, with the wisdom of hindsight and all of the things that happened, including the deliberations of this Committee - if I had that knowledge and I had been in my present position at that time - I think I would have got the Minister at least to agree with it.[12]

6.9 As the revised Defence Instruction has been forwarded to the Minister for his consideration, the Committee considers that should the Minister approve the Instruction, the terms of Audit's recommendation will have been met. However, as this has not yet occurred, the Committee concludes that this recommendation has not yet been satisfactorily implemented.

6.10 The Committee also examined the legal advice of the Department on other issues related to explosives operations and the claim by Audit that such advice was inadequately supported. On the matter of whether the Defence Instruction (General) was mandatory for Service and civilian personnel the advice given by the Department's legal branch was found to be incorrect. The Attorney-General advised that:

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10. Evidence, p.83.
11. Evidence, p.1041.
12. Evidence, p.445.

> My short answer is that the instructions are mandatory in the sense that it was intended that the Defence Department and the Defence Force comply with them.[13]

6.11 The second legal issue which Audit claimed lacked sufficient legal weight concerned the situation of employees who continued explosives activities in the knowledge that they did not comply with the Department's instructions. This would have applied to almost all of the Public Risk Waiver situations now current that had not been subject to an approved waiver between the time of introduction of the Waivers Instruction in 1984 and the time of waiver approvals, by the Minister, some three to four years later. The Department contended that continuing such operations did not affect the legal position in criminal or civil proceedings of its employees responsible for that decision if an accident occurred.[14]

6.12 The advice from the Attorney-General's Department concurred with that given by the Department. In relation to liability by the Commonwealth, the following advice was offered:

> As to civil liability, the standard of care required of anyone who handles explosives is extremely high. The standard is so high that it has been described as amounting to 'practically a guarantee of safety'. It follows that, in the event of a person (other than military personnel) being injured by the explosion of a Commonwealth explosive, otherwise than in the course of operations against an enemy, the Commonwealth and, if sued, the Commonwealth servant or agent whose act or omission is identified as causing the injury, would in all probability be held liable. The Commonwealth of course has a standard practice in relation to such matters and will normally undertake to arrange the defence of an officer and to meet any damages awarded. (Finance Manual, pages 21/5 and 21/6, and related guideline 5). The above statement applies equally to damage to property caused by explosives.[15]

6.13 The advice goes on to say that, whether or not a Public Risk Waiver had been approved, the Commonwealth would still be liable. Even in a situation where a Public Risk Waiver was necessary but had not been approved, the Commonwealth's liability would still be the same.[16] In legal terms it does not appear to

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13. Exhibit 24, p.1.
14. Efficiency audit report: safety principles for explosives, p.25.
15. PAC file 1988/4 B(23): Letter from Department of Defence dated 28 April 1989, p.2 of attachment.
16. ibid.

make a great deal of difference as to whether a waiver is approved or not. In either case, the Commonwealth would still be liable. The only legal issue is whether, by not applying for a waiver, the employees of the Department have breached the terms of the Instruction. This will be discussed in Chapter 13.

6.14 On the third legal issue that Audit considered was insufficiently supported, the Committee noted that no legal advice had been sought from the Attorney-General's Department, despite Audit's request to do so. Nevertheless, while the Department originally maintained that no operations need be curtailed or stopped because they did not comply with the Instruction, the Committee notes that the revised draft Instruction specifies that if a non-compliant activity is not approved the activity is to cease immediately.[17]

6.15 The Committee notes that it was not until 1983 that the Department formally sought legal advice in respect to the potential liabilities that may have arisen in relation to personal injury or property damage as a consequence of an accidental explosion at a Defence establishment.[18] The Department also advised that a review of Departmental files indicated that in adopting the NATO Principles, advice was not formally sought on the legal ramifications of this action.[19] In the Committee's view this reinforces the Committee's finding in an earlier chapter that the decision to adopt the new Principles was made without proper consideration of the possible ramifications in terms of costs, operational effects and legal liabilities.

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17. Exhibit 59, Attachment 12, Annex C.
18. PAC file 1988/4 B(23): Letter from Department of Defence dated 23 August 1989.
19. PAC file 1988/4 B(23): Letter from Department of Defence dated 28 April 1989, p.5.

CHAPTER 7

SAFEGUARDING

Background

7.1 Safeguarding is a term used to describe a method of facilities-related planning, the object of which is to maintain the existing storage capacity of a Defence facility. To ensure that explosive operations are not affected by the construction of *certain types of buildings near Defence bases, the Department is* supposed to consult local planning authorities and provide them with maps notifying their requirements.

Audit findings and recommendations

7.2 Audit found that, despite having adopted a policy requiring production of safeguarding maps for each of its explosives establishments in 1983, by 1986 no map acceptable to the Department of Defence had been produced for any Service establishment.[1] Audit also found that the information used to compile the maps was based on current use requirements rather than the longer term, and therefore the value to both non-defence and defence users of the maps was substantially diminished, as it provided no guide to future developments in areas surrounding Defence establishments which contain stored explosives.[2] Audit considered that the safeguarding procedure had the potential to provide a stable basis for the Department's interest and recommended that the Department determine the extent of landholdings and any restrictions on surrounding land use required for the long term viability and development of each establishment, by either acquiring the land or ensuring that the restrictions are enforced (Audit Recommendation No.14).[3]

7.3 Audit considered that the Department had been remiss in failing to obtain appropriate restrictions when facilities were first established when in some cases surrounding land was still undeveloped, as this allowed potential construction within inappropriate distances of explosives operations.[4] Audit suggested three solutions to the problem of urban encroachment surrounding establishments containing explosives:

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1. Efficiency audit report: safety principles for explosives, p.27.
2. Ibid.
3. Ibid, pp.27-8.
4. Efficiency audit report: safety principles for explosives, p.28.

(i) seek legislation to enable enforcement of restrictions on use of land surrounding defence establishments;

(ii) continue present practice of trying to contain prescribed safety arcs wholly within the Commonwealth Property Boundary; and

(iii) procure the affected land, although Audit accepted this would involve a high cost.[5]

Department's response

7.4 The Department did not accept Audit's Recommendation No.14 as it considered it was already being implemented. It pointed out that control of surrounding land existed at many establishments where State or Commonwealth land adjoins, or where private development is restricted by agreement with local councils. The Department advised that safeguarding maps identifying restrictions on land in the vicinity of Defence explosive facilities were under preparation and would be issued to councils and planning authorities progressively by each Service in November and December 1989, together with a public information brochure explaining safeguarding.[6]

7.5 Commenting on the three options suggested by Audit for ensuring restrictions around Defence establishments, the Department pointed out that using legislative mechanisms to control land was not consistent with the Commonwealth's policy of acknowledging State and Local Government rights on land use matters. The Department also advised that purchasing land was not always justified because of its cost and the fact that contraction of explosive activities within Defence land often involves unacceptable compromises in terms of Defence operational capability.[7]

Committee's findings

7.6 The Committee questioned the Department on its response to Audit's recommendation and whether in fact ensuring restrictions for land surrounding Defence explosives establishments was already in practice as claimed by the Department.

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5. *Efficiency audit report: safety principles for explosives*, pp.28-9.
6. Department of Defence submission dated 8 June 1988, Annex A.
7. Department of Defence supplementary submission dated 30 September 1988, p.34.

7.7 The Committee was told that the Department's method of ensuring restrictions on land affected by explosive ordnance operations was to consult with the local councils. Where non-defence land was affected by safeguarding distances and Defence became aware of a proposed development that was incompatible with its explosive operations, the Department would seek local government co-operation in seeking to place zoning restrictions and so prevent the development from occurring.[8] This practice was found to be unacceptable by the Committee as it amounted to the Department attempting to avoid what the Committee sees as the rights of landholders to be compensated by adverse use of their land. The Department initially told the Committee that there had been considerable liaison with local councils by the individual Services,[9] and that:

> ... this process of constantly being in touch with the councils, negotiating with councils, the councils advising us, has worked very well.[10]

7.8 The relationship with the local councils was also said to be enhanced by legislation in some States which had a requirement that if a local council was about to rezone any land it must always advise nearby land owners who may be affected. Defence asserted that the existence of this legislation helped the safeguarding process because:

> ... we are always advised of when a development is going to take place that might be adverse to the long-term viability of that particular depot.[11]

In support of its claim that it had a good working relationship with local councils, Defence provided the Committee with copies of correspondence between local councils and Defence.

7.9 The Committee examined the correspondence provided, and noted that, although the NATO Safety Principles had been adopted since 1981, the majority of the letters were dated quite recently. Listed below are the earliest dates of the letters of each of the Services and organisations of Defence:

Organisation	Earliest date of correspondence with local councils
Army	1984, then 1985, then 1987

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8. Evidence, p.1183.
9. Evidence, p.800.
10. Evidence, p.804.
11. Evidence, p.803.

RAAF	1986
Navy	1985 (1 letter) then 1987
DSTO	1988[12]

7.10 The Committee noted that, as well as being recently written, the content of some of the letters from Navy indicated that the earliest form of consultation with the councils had been a briefing in May 1988 by Navy officers.[13]

7.11 When the Committee questioned the Department on this matter at public hearings it conceded that the relationship with the local councils had only been commenced quite recently and had not been as comprehensive as previously indicated. When it was put to the Deputy Secretary in charge of the implementation of the NATO Principles that:

> It seems to me that your relationship or your ability to deal with the question of safety at a local government level is far from satisfactory.

Defence replied:

> I think there is a degree of acceptance of that, Senator.[14]

7.12 When further questioned by the Committee as to whether all councils that were affected by the NATO Principles had been written to, Defence responded that they could not give the Committee their assurance that they had been.[15]

7.13 The Committee also found that despite Defence's assurance that state legislation required local councils to inform adjacent landholders (such as Defence) about proposed developments, there were a number of occasions in the past where Defence was completely unaware of developments that would affect their storage operations. For example, the General Manager of the Explosives Factory, Maribyrnong (EFM) pointed out in January 1989 that:

> There is no record or recollection of advice to the factory of council rezonings, landholder

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12. PAC file 1988/4 B(23): Letter from Department of Defence dated 4 April 1989, Tab 7.
13. Ibid.
14. Evidence, p.819.
15. Evidence, p.819.

developments and the like prior to their occurrence. In most instances EFM has become aware of a fait accompli, as for example that of a residential subdivision in Lily Street ...[16]

7.14 In another example the Committee was told that in 1979 vacant land across the Parramatta River from the Newington explosives wharf was unexpectantly developed by Parramatta Council as a recreational reserve.[17] Parramatta Council was clearly oblivious to Defence's requirements, and started to spend substantial amounts of ratepayers' money in upgrading facilities before Defence 'noticed' the construction activity and contacted the council.[18]

7.15 In a further example, a situation arose whereby a developer effectively forced the Department's hand at Kingswood, NSW. It was originally proposed that 120 hectares be acquired for safeguarding purposes in the northern region of the Depot at Kingswood. However, the owner of the affected land subsequently subdivided the land into farmlets, and while functions at the Kingswood facility were not affected by their development, Defence still wished to purchase 60 hectares at a cost of approximately $700 000 to safeguard the safety arc of the demolition range from any further subdivision activity.[19] The Committee was also told of a development of a glass fronted building opposite Newington in 1984, which forced Navy to restow explosives and restrict various quantity distance arcs, including reducing the amount of explosives that could be stored in some storehouses.[20]

7.16 Having examined the evidence presented by the Department the Committee is of the view that the management of the safeguarding of defence explosives establishments has been grossly inadequate. The level and extent of consultations with local councils up to 1987 and 1988 has been haphazard and in some cases non-existent. This has resulted in some cases of incompatible development which has affected Defence's ability to store explosives. In other cases landholders have had development restricted with no means of compensation. The Committee noted the finding of the Review of Australia's Defence Explosive Ordnance Facilities Requirements which stated:

> ... it was considered that the existence of different EO Management policies and procedures for

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16. PAC file 1988/4 B(23): Letter from Department of Defence dated 4 April 1989, Attachment 7.
17. Evidence, p.805.
18. Evidence, p.807.
19. Exhibit 45, p.13.
20. Evidence, p.1136.

each Service, DSTO and ODP was inefficient, uneconomic and a hindrance to rationalisation.[21]

7.17 The Committee concludes that the Department has not adequately managed its safeguarding procedures, and in particular its relationship with local councils affected by outside quantity distances.

Safeguarding Maps

7.18 The Committee assessed the Department's achievements in relation to safeguarding maps. Audit found that the date when the Department adopted a policy of producing safeguarding maps was 1983.[22] The Committee believes that a decision to produce the maps was made prior to 1983. In a Defence Facilities Policy Committee (DFPC) Agendum dated October 1981 the DFPC concluded that safeguarding procedures are required for explosives storage and handling facilities to prevent incompatible development, and to meet these objectives it was recommended that:

> Service offices and DSTO should produce safeguarding maps for all explosives storage and handling facilities.[23]

7.19 Despite the policy recommendation, the Committee noted that neither of the Instructions explicitly state that safeguarding maps are to be issued.

7.20 Despite the fact that production of safeguarding maps was recommended as early as 1981, the Committee was told that no maps have been distributed to local councils as at September 1989, some eight years later. The Department explained that the reasons for the delay in producing and issuing the maps was that:

> ... the goal posts kept changing in relation to the preparation of safeguarding maps. Maps were prepared but were not satisfactory - they were not on appropriate documents that could be issued or defended legally.[24]

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21. PAC file 1988/4 B(23): Letter from Department of Defence dated 18 August 1989, Tab B, p.2.
22. Efficiency audit report: safety principles for explosives, p.27.
23. Exhibit 67, p.7.
24. Evidence, p.799.

7.21 Defence also argued that the continual rationalisation of stores of explosive ordnance to bring about greater efficiencies had an effect on the safeguarding distances and thus changed the details on the proposed maps.[25]

7.22 The Committee noted that the Department of Administrative Services (DAS) had a role in the preparation of safeguarding maps through the Australian Surveying and Land Information Group (AUSLIG). DAS prepared numerous maps of Commonwealth properties in and immediately surrounding Defence facilities based on information provided by the Department of Defence.[26] The maps, once produced, were then returned to Defence. There was no evidence that DAS was responsible for the considerable delay in issuing safeguarding maps.

7.23 The Committee noted that Audit had questioned the need for safeguarding maps given that over the years the Department had not been able to provide sufficient or timely data to DAS to facilitate production of maps and in view of the Department's doubts about the usefulness of maps if they were produced.[27] Defence responded by stating that:

> The principles underlying safeguarding and the production of maps are considered to be an essential part of Defence policy to protect the operational integrity of explosive facilities from encroachment by the development of land outside Commonwealth Property Boundaries.[28]

7.24 The Committee considers that the production and distribution of safeguarding maps is a useful mechanism to inform both external interests, such as local councils and affected landholders, as well as internal interests, such as departmental personnel working on the bases and senior management, of the presence and potential effects of an explosion of stored explosives. The Committee noted that there appeared to be no legal impediments to the distribution of maps. According to legal advice received from the Attorney-General's Department, Defence did not envisage any circumstances where diminished land values arising from the publishing of safeguarding maps could attract legal liability.[29]

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25. Evidence, p.1190.
26. Evidence, p.1057.
27. Efficiency audit report: safety principles for explosives, p.28.
28. Department of Defence supplementary submission dated 30 September 1988, p.34.
29. PAC file 1988/4 B(23): Letter from Department of Defence dated 28 April 1989, p.5.

7.25 **The Committee recommends that:**

- **Safeguarding maps be prepared and distributed to local councils and affected landholders surrounding Defence establishments containing stored explosives, and that the maps reflect as far as possible long term interests of Defence.**

7.26 The Committee concludes that the management of the policy to produce and issue safeguarding maps has been unsatisfactory. While the Committee accepts that changes in storage requirements have changed the parameters of different safety arcs, it nevertheless considers that the record of no maps issued after more than six years is entirely unacceptable, and again reflects the low priority that Defence gave to the management and implementation of the NATO Safety Principles.

Audit's options for safeguarding

7.27 The Committee examined the three options proposed by Audit for Defence to ensure its interests around explosive storage establishments, namely land acquisition, the use of legislation, and the containment of all safety arcs within the CPB.

7.28 While the Committee agrees with Defence that the option of land acquisition to the purple line for all its facilities would massively burden the taxpayers, it notes that there have been some occasions where Defence has been willing to acquire the land.[30] The Committee noted that another mechanism had been used by Defence to ensure restrictions. In Tasmania where the Army had a safety distance arc extending over a property, the Committee was told that Defence was:

> ... acquiring that section of land with the object of leasing it back to the current landholder. It is only farming land at present, but it will ensure that we have control over the land.[31]

7.29 The Committee considers that this type of land acquisition is a very viable and practical solution, as it would allow Defence to safeguard its operations and let landholders continue to use their land, albeit in a restricted way.

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30. Evidence, pp.113-4.
31. Evidence, p.179.

7.30 **The Committee recommends that:**

- **The Department examine more closely the option of acquiring land and leasing it back to the previous owner where the land is affected by outside quantity distances in order to ensure control over its explosives storage operations.**

7.31 Although the Department suggested that the use of legislation, the second option proposed by Audit to ensure restrictions, was to be used only as a last resort, the Committee noted that legislation was being used to control areas of land surrounding Defence airfields. The proposed new Defence Areas Control Regulations which are not yet in force concern the control of building heights and other obstructions to the movement of aircraft in the vicinity of airfields.[32] The Department informed the Committee that:

> ... we are anxious to have administrative procedures that enable the regulations to be administered effectively and also to manage the compensation process that will be involved where ownership rights are adversely affected by these regulations.[33]

7.32 This is because the Department had received legal advice that landholders whose land is affected in some way by outside quantity distances from explosives storage facilities have no right to any compensation.

7.33 The Committee was puzzled as to why, in relation to Defence airfields, Defence considered legislation in the form of regulations was necessary, and yet in relation to Defence explosive storage establishments it was not. The Committee sees this as inconsistent, as both explosives facilities and airfields areas need to have control over areas surrounding Defence facilities, and both have the capacity to affect landholders adversely and thus there exists the need for adequate compensation provisions.

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32. Evidence, p.1062.
33. Evidence, p.1062.

7.34 The refusal by Defence to consider making regulations is even more surprising given that the Commonwealth's property managers, DAS, has recommended the use of legislation. In the Buffer Report for RAAF Base, Townsville, dated June 1988, it was recommended that, in order to establish protective controls over development in the vicinity of the RAAF Base, Townsville to ensure the continued protection of the operational capability of the Base, controls over development should be established through complementary and parallel State and Commonwealth legislation.[34] The Report commented that the existence of development control plans would ensure that Commonwealth requirements for the protection of the Base were widely known, and strengthened Commonwealth regulations under the Air Navigation and Defence Acts would provide a basis for continuity of controls during reviews and amendments of planning schemes.[35] When the Committee checked to see what action had been taken to consider the recommendations, it was told that there had been no examination by Defence Committees. The recommendations were considered by the Air Force Director-General of Facilities, who oversighted follow-up action.[3] Although Defence commented that most of the recommendations were being actioned, the Committee was not advised whether action had been taken to implement the recommendation mentioned above.

7.35 The Committee also noted that in Great Britain legislation is used to ensure the operational capability of military establishments. Under the legislation, local planning authorities are required by directions issued by the Secretary of State for the Environment under the Town and Country Planning General Development Order 1977 to consult with the Ministry of Defence before granting permission for development within safeguarding areas.[37]

7.36 The Committee sees benefits in applying legislation to ensure the operational capability of Defence establishments, and can see no reason why Defence has not done so given the recommendations by DAS and the Auditor-General and the problems experienced in incompatible development close to Defence establishments which were discussed earlier in the chapter.

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34. Exhibit 9, p.52.
35. Ibid, p.53.
36. PAC file 1988/4 B(23): Letter from Department of Defence dated 25 September 1989, Attachment 18.
37. Exhibit 70, p.1.

7.37 **The Committee recommends that:**

- **Regulations be made under the Defence Act 1903 similar to the proposed Defence Area's Control Regulations, to ensure that no incompatible development adjacent to Defence establishments is allowed to occur that would affect Defence's operational capability and that landholders affected by the Regulations are adequately compensated for any adverse effect to their land.**

7.38 In relation to the option to reduce the Department's explosive-related activities so that the prescribed safety arcs are wholly contained within the CPB, the Committee recognises that such an option would, if fully implemented, severely reduce its operational capability. The Committee noted that a recent departmental review of Australia's defence explosive ordnance facilities requirements had recommended that the Services, as a priority task, review their basis of provisioning for Explosive Ordnance stocks taking into account revised Defence Stockholding.[38] The Committee notes that this review may lead to further containment of prescribed safety arcs within the Commonwealth Property Boundary through revised storage requirements.

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38. PAC file 1988/4 B(23): Letter from Department of Defence dated 18 August 1989, Tab B, p.7.

CHAPTER 8

DEFENCE SCIENCE AND TECHNOLOGY ORGANISATION (DSTO)

Audit findings and recommendation

8.1 DSTO operates two laboratories that contain and use explosives; one is at the Materials Research Laboratories in Maribyrnong, Victoria and the other is at the Defence Research Centre in Salisbury, South Australia. In relation to the Laboratories at Maribyrnong, Audit found in 1983 DSTO Central Office in Canberra was advised that of 34 locations involved in explosives operations, only three complied fully with the requirements of the Safety Principles Instruction.[1] After the Waivers Instruction was issued, the Laboratories claimed no public risk waivers were required, as compliance with the 'spirit' of the NATO Safety Principles had been achieved.[2] Audit considered that the advice was unclear in that it was not known whether the Laboratories were in compliance with the NATO Safety Principles.[3]

8.2 At the Defence Research Centre, Salisbury, Audit found that no licensing system (ie approving a maximum quantity of explosives that can be stored) existed prior to 1986, whereas they have been in operation at other departmental establishments for many years.[4] Therefore Audit recommended that the Department ensure that all facilities of the DSTO comply with the Safety Principles and Waivers Instructions (Audit Recommendation No.15) and that if the desired level of safety in the event of a fire or explosion can be achieved more cost effectively through means that do not comply with the Safety Principles, the Department take action to facilitate the adoption of such means through amendment of the Instructions, if appropriate, while ensuring the intended level of safety is not compromised (Audit Recommendation No.16).[5]

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1. Efficiency audit report: safety principles for explosives, p.30.
2. Ibid.
3. Ibid.
4. Ibid, p.31.
5. Ibid.

Department's response

8.3 The Department accepted both Recommendation No.15 and No.16 of the Auditor-General. It advised that all DSTO facilities now complied with both the Safety Principles Instruction and the Waivers Instruction.[6] All the explosives facilities at DSTO Salisbury were now licensed and Departmental Risk Waivers (17 in number) had been issued where necessary.[7] In relation to Recommendation No.16, Defence advised that a paragraph had been inserted in the revised draft Instruction to give effect to the recommendation. Paragraph 17 of the Instruction states:

> ... the documents at paragraph 16 (ie NATO Principles) provide guidance to licensing authorities. Licences shall be issued only where the hazard to people or property is, in the judgement of a licensing authority, no greater than the hazard level inherent in these documents ...[8]

8.4 Defence pointed out that the effect of this provision was that safety measures would not only be a function of the NATO Principles per se, but would also be influenced by a technical assessment of all factors influencing, but not compromising, safety.[9]

Committee's findings

8.5 The Committee found that Recommendation No.15 had been implemented satisfactorily. Recommendation No.16, although included in the revised draft Instruction and claimed by the Department to already be in practice, has not, in the view of the Committee, been satisfactorily implemented as the amended Instruction has not yet been issued.

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6. Department of Defence supplementary submission dated 30 September 1988, p.41.
7. Ibid, p.39.
8. Exhibit 59, Attachment 12, p.3.
9. PAC file 1988/4 B(23): Letter from Department of Defence dated 18 August 1989, Attachment 2.

CHAPTER 9

OFFICE OF DEFENCE PRODUCTION (ODP) AND MARIBYRNONG

Audit's findings

9.1 Audit found that, notwithstanding the fact that ODP facilities had been subject to the NATO Principles for several years, they did not comply at the time of integration with the Department of Defence in 1984, with 20 blocks of flats and over 100 dwellings within inappropriate safeguarding zones and no public risk waivers applied for as at the end of 1986.[1] ODP had estimated in 1985 that in order to achieve total compliance with Departmental instructions an amount of $57m would be needed, although an alternative estimate of $17m was made for compliance with the 'spirit' of the Principles.[2] Accordingly Audit recommended that consideration be given to whether obtaining the marginal benefit in improved safety, if any, is the optimal use of the estimated additional $40m required for the ODP operations to achieve strict compliance with the current Instructions (Audit Recommendation No.17).[3]

9.2 Audit also commented on the Operational Safety Committee (Explosives) which had operated as an expert advisory body on safety matters relating to explosives until 1984 when its status was not clear due to the abolition of the Department of Defence Support.[4] Audit was concerned to find the safety audits of facilities had ceased and therefore it recommended that the status and role of the Operational Safety Committee (Explosives) or a body to replace it be formalised (Audit Recommendation No.18).[5]

Department's response

9.3 During the course of the Inquiry the Office of Defence Production was under the management of the Department of Defence up until May 1989 when it subsequently became a separate corporate entity known as Australian Defence Industries Ltd (ADI). Therefore, the response to the recommendations relating to ODP was forwarded prior to May 1989 by the Department and subsequent to May 1989 by ADI.

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1. Efficiency audit report: safety principles for explosives, p.32.
2. Ibid.
3. Ibid.
4. Ibid, p.33.
5. Ibid.

9.4 In its initial response the Department accepted both Recommendation No.17 and No.18 of the Auditor-General. The Department advised the Committee that it would normally adopt the most cost efficient option to meet the prescribed safety standards, and in ODP's case the situation had been assessed and it was proposed to spend the additional $40m to ensure compliance with Departmental Instructions.[6] However, the Department subsequently advised that the information provided to Audit contained a costing error, and only $22m and not $57m was needed for total compliance with the Instructions.[7]

9.5 In relation to the role and status of the OSC(E) the Department stated that it had accepted Audit's recommendations, but indicated that as yet the relationship with the AOC had yet to be formalised.[8] ADI later advised the Committee that an Instruction issued by the Managing Director of the company in August 1989 provided for the establishment of a new committee, the Explosives Safety Committee, with independent responsibilities in relation to ensuring adequate safety measures are in force.[9]

9.6 ADI also advised the Committee that, of the Auditor-General's recommendations which were applicable to ADI, all had been implemented with the exception of Recommendation No.1 regarding notification of risks to landholders.[10]

Committee's findings

9.7 The Committee was told at public hearing that the Minister for Defence had expressed his desire for ADI to comply with the safety procedures that were being developed within the Department, and that this direction was being carried out.[11] The Committee welcomes the issue of an Instruction on safety principles for explosives by the General Manager of the company on 23 August 1989. However, it is noted that the Instruction had, in the Committee's view, one matter that required clarification. The Instruction states at paragraph 17 that:

> ... a waiver authorising the continuation of the non-compliant activities is to be sought under the authority of the Managing Director, ADI.

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6. Department of Defence submission dated 8 June 1988, Annex A.
7. Department of Defence supplementary submission dated 30 September 1988, p.44.
8. Department of Defence submission dated 8 June 1988, Annex A.
9. PAC file 1988/4 B(23): Letter from Australian Defence Industries dated 8 September 1989, p.2.
10. Ibid, p.1.
11. Evidence, p.1107.

9.8 This paragraph implies that the Managing Director, ADI can approve waivers, and not the Minister as is the practice in the Department of Defence. It is noted that at Annex C to the Instruction the approving process for PRWs is listed as being clearance through the Managing Director, ADI prior to seeking approval by the Minister for Defence. In the Committee's view the wording of the Instruction contradicts the information provided in Annex C. Clearly, the Minister should be the sole approving authority for situations where the risk to the general public is greater than deemed acceptable under the NATO Principles.

9.9 **The Committee recommends that:**

- **The Australian Defence Industries (ADI) Instruction be amended to clarify the reference concerning the approving authority for a Public Risk Waiver.**

9.10 The Committee concluded that Audit's Recommendation No.18 had been satisfactorily implemented.

Maribyrnong – Audit findings and recommendation

9.11 Audit found that three facilities occupying the one site at Maribyrnong in Melbourne, namely the Materials Research Laboratories, Army's Engineering Development Establishment and the Explosives Factory had given little indication of effective co-ordination in relation to the conduct of explosives operations.[12] Audit noticed that although it was agreed in 1984 to establish a working group with the aim of producing a master plan for the three establishments there was little evidence by late 1987 of any progress toward such a plan.[13] Audit discovered that in December 1986 the Department had recommended to the Minister that Explosives Factory land be released for use by the public without apparent consultation with the Materials Research Laboratories or Engineering Development Establishment, despite the fact that the latter establishment required new buildings close to the factory.[14] Audit recommended that an increased priority be given to the development of a master plan for the co-ordination and compatible operation of the Department's facilities at Maribyrnong (Audit Recommendation No.19) and the Department not sanction the release of any further land at Maribyrnong or any other locations where there are unresolved problems with achieving the separations required under the Safety Principles Instruction (Audit Recommendation No.20).[15]

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12. Efficiency audit report: safety principles for explosives, p.34.
13. Ibid.
14. Ibid.
15. Ibid, p.35.

Department's response

9.12 The Department accepted both recommendations in February 1988. The Department's response to Recommendation No.19 indicated that as a result of a number of meetings between the relevant parties, a master plan for Maribyrnong was being developed as a matter of priority, with arrangements being made to ensure effective liaison at local levels.[16] The Committee was later advised that the requirements for master planning had been incorporated into the revised Defence Instruction in general terms, although master planning at Maribyrnong had been affected by the Government's decision to close the Explosives Factory by the end of 1990.[17] As a result of this decision the remaining establishments at Maribyrnong had been asked to develop master plans for their continued operation following the closure of the factory.[18]

9.13 In relation to Recommendation No.20 the Department informed the Committee that it was already current Departmental practice not to release land where problems existed with safety distances. It pointed out that the release of the land at Maribyrnong did not compromise the Department's safeguarding requirements, as it had not been permanently disposed of and was subject to a lease which protected the Department's freehold and safeguarding interests.[19]

Committee's findings

9.14 The Committee noted that, despite undertaking in 1984 to develop a master plan for co-ordination of the activities of the three establishments, it has still yet to be produced some five years later. The Committee concedes that the announcement on 27 February 1989 that the Explosives Factory, Maribyrnong would be progressively closed would have changed the basis of any master plan that may have been prepared. Nevertheless, it considers that there has been sufficient time for a master plan to be produced even if it had to take account of the closure of the factory. The Committee concludes that Recommendation No.19 has not yet been implemented by the Department.

9.15 **The Committee recommends that:**

- **A master plan for the effective co-ordination of explosive operations at Maribyrnong be produced without further delay.**

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16. Department of Defence submission dated 8 June 1988, Annex A.
17. PAC file 1988/4 B(23): Letter from Department of Defence dated 18 August 1989, Attachment 2.
18. Ibid.
19. Department of Defence submission dated 8 June 1988, Annex A.

9.16 Although the Committee was told that release of the land at Maribyrnong did not compromise Defence's safeguarding requirements, a point the Committee does not dispute, it was noted that the Department did not state why the other two establishments had not been consulted.

CHAPTER 10

RAN SYDNEY OPERATIONS

Audit's findings

10.1 Audit found that operations in Sydney Harbour at RAN Armament Depot, Newington, Spectacle Island and the Man-of-War anchorages did not comply with the Safety Principles Instruction in regard to separation of potential explosion sites from civilian facilities which could be affected by an explosion, with a large number of people and facilities costing many millions of dollars at risk.[1] It was also noted that a review by Navy as early as 1971 had revealed that naval operations in Sydney did not comply, and could not be amended to comply, with the then current Safety Instructions.[2] Audit noted that as at the end of 1986, more than five and a half years after the introduction of the Safety Principles Instruction and more than two years after the introduction of the Waivers Instruction, substantial non-compliance with the Safety Principles continued and the required ministerial approval of waivers had not been sought.[3] Audit therefore recommended that notwithstanding any actions to amend the Waivers Instruction to provide for interim approvals, the Department act forthwith to bring the RAN Sydney Harbour operations within the provisions of the Safety Principles and Waivers Instructions (Audit Recommendation No.21).[4]

10.2 Audit also examined Navy's actions in relation to Snapper Island which is located near an explosives staging point at Spectacle Island on the Parramatta River. Audit found that the Department was aware in 1981 that access to Snapper Island would need to be restricted if explosives operations were to continue on Spectacle Island, and yet in February 1985 the lessees of Snapper Island were granted a concessional rental despite a previous review recommending termination of the lease.[5] Audit also noted the recommendation to terminate the lease on the island was completed in 1984, yet the notice to quit was not forwarded until mid 1987.[6]

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1. Efficiency audit report: safety principles for explosives, p.36.
2. Ibid.
3. Ibid, p.37.
4. Ibid.
5. Ibid, p.43.
6. Ibid.

Department's response

10.3 The Department accepted Audit's recommendation and advised the Committee that the Public Risk Waiver was sent to the Minister in mid-February 1988, with subsequent approval being given on 22 February 1988.[7] The Department advised in June 1988 that a further review of options in relation to Navy's ammunition activities was nearing completion.[8]

10.4 The Department also gave considerable detailed evidence in response to Audit's claim that the Department had not done all within its power to keep the Minister informed and seek his approval for waivers. This issue will be dealt with separately in Chapter 13 of this report.

10.5 The Department also gave detailed evidence in its supplementary submission on actions it had taken in an effort to reduce the risks to the public from the ammunition pipeline in Sydney Harbour, as well as a detailed history of the decision to control Snapper Island. The Department acknowledged the delays in obtaining the Minister's approval for Public Risk Waivers in Sydney Harbour but considered that the detailed examination of possible options to reduce the risk and to remedy non-compliant activities where feasible before seeking Ministerial consideration of a PRW request was reasonable and responsible.[9]

Committee's findings – Sydney Harbour

10.6 The Committee noted that it had been common knowledge within Navy that it could not comply with both the previous and the current Safety Instructions for many years. Audit found that this had been known since the conduct of a review in 1971. The Committee was informed at public hearing that it had been known as far back as 1956.[10] The Committee was told on numerous occasions that the only way that Navy can comply with the NATO Safety Principles in Sydney Harbour is to move the ammunitioning of ships out of the Harbour.[11] Given that there was a situation in which Navy had known for many years that it could not comply with safety distances, the Committee expected that, when both the Safety Principles Instruction and the Waivers Instruction were issued in 1981 and 1984 respectively, Navy would have informed the appropriate higher authorities that it could not comply and approval to continue the operations would have been sought. As Audit has shown, this was not the case.

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7. Department of Defence submission dated 8 June 1988, Annex A.
8. Ibid.
9. Department of Defence supplementary submission dated 30 September 1988, p.65.
10. Evidence, p.781.
11. Evidence, pp.78,177,179.

10.7 The Committee was shown evidence relating to the Sydney Harbour Operations which demonstrated the efforts of the Department to reduce the risk to the public. The Committee does not dispute this as many of the documents and reviews all emphasise the need to try and consider options to reduce the level of risk to the public. However, another constant theme running through the correspondence and documentation was that approval needed to be sought for those situations where Navy could not comply. For example, an AOC proceeding dated 9 August 1983 concluded that:

> For the RAN to continue to conduct ammunition logistic operations in Sydney Harbour it will be necessary to ...
>
> (d) seek waivers of safety distance requirements where non-compliance pose unacceptable risks to public safety.[12]

10.8 In another AOC proceeding No 4/84 dated 17 April 1984 it was recommended that:

> Ministerial approval be sought for a waiver of the Commonwealth adopted NATO regulations applicable to Naval ammunitioning activities in Sydney Harbour to permit the continuation of the RAN ammunition logistic system pending relocation.[13]

10.9 As a result of this recommendation the Chief of Naval Staff's office wrote to Flag Officer Commanding the Australian Fleet pointing out that:

> Now that the Minister has approved the procedures for the granting of Public Risk Waivers, the Chief of Supply is anxious to submit to the Minister for approval cases where waivers are necessary. Given the sensitivity of the Sydney Harbour ammunition logistic activities early action to seek waivers is required.[14]

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12. PAC file 1988/4 B(6): AOC Proceeding No. 16/83, p.3.
13. PAC file 1988/4 B(6): AOC Proceeding No. 4/84, p.8.
14. PAC file 1988/4 B(5): Letter from Office of Chief of Naval Staff to Flag Officer Commanding HM Australian Fleet dated 11 May 1984, p.2.

10.10 Despite the requests that waivers be submitted and approved, it took four years before the Department forwarded to the Minister waiver applications for Sydney Harbour for situations where the Navy could not comply with the NATO Safety Principles. *The delay was caused both by Navy Office in taking so long* to submit a waiver request and Supply Division not processing the applications quickly. The Committee considers that this is well past an acceptable time when waivers should have been submitted and approved. The reasons for the delay that were suggested by the *Department, that they sought to obviate the need for a waiver* before seeking ministerial approval, have been discussed in Chapter 5. It is hoped that the Committee's recommendation of a time limit from the time a non-compliant situation is first identified to when it is approved by the Minister will remedy this deficiency. Had such a practice been adopted earlier, Public Risk Waivers for Sydney Harbour may have been approved as early as 1984.

Spectacle Island

10.11 The Committee noted the recent decision by the Department to bypass Spectacle Island in its ammunitioning procedure in Sydney Harbour. The Island had been previously used as a temporary staging point for loaded ammunition barges en route from Newington to Man-of-War Anchorage off Garden Island. The temporary storage of explosives on the island created safety arcs that covered Snapper Island, parts of Cockatoo Island and Pulpit Point, and resulted in eviction action being initiated against the Sydney Training Depot cadets who were leasing Snapper Island.[15] As a result of the decision not to temporarily store explosives near the Island the safety arcs are no longer in force, although the Department pointed out that the Island may still be required for use in the event of an extremely rare occurrence involving a unavoidable emergency de-ammunitioning of a Navy ship.[16]

10.12 The operational effect of the decision in terms of loading ammunition onto Navy ships was not considered to be very significant. The Committee was told that ships were now at Man-of-War Anchorage for a full ammunitioning for about twice the time they took before, with costs of loading the ships being higher due to extra overtime requirements at Newington.[17]

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15. PAC file 1988/4 B(23): Letter from Department of Defence dated 9 August 1989.
16. Ibid.
17. Evidence, pp.1065,1067.

10.13 The Committee was also told that, one year prior to the decision being made not to use Spectacle Island, an amount of $1.4m had been spent to insert piles off Spectacle Island so that the public risk to the surrounding foreshores of Parramatta River would be minimised.[18] When it was put to the Department that an investment of such a large amount of money to ensure that Spectacle Island could store explosives more safely was a waste of funds following the decision not to use the Island, the reply given was that the money spent was:

> ... not a bad emergency investment. If we ever do have such an emergency, then we would need such a facility.[19]

10.14 The Committee considers that the decision to bypass Spectacle Island could have been made much earlier, given the amount of time and effort spent on reviewing Sydney Harbour Operations between 1971 and 1988. The Committee also considers that the expenditure of $1.4m is extremely questionable given that seven months after the works finished a decision was taken not to use the Island except on extremely rare occasions.

Snapper Island

10.15 Snapper Island has been leased since 1931 by the Sydney Training Depot cadets. As stated previously, action to evict the cadets was commenced because they were within the outside quantity distances emanating from Spectacle Island. On 2 May 1989 the Depot was advised that under the revised arrangements Navy's ammunitions activities in Sydney Harbour will no longer place Snapper Island within an 'explosives safety zone'.[20] The future of the continued use of Snapper Island is somewhat unclear. The Committee was told that the Department had simply 'not got round to' making a decision on the future use of Snapper Island.[21] Given that there is no apparent risk to the cadets from any explosives activities, the Committee considered it inappropriate that eviction action was still pending against the cadets.

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18. Evidence, pp.1069,1122.
19. Evidence, p.1070.
20. Evidence, p.64.
21. Evidence, p.1080.

CHAPTER 11

RAAF BASES

Audit findings

11.1 Audit reviewed explosive operations at RAAF Bases Amberly, Butterworth, Edinburgh, Richmond and Williamtown. At RAAF Base Amberly it was found that three and a half years had elapsed between the initial submission of a waiver to its approval, and there was no evidence to indicate that operations which had contravened the Safety Principles Instruction had been curtailed pending consideration of waivers under the Waivers Instruction.[1] At RAAF Base Butterworth in Malaysia the level of non-compliance with the 1981 instruction was not identified for almost three years.[2] Also shown by Audit was that as at the end of 1986 there was no evidence that the Minister had been advised of the Butterworth situation, and non-compliant operations had continued to be undertaken contrary to Defence Instructions.[3] At RAAF Base Richmond it was noted that despite having submitted a PRW request to the Chief of Supply in November 1983, by the end of 1986 Supply Division had not sought Ministerial approval for the PRW.[4] Following the completion of Audit field work, Audit discovered that it had taken the Department over three years to determine whether the explosives operations at Richmond contravened the Safety Principles Instruction.[5] At RAAF Base Williamtown similar problems were found, with long delays in determining whether PRWs were required, the Minister not being informed of PRWs that had been approved by the Chief of Supply, and the continuation of operations using explosives without a waiver.

11.2 Audit considered that the need for numerous waivers at the various bases referred to above highlighted deficiencies in the storage, preparation and loading capabilities for explosive ordnance.[6] The solution for these problems according to Defence are new facilities to be constructed. However, Audit noted that as the building program would not be completed until at least 1992 waivers will be necessary to enable operations to continue at bases for at least five years.[7]

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1. Efficiency audit report: safety principles for explosives, pp.46-7.
2. Ibid, p.47.
3. Ibid, p.48.
4. Ibid.
5. Ibid, p.49.
6. Efficiency audit report: safety principles for explosives, p.51.
7. Ibid.

Department's response

11.3 In relation to the delay of three and a half years in the progress of a PRW submission at RAAF Base Amberly the Committee was told Departmental records could not specifically indicate the reasons for the delay.[8] In relation to RAAF Base Butterworth the Department identified several reasons for the delay, with the principal one being that during the period 1981 to 1988 there was continual uncertainty as to the future of the Base, with the date of transfer of the explosives storage area to Malaysian control continually changing.[9]

11.4 The Department could not explain the delay in processing PRWs for RAAF Base Richmond from information held on departmental files.[10] The Department noted, however, that it had earlier banned certain more hazardous operations from being conducted at Richmond in the interests of public safety, and the activities that were allowed to continue were assessed by RAAF to be essential with minimal public risk.[11]

Committee's findings

11.5 Much of the Committee's findings on matters raised in this chapter are addressed in other chapters of this Report. The delays in processing waiver requests is discussed at Chapter 13. It is perhaps worth mentioning again that the Committee's view is that such delays on the most favourable interpretation indicate very poor management of the waiver approval process. Audit's claim that Ministers were not fully informed on matters relating to waivers will be addressed in Chapter 13.

11.6 The Committee was concerned that there appeared to be some confusion over the application of the NATO Safety Principles within RAAF, leading to doubt as to whether a PRW was required or not. The Committee would have expected that where such doubt had existed, the Australian Ordnance Council (AOC), which is the technical expert on the NATO Principles, should have been requested to examine the matter. The Committee could find no evidence from the Department that this had been contemplated, let alone done in the cases where RAAF had difficulty in determining the need for waivers. The Committee noted that, although the AOC is mentioned in the revised draft Instruction, there is nothing that requires a licensing authority to consult with it should

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8. Department of Defence supplementary submission dated 30 September 1988, p.69.
9. Ibid, p.71.
10. Ibid, p.76.
11. Ibid.

confusion arise as to whether or not NATO Principles are contravened. The Committee is concerned that what happened at RAAF Bases Edinburgh, Richmond and Williamtown not be repeated once the new Instruction is issued.

11.7 **The Committee recommends that:**

- **The revised Instruction be amended to provide for the Australian Ordnance Council (AOC) to be consulted where confusion exists as to the application of the NATO Safety Principles.**

CHAPTER 12

COSTS OF IMPLEMENTING THE DEPARTMENT'S SAFETY PRINCIPLES FOR EXPLOSIVES

Audit's findings

12.1 Audit found that at the time of adoption of the NATO Safety Principles in 1981 the Department did not cost the effects of the change to the new system, as it considered it would be a negligible amount.[1] Audit noted that this was due to the Department's belief that the new system was basically similar to the then current safety principles and its belief that it already substantially complied with the existing outside quantity distance requirements.[2] Audit considered that senior management was totally Department prior to 1981 because of the waiver approval system then in existence whereby waivers could be approved by lower level officers with no requirement to notify senior management or any co-ordinating authority.[3] Audit also considered that the substantial delays in meeting the timetable for implementation of the new NATO Principles were due in part to the over-optimistic timetable proposed in the absence of full knowledge of the extent of non-compliance existing within the Department.[4]

Department's response

12.2 The Department provided the Committee with a costing of new facilities and land acquisition related to explosive ordnance storage. However, the figures provided did not discriminate between costs which could be directly attributable to the implementation of the NATO Safety Principles and those which would have been necessary to upgrade explosive ordnance storage under pre NATO procedures.[5] The Department also acknowledged Audit's point concerning the fact that it was not aware of the extent of non-compliance existing under single-Service procedures.[6] The figures provided by the Department are reproduced in Table 12.1:

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1. Efficiency audit report: safety principles for explosives, p.52.
2. Ibid.
3. Ibid, p.53.
4. Ibid.
5. Department of Defence supplementary submission dated 30 September 1988, p.82.
6. Ibid.

TABLE 12.1

SUMMARY OF EXPLOSIVE ORDNANCE SAFETY DISTANCE-RELATED *FACILITIES INCLUDED IN DEFENCE PROGRAMS*

1981-88 PROGRAM ($M)

	WORKS	LAND ACQUISITIONS
NAVY	1.145	-
ARMY	0.671	0.004
AIR FORCE	7.418	0.295
ODP	-	-
DSTO	0.445	-
TOTAL	9.679	0.299

1988-93 *FIVE YEAR DEVELOPMENT PROGRAM AND BEYOND ($M)*

	WORKS	LAND ACQUISITIONS
NAVY	179.250	3.338
ARMY	25.000	2.575
AIR FORCE	111.680	8.885
ODP	7.700	1.095
DSTO	-	-
DEFENCE	32.600	-
TOTAL	356.230	15.893[7]

Committee's findings

12.3 The Committee noted that very little assessment, if any, had been made of the potential costs of adopting the NATO Safety Principles in 1981. Commenting on the criticism made by Audit that the Department had not really assessed the cost implications, one witness stated:

> I think the judgement was made at the time that the additional costs would be negligible, or words to that affect. I think, once again with the wisdom of hindsight, that judgement was not as sound as it could have been ...[8]

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7. Department of Defence supplementary submission dated 30 September 1988, p.83.
8. Evidence, p.445.

12.4 The Department also conceded that the decision to accept the Ombudsman's Recommendation had led to the potential for great cost.[9] The Minister for Defence, in answering a question in Parliament on the decision to adopt the NATO Safety Principles, noted that:

> The Auditor-General found - and I agree with him - that this decision was not based on any realistic consideration of the time constraints, the costs and a variety of other matters involved in taking that decision.[10]

12.5 The Committee considers that the decision to adopt the NATO Safety Principles was made with little examination of the possible resource and operational implications. The Committee concurs with Audit's finding on this matter. Had the Department assessed the possible implications of its decision it may have avoided many of the problems associated with compliance that it had in later years.

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9. Evidence, p.784.
10. Australia, House of Representatives Debates, 26 April 1985, p.2045.

CHAPTER 13

REPORT REFERENCES TO MINISTERS NOT BEING INFORMED AND REQUISITE MINISTERIAL APPROVAL NOT BEING SOUGHT

Audit's findings

13.1 The Auditor-General's report made a number of assertions in relation to Defence Ministers not being fully informed on various occasions in relation to approvals of waivers and other matters associated with the implementation of the Safety Principles Instructions. These instances occurred as early as 1981 when no approval was sought from the Minister when the NATO Safety Principles were first adopted by the Department, despite having received advice that such approval should be sought. Some of these issues have already been dealt with earlier in this report. However, the more serious of these allegations are dealt with below.

13.2 The major references in the efficiency audit report about Ministers not being informed or approval being sought were as follows:

- Notwithstanding advice given by the Department of Administrative Services in 1980 the Government endorsement should be sought for adoption of the NATO Principles, the Department had not obtained such approval (Section 6.1.2);
- The Minister was advised of eight locations which could require PRWs but was not advised of others (Section 4.1.9);
- Instances, including RAAF Base Butterworth, were identified as requiring PRWs to continue operations but the Minister was not informed (Sections 4.1.8 and 4.1.9);
- As at the end of 1986, the Minister had not received any PRW submissions nor had he received notification of any PRWs approved by the Chief of Supply. (Section 5.2.3);

- The Minister was not promptly advised of PRWs approved by CSUP - on one occasion the time before advice was sent was almost 15 months;
- By October 1987 no requests for PRWs had been submitted to the Minister for consideration. (Section 11.2.2 viii);
- The Department's approach of rectifying problems before seeking a PRW restricted the Minister's options. (Section 11.2.13).[1]

Department's response

13.3 The Department conceded that it should have sought Government endorsement of the NATO Safety Principles. The Department accepted that there had been considerable delays in some instances in forwarding waiver applications for the Minister's information or approval. As one Departmental witness stated:

> We did not move with the speed of light to deal with waiver requests.[2]

However, the Department denied that there had been any deliberate misleading of Defence Ministers. The Department argued that, while there may have been instances where waiver submissions took a considerable time to reach the Ministers, they had been orally briefed on a number of occasions that PRW's would be required for various Defence facilities.

13.4 The Department did not attempt to justify the delays of up to 15 months that occurred in advising Ministers of details of PRWs that had been approved by the Chief of Supply, and while admitting the delays were excessive advised they certainly were not deliberate.[3] The Department pointed out that the number of waivers was small, and none of the CSUP-approved waivers involved direct risk to the public or public property since the

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1. Efficiency audit report: safety principles for explosives, passim.
2. Evidence, p.446.
3. Department of Defence supplementary submission dated 30 September 1988, p.17.

quantity distance arcs projecting beyond the CPB fell onto uninhabited land.[4] The Department argued that, with regard to the submissions requiring Ministerial approval, Departmental practice was and continues to be a thorough analysis of the situation to ensure that submissions have addressed all possible alternative solutions, before being put to the Minister.[5]

13.5 Another reason put forward by Defence for not informing the Minister for such long periods was due to time spent by staff familiarising themselves with a new system before it became fully operational. As one witness pointed out:

> As to the reason why applications took some time, it was due largely to our having to educate ourselves on the implications and the mechanics of seeking the waivers.[6]

Committee's findings

13.6 The Committee considers that the explanations offered by the Department for the delays in informing and adequately briefing Ministers are unacceptable. The Department's claim that Ministers were orally briefed on the need for waivers is something which the Committee cannot really assess as most officers who were involved at the time did not appear before the Committee. Even if the Ministers had been briefed verbally, the terms of the Instruction were still not met as Ministerial approval was required.

13.7 The other reasons put forward by the Department are also questionable. The Department claimed that the number of PRWs that had been delayed was only nine, with only two requiring Ministerial approval. As Audit commented:

> The argument put forward by the Department appears to be that there are only a small number of waivers which required approvals which had not been obtained for a number of years. It appears to Audit that this argument is somewhat counter-productive in that if only so few are required to be dealt with why should such an extensive period of delay occur?[7]

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4. Department of Defence supplementary submission dated 30 September 1988, p.17.
5. Ibid.
6. Evidence, p.369.
7. Exhibit 22, p.7.

13.8 While only nine PRWs were required to be notified to the Minister during Audit's review in 1986-87, it was noted that in October 1989 17 PRWs were in operation.[8] Although Defence noted that only two PRWs were required, it is relevant to note the nature of those two submissions. As Audit pointed out:

> One concerned some of the most expensive real estate in Australia (Sydney Harbour) and another concerned other country's citizens (RAAF Base Butterworth, Malaysia).[9]

13.9 In relation to the Department's claim that the adoption of a new procedure of obtaining Ministerial approval for non-compliant situations required a certain amount of time to settle in, the Committee considers that the periods of delay that Audit found were well in excess of what is deemed acceptable for phasing in a new process. It should be remembered that the 1981 Safety Principles Instruction required all non-compliant situations to be notified to the Chief of Supply by the end of 1983. In many cases, such as with RAAF, submissions requesting waivers had been received by Supply Division prior to the approval of the Waivers Instruction in 1984.[10] Thus, when the new Waivers Instruction became operative in 1984 the Committee would have expected that these requests for waivers would be approved or rejected within a matter of months, if not weeks. However, as Audit found, it was not until 1986 that any waivers were approved.

13.10 The Committee considers that one of the principal reasons for the delays in informing Ministers was due to a flawed interpretation of the Waivers Instruction. This matter was previously discussed in Chapter 5. Because of this interpretation, ie that an effort be made to reduce the risk first and then forward a waiver application to the Minister, it inevitably led to long delays before the Minister's approval was eventually sought. In the case of Sydney Harbour this delay was almost four years.

13.11 Both the Committee's and Audit's view of the Waivers Instruction was that where a situation arose whereby an explosive operation could not be conducted within the NATO Safety Principles and involved a risk to the public, then the Minister's approval of a waiver should be sought immediately. One Committee member gave the following interpretation of the Instruction:

> I have a very simple view, reading that document. I think there is only one option open to you: until you get your waiver, you stop the activity. The waiver is an authorisation for the performance of an essential activity where it is not feasible to

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8. Exhibit 46.
9. Exhibit 22, p.7.
10. Evidence, p.487.

> comply with Explosive Operations regulations. When making an application you have got to explore the options. That is fine. Until such time as you are able to put your submission in, get your approval and have your waiver, you stop the activity. It is a danger. There is a public risk involved. If you want to continue it, you obtain your waiver but in doing so you put up the options, which include alternative locations, relocation, reconstruction and so on, and in doing so you put in the costing and other matters, and assessment of the risk. But until you have done it, you stop.[11]

13.12 The Committee's attention was drawn to one instance highlighted by the Auditor-General regarding processing of waiver submissions. In examining Departmental records concerning RAN operations in Sydney Harbour it was disclosed by Audit that:

> ... the processing of other Public Risk Waiver submissions was delayed deliberately within Supply Division in order that one of the RAN Sydney requests would be the first to go to the Minister ...[12]

13.13 After questioning by the Committee, Audit indicated that it had reached this conclusion after sighting a minute written by a Lieutenant Colonel in the Supply Division which was sent to the Acting Chief of Supply, dated 18 June 1985.[13] The relevant paragraph of the minute stated:

> In relation to the considerable time-lag since most of the waiver requests were received, I understand that that delay was purposely imposed in the hope that the first public risk waiver to go before the Minister would be one of the Navy Sydney requests, ie, one with a bit of meat on it. An additional reason for the delay, at least up until the issue of the DI(G) SUP 20-2 in September 1984 was the need to decide and promulgate policy.[14]

13.14 The Committee was concerned as to why submissions had been deliberately delayed and whether in fact this delay breached the terms of the Waivers Instruction. The Audit office witness commented on whether an offence had occurred by saying that:

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11. Evidence, p.470.
12. Efficiency audit report; safety principles for explosives, p.36, (vii).
13. Evidence, p.425.
14. Evidence, p.426.

> ... there is no statement specifically in the Instruction which we have referred to about the time by which the Minister has to be advised of the waiver.[15]

13.15 The Department admitted that the submissions had been deliberately delayed but concurred with Audit's view that because the Instruction did contain sufficient reference to timing, one could not conclude that there had been a breach of that Instruction.[16]

13.16 The Department gave three reasons to explain why such a delay had been purposely imposed. Firstly, the policy for the processing of the waivers had not been fully developed, and as the RAAF waiver submission had been received prior to the issue of the Waivers Instruction, it was considered inappropriate to process the waivers until the actual policy had been approved and published.[17] The second reason put forward was that the RAAF Technical Site Selection Boards were convened from late 1984 to early 1985, a process that was considered essential to the further progression of the waivers.[18] The third reason given was that a management decision was taken after the publication of the waiver policy which gave priority to the PRW problems in Sydney Harbour.[19] Because of the complex nature of PRWs in Sydney Harbour the RAAF submissions were held up, after which it was determined some did not need ministerial approval anyway.[20]

13.17 The Department gave evidence at public hearings as to what it had interpreted the phrase 'purposely imposed' to mean. The Committee was told that nothing sinister should be made of the words, but rather that:

> ... there was a delay, that there was no hastening to advance those particular submissions in circumstances where there were other submissions with a far higher risk to the public involved, and in those cases I certainly would have been giving priority to those of higher risk than to those of a somewhat lesser risk.[21]

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15. Evidence, pp.427-8.
16. Evidence, p.430.
17. Department of Defence supplementary submission dated 30 September 1988, p.20.
18. Ibid.
19. Ibid.
20. Ibid.
21. Evidence, p.484.

13.18 The Committee concedes that there is no time limit specified in the Waivers Instruction which would allow this action of deliberately delaying submissions to be regarded as a breach. The Committee was told that some disciplinary action had been taken against staff involved in administering the NATO Safety Principles, although the Department did not specify if this instance received such action.[22] The Committee's view of the Instruction is that there would be an underlying assumption that an explosives operation that could not comply with the NATO Safety Principles be brought to the Minister's attention within a reasonable time. The Committee is dismayed that a management decision was taken to deliberately withhold RAAF waiver submissions from the Minister. When it was put to the Department that such a decision was contrary to Defence Instructions, Defence responded by stating:

> There is nothing in the Instruction which would have provided support for that action.[23]

13.19 The Committee considers that the Department's management of the system of processing waiver requests for approval by the Minister has been abysmal. Had an accidental explosion occurred in Sydney Harbour in the period between 1984 and March 1986, the subsequent investigation would have revealed that no Public Risk Waiver had been sought until November 1985 and that it had not been forwarded to the Minister. It would be further revealed that despite the Instruction clearly stating that the Minister's approval needed to be obtained to conduct explosives operations that could not comply with the NATO Safety Principles, it had not been sought or granted. The Minister had only been orally briefed on the matter.

13.20 The Committee does not condemn the actions taken by the Department in endeavouring to reduce the risks of explosives operations. In fact, the Committee encourages the Department to continue to seek ways to achieve compliance with the NATO Safety Principles wherever possible. However, the Committee considers that all this action should be taken only after the Minister's approval has been sought. Otherwise, the Minister is denied any say in determining whether operations that involve risk to the public will continue. Under the practices adopted by the Department between 1984 and 1987 this very important decision was being made by senior but unelected officials, rather than by the Minister.

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22. Evidence, p.1166.
23. Evidence, p.497.

13.21 The revised Instruction should help to ensure some of the problems do not recur. If the Department adopts the recommendation of the Committee for a time limit for processing waivers, then this will ensure that the Minister is informed within a reasonable timeframe, and prevent a recurrence of the situation that has been outlined above.

CHAPTER 14

TRANSPORT OF EXPLOSIVES

14.1 The Committee received evidence suggesting that the transport of explosives was more hazardous than storage and handling. The NATO Safety Principles adopted by the Department of Defence do not include the transport of explosives. The requirements for transporting Commonwealth explosives in public places is prescribed by the Commonwealth's Explosives Act 1961 and associated regulations, and are administered by the Department of Transport and Communications.[1] As such, the transportation of explosives does not fall within the terms of reference of the Inquiry as the Committee is reviewing the implementation of the Auditor-General's report. However, because of the topical nature of the matter and the fact that it relates to RAN Operations in Sydney Harbour the Committee thought it was necessary to at least place on record the evidence it had received on the issue.

14.2 The Jervis Bay Protection Committee lodged a submission to the Inquiry and appeared before the Committee at a public hearing in May 1989. The main thrust of the Protection Committee's submission to the Inquiry was that the shift of Newington armaments depot and wharf to Jervis Bay will not substantially reduce, and may increase, the actual overall risk of an accidental explosion and injury to the public because there would be an extended transport road route of dangerous explosives between Kingswood and Jervis Bay.[2] The Protection Committee argued that the greatest risks that exist in Sydney at the moment are not from the storage of explosives but rather from their transport, and there was no evidence that indicated this risk had been adequately assessed.[3]

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1. PAC file 1988/4 B(23): Letter from Department of Defence dated 25 August 1989.
2. Evidence, p.1013.
3. Evidence, p.1000.

14.3 The Department responded to this claim by asserting that although transporting explosives did have high risks, the physical handling of explosives is a higher risk.[4] The Department pointed out that there had never been an accident involving Defence munitions on any road in Australia, and that as the roads between Kingswood and Newington have a high density of traffic there was probably a higher risk in travelling with ammunition down that route than there would be in the less trafficked roads from Kingswood to Jervis Bay.[5] It also explained that ammunition has design standards which specify a safety standard, and that once manufactured the ammunition is put through extensive safety tests, including a 12 metre drop to simulate conditions that might be expected in service and liquid fuel fire to establish the response of the ammunition to that element.[6] The Department also advised that most of the ammunition used to supply ships in Sydney Harbour had been transported by road from Point Wilson in Victoria.

14.4 As stated previously, the Committee did not examine the issue in great detail as it considered the issues raised were beyond the terms of reference of the Inquiry and could not be further investigated as the Committee did not have the resources for such a task.

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4. Evidence, p.1214.
5. Evidence, p.1215.
6. Evidence, p.1133.

CHAPTER 15

CONCLUSION

15.1 As this Inquiry progressed it became obvious to the Committee that Defence's management of the implementation of the NATO Safety Principles left a great deal to be desired. As outlined in previous chapters of this report, significant administrative weaknesses were found by Audit, and these were confirmed by the Committee's Inquiry.

15.2 The latest Department of Defence Annual Report notes that the first responsibility of government is to provide the nation with security from armed attack.[1] In order to fulfil this task Defence needs sufficient ammunition to provide a credible force to fight such an armed attack. Australian citizens have a right to expect that this ammunition should be stored and handled in the safest manner possible, especially where stored explosives are located near heavily populated areas.

15.3 Generally speaking, Defence's record has been very good, with relatively few accidents involving explosives in Australia over the past few decades. The last recorded deaths were at Newington in 1985, with two maintenance personnel being killed while arming a torpedo.[2] The Committee was told that in comparison with other countries which have adopted the NATO Safety Principles, Australia was probably ahead of our allies.[3]

15.4 The Committee acknowledges Defence's record on safety with regard to the handling and storage of explosives. However, both the Auditor-General's efficiency audit and the Committee's Inquiry have raised serious issues concerning Defence's ability to apply the NATO Safety Principles and how they have been administered.

15.5 It seems obvious to the Committee that Defence has had considerable difficulty in complying with the NATO Safety Principles that it adopted in 1981. This is demonstrated by the high number of both Public Risk and Departmental Risk Waivers that are in existence. It is further evidenced by the claim that Navy cannot comply with the Principles unless it moves its explosives operations out of Sydney Harbour to another location.

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1. Department of Defence, Annual Report 1988-89, AGPS, Canberra, p.ix.
2. Exhibit 28.
3. Evidence, p.1235.

15.6 The Committee concurred with Audit's findings that there had been no concerted or co-ordinated effort to implement the new Principles until 1986 and 1987, some six years after they had been adopted and three years past the deadline of December 1983 that Defence imposed upon itself.

15.7 The Committee also found that the decision to adopt the new Safety Principles was ill conceived in that there was no consideration of the costs, operational effects and legal liability that would be involved and no approval was sought from the Government to increase the level of risk to the public. This meant that Defence was never able to meet its timetable for implementation and was not fully aware of the costs of the decision.

15.8 By far the most important issue that the Committee examined during the course of the Inquiry was the delays in seeking Public Risk Waivers approvals from the Minister. The Department, after receiving legal advice, issued an Instruction requiring ministerial approval for situations where it could not comply with the NATO Safety Principles and where there existed an increase in the level of risk to the public. The Department considered, and the Committee agrees whole-heartedly, that a decision to continue explosives operations which involve a risk to public safety is one which should be made by the Minister. The Auditor-General's report revealed that substantial delays of over two years had occurred in which explosives operations continued without the Minister's authority.

15.9 The Committee was dismayed that senior unelected officials were making decisions to continue explosives operations which increased the level of risk to the public, decisions which, according to the Instruction, were to be made only by the Minister. By taking this course of action, the Department denied the Minister the opportunity to decide whether the continuation of the explosives operation was worth the extra risk to the public that it involved. Had an accidental explosion occurred when public risk waivers were required but had not been approved, the Department, by its actions, would have placed both itself and its Minister in an untenable position.

15.10 The Committee examined the Department's reasons as to why such delays had occurred and found them to be unconvincing. The Department argued that it felt obliged by the terms of the Instruction to examine all possible options to avoid the need for a waiver situation before forwarding a submission to the Minister for approval. The Committee considers that the Department seemed preoccupied with considering options and alternatives to the waiver with scant regard to obtaining the Minister's approval for the non-compliant operation. The Committee expects that efforts to reduce the risk to the public would always be under consideration. However, any action to consider alternatives or actions to reduce the risk should, in the Committee's view, be done only after the Minister's authority had been given.

15.11 The Committee found that the Department's liaison with local councils and landholders who lived adjacent to Defence establishments containing stored explosives was less than satisfactory. Despite having accepted an Ombudsman's recommendation to notify all affected landholders in 1980 the Committee found that very few, if any, had been officially notified. While the Department claimed that it had a good relationship in terms of keeping local councils aware of the effect of its explosives operations, the Committee found that it was only recently that an effective relationship had been established. The Committee also found that safeguarding maps, which show the potential effects of an accidental explosion, had taken six years to produce, and had not yet been distributed to local councils.

15.12 The Auditor-General made 21 recommendations in his efficiency audit report on the Department's safety principles for explosives. The Committee considers that 12 recommendations have taken far too long to be implemented. The majority of these relate to changes in the Defence Instructions which govern the application of the NATO Safety Principles. The revised Instruction was issued on 10 November 1989, some two years after Audit first made its findings, leaving the previously inadequate Instructions still in force. The Committee considers that the redrafting of these Instructions took too long, given that the Department accepted the Auditor-General's criticisms in February 1988.

15.13 The Committee considers that the new Instruction will improve the application of the NATO Safety Principles, provided it is adhered to. The Committee is generally satisfied with the revised Instruction, although it has made some recommendations for its improvement. Principal among these is a recommendation which is designed to ensure that the Minister's approval for non-compliant situations will be sought as soon as possible, thus avoiding the considerable delays that Audit reported. The Committee hopes recent changes in implementing the Safety Principles Instruction, in particular the creation of an Assistant Chief of Logistics responsible to both the Secretary and Chief of Defence Force, will vastly improve the management of the new Instruction.

15.14 The Committee notes with dismay the long period of time this issue has been mismanaged within the Department. Of most concern is the fact that very important policy decisions were made by unelected and unaccountable public servants since 1981. The system of Parliamentary democracy is based on the premise of the responsibility of Ministers to Parliament, and their ultimate responsibility through the electoral process, to the people. The theory of Parliamentary democracy falls down if Ministers are not adequately briefed and continually informed, especially on matters that involve risks to the public, as the storage and handling of explosives clearly does.

15.15 The Committee considers the findings of this report have ramifications for all departments in their relationship with the Executive. It should serve as a reminder to all departmental secretaries of the need to ensure that Ministers are adequately briefed and kept informed, not least of all when government approval is required for new initiatives.

15.16 The Committee wonders what may have happened had the Department of Health or the Department of Administrative Services adopted a code for the management of asbestos without seeking the Minister's approval. Further, had a system of waivers been adopted to allow continuation of asbestos-related work where there was a slight risk of danger to the public the political and safety ramifications would have been of huge proportions. The Committee offers this hypothetical example as a demonstration of how seriously it views the actions of the Department of Defence in implementing of the NATO Safety Principles.

R E Tickner, MP
Chairman
28 November 1989

APPENDIXES

SUMMARY OF AUDIT RECOMMENDATIONS

1. To accord with the Ombudsman's Recommendation which it had accepted, the Department ensure that where any outside quantity distances extend beyond the Commonwealth property boundary, affected landholders are appropriately notified and special agreements made. (paragraph 3.2.4)

2. Priority be given to the formal adoption by the Department of compatibility mixing rules for explosives, based on the UN System. (paragraph 3.5.5)

3. Departmental Instructions be revised to clarify the reference in the Safety Principles Instruction to '... other clearly demonstrable specific conditions' and the authority responsible for determining whether they apply. (paragraph 4.2.3)

4. Departmental Instructions be revised to provide for verification of adherence to departmental Instructions for the storage and processing of explosives by a body independent of the management responsible for conducting the explosives operations. (paragraph 4.2.3)

5. Departmental Instructions be revised to clarify the applicability of the Instructions to all ammunition and explosives held by the Department (paragraph 4.2.3)

6. Departmental Instructions be revised to require prompt reporting of non-compliant situations when identified. (paragraph 4.2.3)

7. Departmental Instructions be revised to provide a means for the controlled continuation of non-compliant activities while proposals for waivers and remedial action are prepared and considered, so that personnel are not put in the position of having little or no choice but to continue operations which are non-compliant. (paragraph 4.2.3)

8. Pending revision of the Waivers Instruction, the Department forthwith bring non-compliant operations within the provisions of the Waivers Instruction, either by cessation of the identified non-compliant operations or by issue of waivers. (paragraph 4.2.5)

9. Prompt action be taken to expedite the consideration of outstanding Public Risk Waiver requests at the Chief of Supply or ministerial level as appropriate. (paragraph 5.2.5)

10. Action be taken to ensure that any future instances requiring Public Risk Waivers are processed in a timely manner. (paragraph 5.2.5)

11. Future waiver submissions provide comprehensive details of alternative proposals and of the effects on operations that would result if a waiver was not granted. (paragraph 5.2.11)

12. Copies of all Departmental Risk Waivers be sent to a central body, as required under the Defence Instructions, and be compiled to form a centralised record providing an awareness of the overall situation in the Department. (paragraph 5.3.2)

13. Approval be sought from the Government for the acceptance of the level of risk to the public which is inherent in the Safety Principles Instruction. (paragraph 6.1.3)

14. The Department determine the extent of landholdings and any restrictions on surrounding land use required for the long-term viability and development of each establishment. The Department should seek to acquire the landholdings or ensure that the restrictions are enforced. (paragraph 7.2.3)

15. The Department ensure that all facilities of the Defence Science and Technology Organisation comply with the Safety Principles and Waivers Instructions. (paragraph 8.5.1)

16. If the desired level of safety in the event of a fire or explosion can be achieved more cost-effectively through the means that do not comply with the safety principles, the Department take action to facilitate the adoption of such means through amendment of the Instructions, if appropriate, while ensuring the intended level of safety is not compromised. (paragraph 8.5.1)

17. Consideration be given to whether obtaining the marginal benefit in improved safety, if any, is the optimal use of the estimated additional $40m required for the Office of Defence Production operations to achieve strict compliance with the current Instructions. (paragraph 9.2.5)

18. The status and role of the Operational Safety Committee (Explosives) or a body to replace it be formalised. (paragraph 9.3.3)

19. An increased priority be given to the development of a master plan for the co-ordination and compatible operation of the Department's facilities at Maribyrnong. (paragraph 10.2.6)

20. The Department not sanction the release of any further land at Maribyrnong or any other location where there are unresolved problems with achieving the separations required under the Safety Principles Instruction. (paragraph 10.2.6)

21. Notwithstanding any actions to amend the Waivers Instruction to provide for interim approvals, the Department act forthwith to bring the RAN Sydney Harbour operations within the provisions of the Safety Principles and Waivers Instructions. (paragraph 11.2.6)

APPENDIX 2

SUBMISSIONS RECEIVED

1. Firesafe Pty Ltd
2. Sydney Training Depot
3. Rodney Skiller
4. A E Jackson
5. Plant Audit (Australia)
6. Jervis Bay Protection Committee
7. Nature Conservation Council of NSW
8. Department of Defence
9. Sydney Training Depot - Supplementary Submission
10. Department of Defence - Supplementary Submission

APPENDIX 3

CONDUCT OF THE INQUIRY

List of Hearings and witnesses

25 July 1988, Canberra

Department of Defence	Brigadier Bray Mr R Claridge Mr K Forsey Lieutenant-Colonel J Gratton Wing Commander A Hall Mr F Harvey Air Vice Marshall A Heggen Group Captain J Hudson Mr D Huntley Group Captain R Killeen Captain S Adam Wing Commander J McGrath Mr J McMahon Mr M McNamara Mr E Murby Air Commodore P Newton Mr W Pattinson Captain P Reeves Flight Lieutenant B Roberts Mr S Scanlon Air Vice Marshall Sutherland Brigadier I Wills Lieutenant-Colonel S Yates Commodore M Youl

19 August 1988, Sydney

Department of Defence	Mr J Abbott Brigadier G Christopherson Mr R Curran Mr P Dean Mr D Ekman Mr R Jones Commander H McFerran Commander J Scott Mr R Claridge Lieutenant-Colonel J Gratton Wing Commander A Hall Mr F Harvey Air Vice Marshall A Heggen Rear Admiral A Horton

	Mr D Huntley Mr M McNamara Captain P Reeves Brigadier I Wills Commodore M Youl
31 October 1988, Canberra	
Department of Defence	Brigadier P Bray Air Commodore G Giles Lieutenant-Colonel D Halmarick Mr F Harvey Air Vice Marshall A Heggen Mr D Huntley Mr L Woodward Commodore M Youl
16 December 1988, Canberra	
Department of Defence	Lieutenant-Colonel J Gratton Mr F Harvey Air Vice Marshall A Heggen Mr D Huntley Commander H McFerran Mr E Murby Captain P Reeves Air Vice Marshall I Sutherland Brigadier I Wills Mr L Woodward Commodore M Youl
4 May 1989, Canberra	
Sydney Training Depot, Snapper Island Ltd	Mr M Shannon
Jervis Bay Protection Committee	Mr R Bolt Ms S Hanley Ms D Lowe Mr T Robertson
24 August 1989, Canberra	
Department of Defence	Brigadier P Bray Mr S Brown Commodore N Burt Mr R Corey Mr D Ekman Mr J Goold

	Lieutenant-Colonel J Gratton Major-General J Grey Mr F Harvey Rear Admiral A Horton Group Captain R Killeen Mr I Maclean Dr M McIntosh Mr M McNamara Mr W Pattinson Flight Lieutenant B Roberts Commodore D Thompson Lieutenant-Colonel G White Commodore M Youl
Australian Defence Industries Pty Ltd	Mr J McMahon
Department of Administrative Services	Mr D Folte Mr F Mestrov

28 August 1989, Canberra

Department of Defence	Brigadier P Bray Mr S Brown Commodore N Burt Mr R Corey Mr D Ekman Mr J Goold Major-General J Grey Lieutenant-Colonel D Halmarick Mr F Harvey Rear Admiral A Horton Group Captain R Killeen Mr I Maclean Flight Lieutenant B Roberts Commodore D Thompson Commodore M Youl
Australian Defence Industries Pty Ltd	Mr J McMahon