



# Report 331

**An Advisory Report on the Financial  
Management and Accountability Bill 1994, the  
Commonwealth Authorities and Companies Bill 1994  
and the Auditor-General Bill 1994,  
and on a Proposal to Establish an  
Audit Committee of Parliament.**

SEPTEMBER 1994

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Joint Committee of Public Accounts

The Parliament of the Commonwealth of Australia

Joint Committee of Public Accounts

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and the Auditor-General Bill 1994,**

**and on a Proposal to Establish an  
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September 1994

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## MEMBERSHIP OF THE COMMITTEE

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Senator W R Parer (Vice-Chairman)<sup>2</sup>

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1. Vice-Chairman from 29 June 1994
2. Discharged 9 June 1994
3. Appointed 29 June 1994
4. Discharged 29 June 1994

## DUTIES OF THE COMMITTEE

The Joint Committee of Public Accounts is a statutory committee of the Australian Parliament, established by the *Public Accounts Committee Act 1951*.

Section 8(1) of the Act describes the Committee's duties as being 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*;
- examine the financial affairs of authorities of the Commonwealth to which this Act applies and of inter-governmental bodies to which this Act applies;
- 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;
- 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;
- 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
- inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question.

The Committee is also empowered to undertake such other duties as are assigned to it by Joint Standing Orders approved by both Houses of the Parliament.

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**LIST OF ABBREVIATIONS**

ABC	Australian Broadcasting Corporation
ADI Ltd	Australian Defence Industries Ltd
ADIC	Australian Dairy Industry Council
AGM	Annual General Meeting
AG Bill	Auditor-General Bill 1994
AFP	Australian Federal Police
AMC	Australian Maritime College
ANAO	Australian National Audit Office
ANU	Australian National University
ASC	Australian Securities Commission
ASIS	Australian Secret Intelligence Service
AUS	Statement of Auditing Standards
AUP	Statement of Auditing Practice
CAA	Civil Aviation Authority
CAC Bill	Commonwealth Authorities and Companies Bill 1994
CAF	Commercial Activities Fund
CBA	Commonwealth Bank of Australia
Corporations Law	<i>Corporations Act 1986</i>
CPSU	Community and Public Sector Union
CRF	Consolidated Revenue Fund

CSIRO	Commonwealth Scientific and Industrial Research Organisation
DIR	Department of Industrial Relations
DoF	Department of Finance
EARC	Electoral and Administrative Review Commission
EFIC	Export Finance & Insurance Corporation
FAC Act	<i>Federal Airports Corporation Act 1986</i>
FAC	Federal Airports Corporation
FMA Bill	Financial Management and Accountability Bill 1994
FMOs	Finance Minister's Orders
GBE	Government Business Enterprise
GCA	Grains Council of Australia
JCPA	Joint Committee of Public Accounts
RDCC	Research & Development Corporations and Councils
<i>Report 296</i>	Report 296 - The Auditor-General: Ally of the People and Parliament, Reform of the Australian Audit Office
RMF	Reserved Money Fund
SeaCare	Seafarers Safety, Rehabilitation and Compensation Authority
SBS	Special Broadcasting Service
SMAAs	Statutory Marketing Authorities

The Accounting Bodies	The Institute of Chartered Accountants of Australia and the Australian Society of Certified Practising Accountants
UK	United Kingdom



## CHAIRMAN'S FOREWORD

On 29 June 1994, the Minister for Finance, the Hon Kim Beazley MP referred a package of three Bills to the Joint Committee of Public Accounts for review. The three Bills, designed to replace the *Audit Act 1901*, were: the Auditor-General Bill 1994; the Financial Management and Accountability Bill 1994; and the Commonwealth Authorities and Companies Bill 1994.

Simultaneously, the Senate referred to the Committee for report a notice of motion moved in the Senate to establish an audit committee of Parliament.

The Committee has welcomed the opportunity to review the Bills and consider the Senate's motion.

The Committee supports, in principle, the scope and much of the detail in all three Bills.

The Committee believes that the Financial Management and Accountability Bill will establish an appropriate structure for financial management and accountability within Commonwealth agencies and the Committee has made only two recommendations for change.

The Committee supports the underlying principles in the Commonwealth Authorities and Companies Bill and believes it is important to establish consistent reporting and accountability requirements for Commonwealth authorities and companies. However, a number of recommendations have been made to clarify the interpretation of clauses in the Bill and make it more consistent with the Corporations Law.

The Committee also broadly supports many of the provisions in the Auditor-General Bill. However, the Committee has recommended that Parliament be given greater opportunities to request the Auditor-General to conduct performance audits of Government Business Enterprises; and that the Auditor-General be given authority to develop separate terms and conditions of employment for the staff of the Australian National Audit Office.

The Government's interest in establishing an audit committee of Parliament is particularly welcome, but the Committee believes that the duties of an audit committee would be most appropriately carried out by the JCPA itself.

The legislation and the notice of motion to establish an audit committee of Parliament combined, represent a landmark package aimed at improving the framework of Commonwealth financial administration and strengthening the accountability of the public sector to Parliament.

The Committee believes that the recommendations contained in this report will further enhance this package and lead to even more accountable and efficient public sector management.

The consideration of Bills by parliamentary committees is a significant development in the way Commonwealth laws are made. It is a relatively recent innovation and represents a new maturity in the relationship between the Executive and Parliament. The Committee's review of the new financial management and audit legislation has not only enabled Committee members to give close attention to the provisions of the Bills, but has allowed many Commonwealth entities, and organisations outside Government, an opportunity to comment on the proposals before they become law. It has been an important and valuable process, and Minister Beazley is to be congratulated for agreeing to refer the Bills to the Committee.

On behalf of the Committee, I would like to thank the officers of the Department of Finance and the Australian National Audit Office who have been generous in their assistance to the Committee during the course of the review. The Committee also wishes to express its appreciation to all the other individuals and organisations who prepared submissions and appeared as witnesses before the Committee at such short notice.

Les Scott MP  
Chairman

## RECOMMENDATIONS

### Recommendation 1

The Definitions section of the Explanatory Memorandum for the Financial Management and Accountability Bill 1994 should be amended to indicate that the term 'property' within the definition of 'public property' encompasses intellectual property. (paragraph 2.17)

### Recommendation 2

Clause 56(2) of the Financial Management and Accountability Bill 1994 should be amended to require the Finance Minister to give the statements to the Auditor-General within five months of the end of the financial year. (paragraph 2.43)

### Recommendation 3

The Department of Finance, together with the Attorney-General's Department, should ensure that amendments to the Corporations Law and associated case law are regularly reviewed to determine whether the Commonwealth Authorities and Companies legislation needs to be similarly amended. (paragraph 3.18)

### Recommendation 4

The Explanatory Memorandum for the Commonwealth Authorities and Companies Bill 1994 (CAC Bill) should be amended to make clear that the meaning of the definition of 'director' in Clause 5 of the CAC Bill is intended to mirror the Corporations Law definition, as articulated in relevant case law. (paragraph 3.29)

### Recommendation 5

The Explanatory Memorandum for the Commonwealth Authorities and Companies Bill 1994 (CAC Bill) should be amended to make clear that the meaning of the definition of 'executive officer' in the CAC Bill will be dependent upon the circumstances of each individual case. (paragraph 3.38)

### Recommendation 6

The Department of Finance should review the funding arrangements for all Commonwealth authorities to ensure that all authorities that should draw appropriations under their enabling Acts do so and do not rely on departmental appropriations. (paragraph 3.45)

### Recommendation 7

Clause 9 of the Commonwealth Authorities and Companies Bill 1994 should be amended to add a deadline for the tabling in Parliament of annual reports of Commonwealth authorities, and that the deadline be specified as the end of the fourth month after the end of the financial year. Furthermore, authorities should be required to dispatch the annual reports to the responsible Minister not less than 14 days before the end of the fourth month after the end of the financial year. (paragraph 3.50)

### Recommendation 8

Clauses 13 and 37 of the Commonwealth Authorities and Companies Bill 1994 should be amended to require interim financial statements to be audited or reviewed by the Auditor-General before tabling. (paragraph 3.71)

### Recommendation 9

The Finance Minister's Orders referred to in Clause 13(2) and 37(2) of the Commonwealth Authorities and Companies Bill 1994 (the CAC Bill) should be broadly consistent with the Finance Minister's Orders prepared under Schedule 1 of the CAC Bill and Australian Stock Exchange Listing Rules for interim financial reports. (paragraph 3.75)

Recommendation 10

The Department of Finance should ensure that there is no conflict in the application of Clauses 15, 16, 39 & 40 of the Commonwealth Authorities and Companies Bill 1994 and the Australian Stock Exchange Listing Rules for Commonwealth authorities and wholly-owned companies that have publicly listed subsidiaries. (paragraph 3.90)

Recommendation 11

The restrictions in Clauses 17(3) and 41(3) of the Commonwealth Authorities and Companies Bill 1994 that require corporate plans for Government Business Enterprises to cover a period of no more than five years should be removed. (paragraph 3.102)

Recommendation 12

The words 'direct or indirect pecuniary interest' be deleted from Clause 21 of the Commonwealth Authorities and Companies Bill 1994 and replaced with the words 'material personal interest'. (paragraph 3.110)

Recommendation 13

Clause 22(2) of the Commonwealth Authorities and Companies Bill 1994 should be amended to conform more closely with the amendments made to Section 232(4) of the Corporations Law by the *Corporate Law Reform Act 1992*. (paragraph 3.118)

Recommendation 14

Clause 23 of the Commonwealth Authorities and Companies Bill 1994 should be amended to provide a defence from the operation of Clause 23(1)(b) for any Commonwealth officer who is acting in the normal course of his or her duties. (paragraph 3.122)

Recommendation 15

Clauses 22, 23 and 24 of the Commonwealth Authorities and Companies Bill 1994 (the CAC Bill) be amended to include a provision allowing some relief in cases where there are extenuating circumstances. The Committee believes that the provisions in the CAC Bill should be broadly consistent with those in Section 1317JA of the Corporations Law. (paragraph 3.136)

Recommendation 16

The Department of Finance should liaise with the Attorney-General's Department to investigate the possibility of the investigations branches of the Australian Securities Commission being authorised to investigate alleged breaches of the Commonwealth Authorities and Companies Bill. (paragraph 3.140)

Recommendation 17

The regulations to be established under Clause 32(2) of the Commonwealth Authorities and Companies Bill 1994 should give consideration to the Statement of Auditing Practice AUP31: 'Audit Committees'. (paragraph 3.152)

Recommendation 18

Clause 35(4) of the Commonwealth Authorities and Companies Bill 1994 should be amended so that, in the case of a Commonwealth company that is not wholly-owned by the Commonwealth, the responsible Minister is required to table annual general meeting documents in Parliament 'as soon as practicable after the annual general meeting'. (paragraph 3.157)

Recommendation 19

Clause 14(2) of the Auditor-General Bill 1994 should be amended to state that the Auditor-General may conduct a performance audit of a Commonwealth authority that is a GBE, or of any of its subsidiaries, if:

- (a) both Houses of the Parliament, by resolution, request the audit; or
- (b) the responsible Minister requests the audit; or
- (c) an audit committee of Parliament requests the audit. (paragraph 4.40)

Recommendation 20

Clause 15(2) of the Auditor-General Bill 1994 should be amended to state that the Auditor-General may conduct a performance audit of a Commonwealth company that is a GBE, or of any of its subsidiaries, if:

- (a) both Houses of the Parliament, by resolution, request the audit; or
- (b) the responsible Minister requests the audit; or
- (c) an audit committee of Parliament requests the audit. (paragraph 4.41)

Recommendation 21

Clause 17(3) of the Auditor-General Bill 1994 should be amended to authorise the Auditor-General to show a proposed report on an audit conducted under Clauses 13, 14, 15 and 16 of the Bill to any person or body who, in the Auditor-General's opinion, has a special interest in the report. (paragraph 4.46)

Recommendation 22

Clause 21(2) of the Auditor-General Bill 1994 should be deleted, as it is made redundant by Clauses 40 and 41. (paragraph 4.52)

Recommendation 23

The Explanatory Memorandum for Clause 27 of the Auditor-General Bill 1994 should be amended to indicate the nature of 'the other laws' that exclude the operation of Clauses 29 and 30. (paragraph 4.59)

Recommendation 24

Clause 33(1) of the Auditor-General Bill 1994 should be amended to also prohibit disclosure of proposed performance audit reports by those receiving them under Clause 17 of the Bill. (paragraph 4.69)

Recommendation 25

Clause 34 of the Auditor-General Bill 1994 should be amended to clarify the Auditor-General's powers of discretion and the relationship between Clause 34(1)(a) and Clause 34(3) of the Bill. (paragraph 4.82)

Recommendation 26

Clause 34(3)(e) of the Auditor-General Bill 1994 be amended to only classify information as sensitive if it unfairly prejudices the commercial interests of any body or person. (paragraph 4.89)

Recommendation 27

Clause 34(2) of the Auditor-General Bill 1994 should be amended to require the Auditor-General to give a copy of a report containing 'sensitive' information to the Chairman of the Joint Committee of Public Accounts as well as to the Prime Minister, the Finance Minister and the responsible Minister or Ministers (if any). (paragraph 4.93)

Recommendation 28

Clause 37 of the Auditor-General Bill 1994 should be amended to empower the Auditor-General to negotiate the terms and conditions of staff of the Australian National Audit Office. Clause 37 should also include a proviso that the terms and conditions set by the Auditor-General be consistent with Government industrial relations and employment policies and the principles decided by the Australian Industrial Relations Commission from time to time.

The consequential amendments legislation should provide that ANAO staff continue to be employed and appointed under the Public Service Act 1922 until such time as an agreement is established. (paragraph 4.113)

#### Recommendation 29

Clause 41(2) of the Auditor-General Bill 1994 should be amended to require the Independent Auditor to show a copy of a proposed performance audit report to the Auditor-General for comment. The amendment should be broadly consistent with Clause 17 of the Bill. (paragraph 4.117)

#### Recommendation 30

Clause 42 of the Auditor-General Bill 1994 should remain unamended, irrespective of any amendments made to Clause 34 of the Bill. (paragraph 4.120)

#### Recommendation 31

Clause 51(1) of the Auditor-General Bill 1994 should be amended to require the Auditor-General to audit the financial statements of intelligence and security agencies, including any exempt accounts. (paragraph 4.128)

#### Recommendation 32

Clause 1(1) of Schedule 1 of the Auditor-General Bill 1994 should be amended to require the appointment of the Auditor-General to be for a term up to 7 years with a minimum term of 5 years. (paragraph 4.134)

#### Recommendation 33

Clause 1(2) of Schedule 1 of the Auditor-General Bill 1994 should be amended so that the Clause reads as follows:

- (2) Before making a recommendation to the Governor-General, the Minister must seek the approval of the following:
- (a) the Leader of the Opposition in the House of Representatives, or his or her nominee;
  - (b) the Joint Committee of Public Accounts; and
  - (c) an audit committee of Parliament.' (paragraph 4.140)

#### Recommendation 34

Clause 7(1) of Schedule 1 of the Auditor-General Bill 1994 should be amended to state that the position of Auditor-General should be filled permanently as soon as practicable if a vacancy occurs under Clause 7(1)(a) of Schedule 1 of the Bill. (paragraph 4.151)

#### Recommendation 35

Clause 1(2) of Schedule 2 of the Auditor-General Bill 1994 should be amended to state:

'Before making a recommendation to the Governor-General the Minister must seek the approval of the Joint Committee of Public Accounts and an audit committee of Parliament.' (paragraph 4.164)

#### Recommendation 36

An audit committee should have the additional function of advising the Independent Auditor of the Committee's audit priorities in respect of the Australian National Audit Office. (paragraph 5.11)

Recommendation 37

The *Public Accounts Committee Act 1951* should be amended by inclusion of a separate section empowering the Joint Committee of Public Accounts to perform the functions of the Audit Committee of Parliament. The amendment should:

- (a) change the name of the Committee to Joint Committee of Public Accounts and Audit;
- (b) list the functions to be performed by the JCPA when convening as the Audit Committee of Parliament; and
- (c) confer the same powers and privileges to the Joint Committee of Public Accounts when carrying out its audit committee functions as when carrying out its traditional duties. (paragraph 5.35)

Recommendation 38

The functions of the JCPA, when convening as the Audit Committee of Parliament, should be the same as those proposed in the Notice of Motion moved in the Senate by Senator the Hon Robert Ray on 28 June 1994, as modified by Recommendations No. 19, 20, 33, 35 and 36. (paragraph 5.36)

Recommendation 39

Section 5 of the *Public Accounts Committee Act 1951* be amended to increase membership of the Joint Committee of Public Accounts to 16 members. The Act should state that the extra position is to be reserved for a parliamentarian nominated by any minority groups or independents in the Parliament. If no such person exists, then the position should be filled according to the practice of the Parliament at that time for joint committees. (paragraph 5.40)

## 1

## INTRODUCTION

## Introduction

*Referral of Legislation to the Joint Committee of Public Accounts*

1.1 On 29 June 1994, the Minister for Finance, the Hon Kim Beazley MP introduced a package of three Bills into the House of Representatives to replace the *Audit Act 1901* (Audit Act). The Bills were: the Auditor-General Bill 1994 (AG Bill); the Financial Management and Accountability Bill 1994 (FMA Bill); and the Commonwealth Authorities and Companies Bill 1994 (CAC Bill).

1.2 After their first reading in the House, the Minister successfully moved that the Bills be referred to the Joint Committee of Public Accounts (JCPA) for review with an advisory report to be presented to the House by 23 August 1994. A copy of Minister Beazley's referral is at Appendix 1.

1.3 However, the breadth and detail of evidence presented to the Committee forced it to request an extension to the reporting deadline. On 23 August, the House agreed to extend the reporting deadline until 22 September 1994.<sup>1</sup>

*Referral of Another Matter to the Committee*

1.4 On 28 June 1994, Senator the Hon Robert Ray gave notice of a motion in the Senate to establish a joint standing committee to be known as the Audit Committee of Parliament. A copy of Senator Ray's notice of motion is at Appendix 2.

<sup>1</sup> *Votes and Proceedings*, No. 84, 23 August 1994, p. 1229.

1.5 On 30 June 1994, the Senate passed a motion by Senator Brian Gibson that the proposed resolution for the establishment of an audit committee of Parliament be referred to the JCPA for inquiry and report back to the Senate by 23 August 1994. A copy of Senator Gibson's motion is at Appendix 3.

1.6 On 23 August 1994, the Senate agreed to a motion moved by Senator Gibson that the deadline for the report on the proposed establishment of an audit committee of Parliament be extended to 22 September 1994.

#### *Conduct of the Review*

1.7 On 30 June 1994 the Chairman of the JCPA, Mr Les Scott MP, wrote to the Secretaries of all Commonwealth departments and the Chief Executives of all Government Business Enterprises (GBEs) inviting their comments on the three Bills. Secretaries were encouraged to solicit the views of Commonwealth authorities and companies within their departmental portfolio.

1.8 The review generated 66 submissions from a range of Commonwealth departments, agencies, authorities, companies, academics, Auditors-General and interested individuals. A list of the submissions received can be found at Appendix 4 and a list of exhibits at Appendix 5.

1.9 To assist its investigations, the Committee held 6 public hearings in Canberra. A list of witnesses who appeared before the Committee can be found at Appendix 6. Where appropriate, witnesses were also asked to comment on the matter referred to the Committee by the Senate.

1.10 The Committee was also briefed on 27 July 1994 by the Comptroller and Auditor-General of the United Kingdom (UK), Sir John Bourn. Sir John described the role of the Auditor-General in the UK and gave an international perspective on some of the issues before the Committee.

1.11 As part of his response to the introduction of the AG Bill, the Auditor-General tabled in Parliament on 29 June 1994 a report entitled, *Audit Report No. 43 of 1993-94, Parliament's Right to Know: Legislation to Replace the Audit Act 1901*.<sup>2</sup> In this report, the Auditor-General made a number of recommendations that he believed would improve the effectiveness of the AG Bill.

1.12 On 19 September 1994, the Committee received a copy of the Government's response to *Report No. 43*.<sup>3</sup> The Committee has taken into account both the Auditor-General's report and the Minister for Finance's response.

#### *Structure of the Report*

1.13 The Report is divided into 5 chapters. Chapters 2 to 4 examine the FMA Bill, the CAC Bill and the AG Bill respectively, as requested by the House.

1.14 The FMA Bill establishes the Commonwealth's financial management structure and the reporting and accountability of Chief Executives of Commonwealth agencies. Agencies are the departments and those statutory authorities whose enabling legislation does not give them legal ownership of money or property separate from the Commonwealth.

1.15 In contrast, the CAC Bill establishes reporting and accountability requirements for those Commonwealth entities that legally own money or property on their own account. These entities are divided into two categories, Commonwealth 'authorities' and Commonwealth 'companies'. Commonwealth authorities are formed under statute. Commonwealth companies are companies, formed under the *Corporations Act 1986* (the Corporations Law), in which the Commonwealth has a controlling interest.

<sup>2</sup> Auditor-General, *Audit Report No. 43 of 1993-94, Parliament's Right to Know: Legislation to Replace the Audit Act 1901*, AGPS, Canberra, 1994.

<sup>3</sup> Minister for Finance, *Government Response to Audit Report No. 43, 1993-94 "Parliament's Right to Know: Legislation to Replace the Audit Act 1901"*, 19 September 1994.

1.16 The AG Bill establishes the Offices of the Auditor-General and the Independent Auditor, describes their powers and responsibilities, and establishes the Australian National Audit Office (ANAO).

1.17 Chapter 5 examines the proposed resolution to establish an audit committee of Parliament and gives particular attention to the appropriateness of establishing a separate committee rather than conferring the functions of the proposed committee on the JCPA, in accordance with the reference from the Senate.

#### *Invitation to Comment on Legislation*

1.18 When referring the three Bills to the Committee, Minister Beazley indicated that the referral was an opportunity for the Government to receive additional comment on the legislation.

1.19 The Committee has welcomed this initiative as it has given Members of Parliament and the wider community a substantial opportunity to contribute directly to the legislative process.

### **Preliminary Observations**

#### *Background to the Inquiry*

1.20 The Audit Act was the fourth piece of legislation passed by the Commonwealth Parliament in 1901. Despite its title, the bulk of the Act is concerned with detailing the principles of the financial framework of the Commonwealth, and the requirements for the proper handling of public moneys and property.

1.21 The Audit Act has been amended many times since 1901. However, despite the amendments and the flexibility provided through the extensive use of delegated legislation, the basic structure of the Act has been unable to accommodate the demands of modern public sector management.

1.22 The JCPA has been at the forefront of recent moves to replace the Audit Act with more modern legislation. The first recommendation made by the JCPA in its 1989 report on the Auditor-General, entitled *Report 296, The Auditor-General: Ally of the People and the Parliament - Reform of the Audit Office (Report 296)*, was that the Audit Act be repealed and replaced with legislation that allowed more effective and flexible financial management.<sup>4</sup> This recommendation was accepted by the Government in 1989.<sup>5</sup>

1.23 Accordingly, the Committee welcomes the introduction of this legislation and supports, in principle, the scope and most of the detail of all three Bills. The legislation allows an appropriate devolution of management responsibility in the public sector, while maintaining clear lines of accountability back to the Parliament, through the Executive and the Auditor-General. The Committee has made a number of recommendations which, it believes, will enhance the Bills and make them even more effective.

1.24 In *Report 296*, the Committee also recommended the establishment of an Audit Committee of Parliament.<sup>6</sup> The Committee welcomes the Government's support for the establishment of an audit committee, although the JCPA has recommended a number of changes to its proposed functions and composition.

<sup>4</sup> JCPA, *Report 296, The Auditor-General: Ally of the People and the Parliament - Reform of the Audit Office*, 1989, AGPS, Canberra, p. 240.

<sup>5</sup> Minister for Finance, Senator the Hon Peter Walsh, *Government Response to JCPA Report 296: 'Reform of the Australian Audit Office'*, 1 November 1989.

<sup>6</sup> JCPA, *Report 296*, p. 72.



*Transitional Arrangements*

1.25 The passage of these three Bills will be only part of the process necessary to replace the Audit Act.

1.26 An additional Bill will have to be passed to repeal the Audit Act and detail consequential amendments to the enabling legislation of many Commonwealth authorities and companies to remove inconsistencies with the three Bills.

1.27 Furthermore, Finance Minister's Orders (FMOs) and Finance Regulations need to be developed to flesh out the details behind the principles of the legislation and provide guidance to officials responsible for management of the Commonwealth's moneys and properties. In addition, the Department of Finance will be providing comprehensive manuals and guides to ease the transition from the Audit Act to the new legislation.

1.28 While the Committee has been aware of the requirement for transitional and delegated legislation, it has chosen to focus on the three Bills themselves. The Committee based its decision on the premise that it was more important to get the fundamentals of the legislation right and later consider any difficulties with the consequential legislation and regulations as and when they occur.

*Consultation*

1.29 The actual drafting of the legislation has been a lengthy process with the Department of Finance, which has policy responsibility for the legislation, involved in consultation with the myriad of Commonwealth agencies, authorities and companies which will be affected by the new legislation.

1.30 During the review, the Committee received considerable comment on the effectiveness of the consultation process.

1.31 Some organisations felt they had been adequately consulted, while others felt they had not been. The degree of consultation appears to have depended on how effectively portfolio departments acted as a conduit between the agencies, authorities and companies within their portfolio and the Department of Finance. Of course, organisations whose recommendations were adopted by the Department of Finance were more likely to feel that they had been consulted than those whose recommendations were rejected.

1.32 The Committee acknowledges the enormity of the task that faced the Department of Finance in trying to acknowledge all opinions on the draft Bills. The process has highlighted lessons for both the Department of Finance and the Secretaries of departments.

1.33 The Committee believes that in any such future exercise, it will be incumbent on departmental Secretaries to ensure that the organisations within their portfolio are better briefed and given adequate opportunity to comment. Likewise, the Department of Finance will need to encourage departments to fully consult within their portfolios.

## FINANCIAL MANAGEMENT AND ACCOUNTABILITY BILL 1994

### Introduction

#### *Outline of the Financial Management and Accountability Bill 1994*

2.1 The FMA Bill is arguably the most significant of the three Bills in the legislation package. It establishes the basic framework for the proper management of public money and public property. The Bill contains many of the fundamental principles of financial control contained in the Audit Act, and modifies them, where appropriate, to reflect recent reforms in public sector management.

2.2 As with the other two Bills, the FMA Bill begins in Parts 1 and 2 with a preamble and list of definitions. Part 3 deals with the collection and custody of public money.

2.3 Part 4 of the Bill establishes an accounting system for public money that is based on the Consolidated Revenue Fund (CRF) and three other funds established by the Bill: the Loan Fund, the Commercial Activities Fund (CAF) and the Reserved Money Fund (RMF).

2.4 Part 5 gives the Finance Minister limited powers to borrow and invest money on behalf of the Commonwealth and Part 6 establishes rules about the control and management of public property. Many of the detailed procedures for dealing with public assets will be spelt out in FMOs made under Clause 64 and Regulations made under Clause 66.

2.5 Part 7 details rules that apply to the Chief Executives of Commonwealth agencies, dealing mainly with the way in which they must control and manage the public assets.

2.6 Commonwealth agencies are those departments and statutory authorities whose enabling legislation does not give them legal ownership of money or property separately from the Commonwealth. Appendix 7 contains a list of proposed FMA agencies. Agencies are distinguished from Commonwealth authorities and companies that do have legal ownership of assets in their own right. The financial management and accountability framework for authorities and companies is described in the CAC Bill, which is discussed in greater detail in the following chapter.

2.7 Part 8 of the FMA Bill deals with the preparation of monthly statements of Fund's transactions and the audit of annual financial statements by Commonwealth agencies. Part 9 deals with miscellaneous matters such as FMOs, regulations and delegations.

#### *JCPA Support for the FMA Bill*

2.8 The Committee welcomes the introduction of the FMA Bill and believes that it will establish an appropriate structure for the financial management and accountability of the Commonwealth's assets.

2.9 Recognition of the need for quality management has underpinned many of the recent public sector reforms. Unfortunately, the current legislation framework for financial management within the Commonwealth has not kept pace with these developments. The FMA Bill proposes to overcome many of the deficiencies in the current Audit Act. The Committee is heartened, in particular, to see the balance that has been struck between the devolution of authority to the Chief Executives of agencies and the need for a counterbalancing chain of accountability back to the Parliament.

*Level of Detail in FMA Bill*

2.10 A common theme of many of the criticisms of the FMA Bill is that the Bill does not provide explicit details of many of the standards, arrangements and administrative procedures that will be required to comply with the Bill.

2.11 However, the Bill is designed to establish a basic framework for the management of public assets and not provide comprehensive detail. The detail is left to the FMOs and regulations, which will complement the legislation and be disallowable instruments.

2.12 The Committee accepts that the FMA Bill is only providing a framework and that detailed arrangements, which will change over time and differ from circumstance to circumstance, are more appropriately dealt with in the subsidiary legislation.

2.13 The remainder of this chapter will consider the Bill on a clause by clause basis. Not all clauses of the Bill are discussed, as the Committee has only focussed on those clauses that have raised significant comment during the course of the review.

**General Definitions: Part 2***Public Property*

2.14 Clause 5 of the FMA Bill defines public property as property in the custody or under the control of the Commonwealth, or of any person acting on behalf of the Commonwealth.

2.15 The Institute of Internal Auditors believes that the definition is not explicit enough and that:

*Either the accompanying commentary or the legislation itself could be enhanced by explicitly stating that public property includes not only cash and investments but also intellectual property...<sup>1</sup>*

2.16 The Committee understands that, by convention, intellectual property is included within the definition of 'property'. However, to clarify the issue, the Committee believes the Explanatory Memorandum should be amended to explicitly state that intellectual property is encapsulated in the definition of property.

**2.17 Recommendation 1**

*The Definitions section of the Explanatory Memorandum for the Financial Management and Accountability Bill 1994 should be amended to indicate that the term 'property' within the definition of 'public property' encompasses intellectual property.*

*Effect of Maximum Penalty at Foot of Section or Subsection (Clause 7)*

2.18 Clause 7 of the FMA Bill states that the penalties specified for contravention of various clauses in the Bill indicate that 'a person who intentionally or recklessly contravenes the section or subsection is guilty of an offence...'

2.19 The Institute of Internal Auditors of Australia questions the use of the term 'reckless' and recommended:

*that the word 'reckless' be replaced by something closer to the idea of an officer who fails to fulfil his/her position or acts without care and diligence.<sup>2</sup>*

1 Institute of Internal Auditors, *Submission*, p. 8183 (Vol. 2 of Submissions)

2 Institute of Internal Auditors, *Submission*, p. 8183 (Vol. 2 of Submissions).

2.20 Clause 6 of the AG Bill and Clause 6 of the CAC Bill are identical to Clause 7 of the FMA Bill. The clauses refer to the nature of the penalty, rather than the offence that they are applied to. They are a standard provision in more recent Commonwealth legislation and are consistent with Section 1317FA of the Corporations Law. Accordingly, the Committee believes Clause 7 of the FMA Bill, Clause 6 of the AG Bill and Clause 6 of the CAC Bill should remain unamended.

### Collection, Custody Etc. of Public Money

*Special Instructions by Finance Minister about Handling etc. of Special Public Money (Clause 16)*

2.21 Clause 16 of the FMA Bill allows the Finance Minister to issue instructions about the handling of 'special public money'. Special public money is trust money being held by the Commonwealth.

2.22 Special public money will be held in the RMF unless it is specified that the money is to be held in a separate account in a bank. The Auditor-General of NSW believes that all:

*Special public money as detailed in Clause 16 should be kept separate through the establishment of separate bank accounts to ensure that normal money cannot be mixed with special public money. The Bill or the Special Instructions should make this point clear.<sup>3</sup>*

2.23 The rationale for separating special public money from other Commonwealth public funds is to protect the trusts if the Commonwealth becomes bankrupt. The Committee accepts that, given the low risk of the Commonwealth becoming bankrupt, the burden of administering separate bank accounts outweighs the extra security they provide.

<sup>3</sup> The Audit Office of NSW, *Submission*, p. 829 (Vol. 1 of Submissions).

2.24 There has been concern that the new Commonwealth fund accounting structure does away with the classification of 'private moneys' made in Section 25 of the Audit Act.<sup>4</sup> Private moneys are a separate class of trust moneys collected by the Commonwealth and include moneys such as tender deposits. Private moneys will be classified as special public money in the FMA Bill and this obviates the need for a separate category.

### Reserved Money Fund and the Commercial Activities Fund

2.25 Clause 20(1) of the FMA Bill establishes the RMF and Clause 21(1) establishes the CAF. Each fund will consist of 'components' that will be created for specific purposes and drawn upon.

2.26 Clauses 20(2) and 21(2) authorise the Finance Minister to make written determinations to establish components of the RMF and CAF respectively and transfer funds to them from the CRF or the Loan Fund. Under Clauses 20(3) and 21(3), the Minister can also make a determination that revokes or varies the original authorising determinations. Clauses 20(4) and 21(4) allow the Finance Minister to make a determination to abolish a component and return any remaining money to the CRF.

2.27 Under Clause 22, the Finance Minister's written determinations made under Clauses 20(2), 20(3), 21(2) and 21(3) are disallowable instruments. However, determinations made under Clauses 20(4) and 21(4) are not disallowable.

2.28 The ANAO believes that this is inconsistent and that all determinations should be disallowable.<sup>5</sup> This opinion is shared by the Auditor-General of NSW who argues that:

<sup>4</sup> Dept. of Transport, *Submission*, p. 8 147 (Vol. 1 of Submissions).

<sup>5</sup> ANAO, *Submission*, p. 8323 (Vol. 2 of Submissions).

without this procedure [disallowable determination], Parliament may not be aware of the reasons behind the closure of such components, as well as the amounts involved that are being transferred back to the Consolidated Revenue Fund.<sup>6</sup>

2.29 Components will only be closed if they have no more funds or if the purpose for which they were created no longer exists. The Appropriation Acts, from which components are ultimately funded, *permit* rather than *require* expenditure by the Executive.<sup>7</sup> Thus, Parliament does not have the authority to disallow a determination if the Finance Minister decides to cease expenditure and close a component of the RMF or CAF.

### Special Responsibilities of Chief Executives

#### *Promoting Efficient, Effective and Ethical use of Commonwealth Resources (Clause 45)*

2.30 Clause 45 of the FMA Bill requires a Chief Executive to manage the affairs of the Agency in a way that promotes proper use of Commonwealth resources. Proper use is defined in Clause 45(3) as 'efficient, effective and ethical use'.

2.31 Several commentators have urged that a clear definition of 'efficient, effective and ethical' should be included in the Clause.<sup>8</sup> However, as the Department of Finance explained:

<sup>6</sup> The Audit Office of NSW, *Submission*, p. S29 (Vol. 1 of Submissions).

<sup>7</sup> Contrast 'permissive appropriations' with the requirement placed on the Executive to spend money under s. 1363 of the *Social Security Act 1991* for example.

<sup>8</sup> Uhr, Australian National University, *Submission*, p. S47 (Vol. 1 of Submissions); Guthrie, *Submission*, p. S265 (Vol. 2 of Submissions).

*We do not define 'ethical', nor do we define 'efficient' or 'effective'. It is there as a declaratory provision...Ethics change. They change over time... The point is that executives should be called to account for whether or not they do anything about the ethical culture that should apply within their organisation...<sup>9</sup>*

2.32 The Committee accepts that there are no absolute definitions for the terms and that an attempt to define them precisely would reduce their utility. Clause 45(1) is a statement about the appropriate conduct of chief executives rather than an exact and rigid requirement. The Committee believes Clause 45(3) should remain unamended. In the Committee's view Clause 45 is a particularly important provision.

### Reporting and Audit

#### *Annual Financial Statements and their Audit (Clauses 50 & 58)*

2.33 Clause 50(1) of the FMA Bill requires a Chief Executive to give the annual financial statements of his or her Commonwealth agency to the Auditor-General. Clause 50(2) requires the statements to 'give a true and fair' view of the matters required in financial statements by the FMOs.

2.34 Clause 58 describes the form of report to be given by the Auditor-General after auditing the annual financial statements prepared by agencies. Clause 58(2)(b) requires the Auditor-General to certify that the financial statements give a 'true and fair view'.

2.35 The ANAO has argued that the term 'give a true and fair view' should be replaced with 'present fairly', a term which reflects contemporary accounting and auditing requirements.<sup>10</sup>

<sup>9</sup> Department of Finance, *Transcript*, p. 28-29 (Canberra, 7 July 1994).

<sup>10</sup> ANAO, *Submission*, p. S324 (Vol. 2 of Submissions).

2.36 Clause 50(2) is consistent with Clause 2(1) of Schedule 1 of the CAC Bill, which requires the financial statements of Commonwealth authorities to give 'a true and fair view' of matters. The CAC Bill, in turn is consistent with the Corporations Law which has a similar requirement, although, as in the Bills, 'true and fair' is not defined.<sup>11</sup> In practice, the Courts have tended to accept the interpretation given by the accounting profession, which accepts the definition 'present fairly'.

2.37 This matter is discussed in greater detail in Chapter 3 in the context of the CAC Bill/Corporations Law relationship. Suffice to say that the Committee believes that, where possible, the standards required in the FMA Bill, the CAC Bill and the AG Bill should be consistent with each other and with the Corporations Law. This will be made easier because the FMOs detailing the requirements for annual financial statements to be used by Commonwealth agencies and authorities will be based on the requirements in Schedule 5 of the Corporations Law.

2.38 The Committee feels it would be misleading, and at the very least confusing, if the financial accounts of Commonwealth entities tabled in Parliament are presented to two different standards. Accordingly, the Committee recommends that Clauses 50(2) and 58(2)(b) of the FMA Bill should remain in their present form.

*Preparation of Annual Statements by Finance Minister (Clause 56 & 57)*

2.39 Clause 56(1) of the FMA Bill requires the Finance Minister to prepare the annual financial statements 'as soon as practicable after the end of each financial year'. Clause 56(2) requires the Finance Minister to give the statements to the Auditor-General for audit 'as soon as practicable' after they are

<sup>11</sup> ss. 292 & 293, the Corporations Law.

prepared. Clause 57(4) requires the Finance Minister to table a copy of the audited statements in Parliament 'as soon as practicable' after receipt. These requirements are based on Section 50AB of the Audit Act.

2.40 The Auditor-General notes that there is no deadline for the Finance Minister to give the statements to the Auditor-General for audit and has commented that:

*it would appear reasonable if such a deadline were set at one month following the required completion of Agency financial statements.<sup>12</sup>*

2.41 The Finance Minister's annual statement provides aggregate information on the receipts and expenditure of the Commonwealth's Funds and cannot be finalised until the Finance Minister has received the financial statements of all Commonwealth agencies. Preparation of the statement will become more complex as the Commonwealth moves towards 'Whole of Government Accounting' and aggregate financial data from Commonwealth authorities and companies is also included in the statement.

2.42 The Committee accepts the difficulty of setting an absolute deadline for the preparation of the Finance Minister's annual financial statement as the statement cannot be finalised until all the myriad financial statements are submitted to the Minister. Nonetheless, the Committee believes that there should be some time limit set to ensure that the statement is tabled in Parliament as promptly as possible, particularly as the statements will become an increasingly significant accountability document. The Committee believes that it is appropriate that the Finance Minister be required to give the statements to the Auditor-General within five months of the end of the financial year.

<sup>12</sup> ANAO, *Submission*, p. S324 (Vol. 2 of Submissions).

2.43 Recommendation 2

*Clause 56(2) of the Financial Management and Accountability Bill 1994 should be amended to require the Finance Minister to give the statements to the Auditor-General within five months of the end of the financial year.*

*Australian Accounting Standards and Auditing Standards*

2.44 The Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia (The Accounting Bodies) believe that the FMA Bill should require financial reports to be prepared in accordance with Australian Accounting and Auditing Standards.<sup>13</sup>

2.45 The Auditor-General has responded that:

*It is... important that the Parliament not be locked into comply with standards produced by the private sector.<sup>14</sup>*

2.46 The Committee agrees and does not believe it is appropriate for the Commonwealth to abrogate its right to set its own standards.

2.47 In practice, the Auditor-General's auditing standards will borrow heavily from the accounting professions requirements as the Auditor-General explained:

*We observe the private sector standards... it is probable that the Minister for Finance's directions will always want us to take account of them, and it is only proper that we do; but if we wish to add other standards, amplify, clarify, we should be able to do it.<sup>15</sup>*

<sup>13</sup> The Accounting Bodies, *Submission*, pp. S158-60 & 169-170 (Vol. 1 of Submissions).

<sup>14</sup> ANAO, *Transcript*, p. 426 (Canberra, 17 August 1994).

<sup>15</sup> ANAO, *Transcript*, p. 427 (Canberra, 17 August 1994).

*Phraseology used in Clauses 57 and 58*

2.48 Clause 57 of the FMA Bill refers to the audit of the Finance Minister's annual financial statements and requires the Auditor-General to 'examine the statements and prepare an audit report'. Similarly, Clause 58 refers to the annual financial statements of Commonwealth agencies and requires the Auditor-General to 'examine the statements and report' on them.

2.49 The Auditor-General has argued that the phraseology used in Clauses 57 and 58 could be improved:

*The expression 'examine' should be more appropriately replaced with 'audit' which has a clearly accepted meaning within the profession and at law. This would be consistent with the tone of the Commonwealth Authorities and Companies Bill, Corporations Law and contemporary legal and professional understanding.<sup>16</sup>*

2.50 The purpose of the words in Clauses 57 and 58 is to describe the activity undertaken by the Auditor-General and to ensure that they are consistent with phrases used in Section 332 of the Corporations Law dealing with the powers and duties of auditors.

2.51 Changing the phraseology in Clauses 57 and 58 will neither enhance nor restrict the Auditor-General's functions and there appears little benefit to be gained from altering the terms, particularly since the existing phrases are consistent with the Corporations Law.

*Comment on 'Any Other Matter'*

2.52 Section 51(1)(d) of the Audit Act authorises the Auditor-General to provide comments on financial statements he, or she, has audited.

<sup>16</sup> ANAO, *Submission*, p. S324 (Vol. 2 of Submissions).

2.53 An equivalent provision is not expressly stated in Clauses 57 and 58 of the FMA Bill and the Auditor-General argues that it should be.<sup>17</sup>

2.54 It should be noted that Clause 58 requires the Auditor-General to comment if the financial statements of Commonwealth agencies do not comply with FMOs or if the Auditor-General did not obtain 'all necessary information and explanations' concerning the statements. Furthermore, Clause 22 of the AG Bill allows the Auditor-General to 'at any time cause a report to be tabled in either House of the Parliament on any matter' and Clause 23 of the AG Bill requires the Auditor-General to 'bring to the attention of the responsible Minister any important matter that comes to the attention of the Auditor-General'.<sup>18</sup>

2.55 The Committee believes that the Auditor-General has sufficient power to comment on 'any other matter' while auditing financial statements, and that it is not necessary to make an amendment to Clauses 57 and 58.

### Miscellaneous

#### *Modifications of Act for Intelligence or Security Agency (Clause 59)*

2.56 Clause 59 of the FMA Bill states that application of this Act to an intelligence or security agency is subject to any modifications that are prescribed by the regulations.

2.57 The Auditor-General argues that security and intelligence agencies should be required to:

<sup>17</sup> ANAO, *Submission*, p. S324 (Vol. 2 of Submissions).

<sup>18</sup> Clauses 22 and 23 of the AG Bill are discussed in greater detail in Chapter 4.

*comply with the 'standard' financial and accountability mechanisms, including full audit by the Auditor-General, but restricting the disclosure of the outcome of the audits.*<sup>19</sup>

2.58 Clause 34 of the AG Bill includes arrangements for restrictions on the disclosure of sensitive information.

2.59 This issue is discussed in further detail in Chapter 4 in relation to Clause 51 of the AG Bill, which also restricts the application of the AG Bill to intelligence or security agencies.

2.60 The Committee supports the principle that the Auditor-General should be able to audit all financial statements of security and intelligence agencies, including secret accounts, with appropriate restrictions on disclosure.

<sup>19</sup> ANAO, *Submission*, p. S235 (Vol. 2 of Submissions).



## COMMONWEALTH AUTHORITIES AND COMPANIES BILL 1994

### Introduction

#### *Outline of the Commonwealth Authorities and Companies Bill 1994*

3.1 As mentioned in the previous chapter, the FMA Bill applies to Commonwealth 'agencies', which by definition, do not hold legal ownership of money or property separately from the Commonwealth.

3.2 In contrast, the CAC Bill applies to those Commonwealth entities that do legally own money or property on their own account. These entities are divided into two categories, Commonwealth 'authorities' and Commonwealth 'companies'.

3.3 Commonwealth 'authorities' are bodies corporate that are incorporated for a public purpose under an Act, regulation or ordinance. This definition is broadly based on Sections 63B and 63C of the Audit Act. Examples are the Australian Maritime College, the Australian Broadcasting Corporation (ABC) and Commonwealth Scientific and Industrial Research Organisation (CSIRO).

3.4 Commonwealth 'companies' are companies formed under the Corporations Law in which the Commonwealth has a controlling interest. The Companies may be wholly owned by the Commonwealth, such as Telstra and the Australian Film Finance Corporation, or they may be partially owned by the Commonwealth, such as Qantas Airways Ltd and the Commonwealth Bank of Australia (CBA).

3.5 At present, the accountability requirements for Commonwealth authorities and companies are scattered through numerous enabling Acts, company memoranda and articles. The CAC Bill draws these together in a single set of core reporting and accountability requirements.

3.6 The first half of the CAC Bill sets out detailed rules about the reporting and accountability obligations of Commonwealth authorities and regulates their banking and investment activities. It also establishes standards of conduct expected of executive officers and the penalties associated with breaching the standards.

3.7 The second half of the CAC Bill establishes similar reporting and accountability requirements for Commonwealth companies.

#### *JCPA Support for the CAC Bill*

3.8 Generally, the Committee welcomes the introduction of the CAC Bill because:

- it will enable Parliament to view the accountability requirements of the vast range of Commonwealth authorities and companies as a whole;
- it will ensure that the accountability requirements are explicit and consistent for each class of Commonwealth entity;
- it will strengthen and clarify the mandate of the Auditor-General; and
- the task of amending one Bill to reflect contemporary best practice standards will be far easier than amending individual enabling Acts, company memoranda and articles.

3.9 However, there are a number of areas where the Committee believes improvements can be made. These areas are highlighted in the remainder of this chapter, which examines the CAC Bill on a clause by clause basis. Not all

clauses of the Bill are discussed, as the Committee has only focussed on the most significant issues raised during the course of its review.

3.10 Several authorities and companies have noted where clauses of the CAC Bill contradict their enabling legislation or memoranda and articles of association. Such contradictions are to be addressed in the transitional legislation.<sup>1</sup> The Committee has not addressed these individual cases, unless they are considered to have wider significance.

#### *The CAC Bill and the Corporations Law*

3.11 Under the Corporations Law, directors of Commonwealth companies, by definition, are accountable to the Australian Securities Commission (ASC) and are required to meet the reporting and accountability standards applicable to all Australian Corporations Law companies.

3.12 Many clauses in the CAC Bill impose very similar obligations and accountability standards on the executive officers of Commonwealth authorities.<sup>2</sup> The rationale being that the obligations on directors of Commonwealth authorities, Commonwealth companies and private sector companies should all be broadly consistent.

3.13 The CAC Bill is designed to ensure that Commonwealth companies are accountable to the responsible Minister and Parliament as well as the ASC. The requirement for the directors of Commonwealth authorities to also meet similar standards will be more onerous for some Commonwealth authorities than others, particularly those authorities not currently covered by Part XI of the Audit Act.

<sup>1</sup> DoF, *Transcript*, p. 3-4 (Canberra, 7 July 1994).

<sup>2</sup> The CAC Bill defines 'executive officer' as being directors of an authority, or any other person concerned in the management of an authority (see the general definitions in Clause 5 of the CAC Bill).

3.14 Part XI of the Audit Act provides standard financial reporting requirements for public authorities and certain other bodies. Approximately 80 statutory authorities are required to meet the reporting requirements of Part XI. There are another 40 statutory authorities, approximately, which have their financial and reporting provisions detailed in their own enabling Acts.<sup>3</sup>

3.15 Common themes in many criticisms of the CAC Bill by both authorities and companies are that the Bill's clauses are either inconsistent with the Corporations Law and/or impose additional obligations. The arguments are usually that the inconsistencies will lead to confusion when existing case law is used to interpret the CAC Bill or that the additional requirements in the CAC Bill will place Commonwealth authorities and companies at a disadvantage with their private sector competitors.

3.16 The Committee is generally sympathetic to these arguments and it supports the principle that provisions of the CAC Bill should be consistent with equivalent sections in the Corporations Law, unless there is good reason for them to differ. In those cases where it believes that the CAC Bill should impose extra obligations, the Committee has usually felt that the requirements for additional public accountability are paramount.

3.17 The serious inconsistencies referred to above are dealt with in this chapter. However, in the future, the challenge will be to ensure that the CAC Act remains consistent with the ongoing amendments to the Corporations Law. This will require the Department of Finance to regularly liaise with the Attorney-General's Department to ensure that CAC Act does not become dated.

<sup>3</sup> DoF, *Transcript*, p. 40 (Canberra, 7 July 1994).

### 3.18 Recommendation 3

*The Department of Finance, together with the Attorney-General's Department, should ensure that amendments to the Corporations Law and associated case law are regularly reviewed to determine whether the Commonwealth Authorities and Companies legislation needs to be similarly amended.*

## General Definitions

### *Executive and Non-Executive 'Directors'*

3.19 Clause 5 of the CAC Bill provides definitions for a number of the terms used in the Bill.

3.20 One of the definitions that has caused concern, particularly for Commonwealth authorities, is that of 'director'.

3.21 Many Commonwealth authorities are governed by Boards or Councils of directors. The Boards typically include unpaid, 'non-executive' directors as well as management representatives who are 'executive' directors. The definition of 'director' in Clause 5 of the CAC Bill does not distinguish between executive and non-executive directors.

3.22 The lack of such a distinction is significant. The enabling Acts of most Commonwealth authorities impose obligations on the authorities as corporate bodies. The CAC Bill, however, places the obligations directly onto the individual director, rather than onto the authority as a whole. Thus, directors who serve in a non-executive, often part-time and frequently unpaid capacity on governing Boards will become as liable for the activities and performance of the authorities as the executive directors and full time managers. Several authorities warned the Committee that the additional obligations for non-executive directors will discourage many from joining Boards. As the Australian Dairy Industry Council (ADIC) put it:

*the additional burdens and penalties which would apply to non-executive directors... are certain to have a chilling effect on the current boards... and seem likely to dissuade potentially well qualified applicants from seeking to join these Boards.<sup>4</sup>*

3.23 Many authorities maintained that the Corporations Law distinguishes between executive and non-executive directors and that the lack of such a distinction in the CAC Bill will place unfair and onerous responsibilities on the directors of Commonwealth authorities. The Grains Council of Australia (GCA) argued that:

*Under the Corporations Law a differentiation is made between the responsibilities of executive and non-executive officers (directors) ... The [CAC Bill definition] represents a significant change in the role and responsibilities of directors and, by requiring directors to contribute significant additional time and bear personal liability would, in our view, discourage persons accepting such directorships.<sup>5</sup>*

3.24 This view was also echoed by CSIRO.<sup>6</sup>

3.25 The Department of Finance, citing advice from the Attorney-General's Department, believes that the Corporations Law, in fact, does not distinguish between executive and non-executive officers. Rather, the distinction has developed in case law and the CAC Bill definition will be interpreted in light of the same case law.<sup>7</sup>

3.26 The Committee recognises the difficulty of drafting an unambiguous distinction between executive and non-executive directors which would be applicable to all authorities in all situations and believes that the distinction is better articulated by the Courts on a case by case basis.

<sup>4</sup> ADIC, *Submission*, p. S326 (Vol. 2 of Submissions).

<sup>5</sup> GCA, *Submission*, p. S204 (Vol. 2 of Submissions).

<sup>6</sup> CSIRO, *Submission*, p. S65-66 (Vol. 1 of Submissions); *Transcript*, p. 215 (Canberra 27 July 1994).

<sup>7</sup> DoF, *Submission*, p. S333 (Vol. 2 of Submissions).

3.27 Furthermore, the Committee is reluctant to recommend that such a distinction be made in the CAC Bill and not in Corporations Law, given the uncertain impact this could have on the interpretation by the Courts of Corporations Law. Recent judgements have shown that the Courts are framing an appropriate distinction between executive and non-executive directors.<sup>8</sup> It is a reasonable expectation that such distinctions will be applied to cases arising under the proposed CAC Act.

3.28 However, the Committee agrees that some steps should be taken to clarify the situation and believes that the Explanatory Memorandum for the CAC Bill should be amended accordingly.

#### 3.29 Recommendation 4

*The Explanatory Memorandum for the Commonwealth Authorities and Companies Bill 1994 (CAC Bill) should be amended to make clear that the meaning of the definition of 'director' in Clause 5 of the CAC Bill is intended to mirror the Corporations Law definition, as articulated in relevant case law.*

#### *Executive Officers and Junior Management*

3.30 Under various clauses of the CAC Bill, 'executive officers' of Commonwealth authorities are liable to pay compensation or damages, as well as face fines and prison terms, for failure to comply with a range of obligations.

3.31 Clause 5 of the CAC Bill defines executive officers in Commonwealth authorities as:

- (a) *a director of the authority; or*
- (b) *any other person who is concerned in, or takes part in, the management of the authority.*

<sup>8</sup> DoF, *Submission*, pp. S342-43 (Vol. 2 of Submissions).

3.32 A number of Commonwealth authorities questioned whether this definition is so broad as to include relatively junior management. The implication being that junior staff could also be liable to pay fines and compensation or face prison.<sup>9</sup>

3.33 The Explanatory Memorandum for the CAC Bill indicates that the definition of an executive officer:

*is intended to have a meaning that is equivalent to its meaning in section 232 of the Corporations Law.<sup>10</sup>*

3.34 The Export Finance & Insurance Corporation (EFIC) asserted that:

*In the context of the Corporations Law, that Section was subject to criticism ... that the definition did not precisely define where in management, or employment, the application of the definition of executive officer came to an end. The CAC Bill may also attract the same criticism.<sup>11</sup>*

3.35 The Committee acknowledges the potential confusion that may arise from the vagueness of the definition, but notes the following advice from the Attorney-General's Department:

*The definition has deliberately been cast in a general fashion to ensure that the question of whether a person is an executive officer will depend on the facts of the particular case and the actual activities that the person undertakes on behalf of the company rather than the actual title or position of the relevant person in the company.<sup>12</sup>*

<sup>9</sup> Australian Maritime Safety Authority, *Submission*, p. S58 (Vol. 1 of Submissions); Australian Maritime College, *Submission*, p. S187 (Vol. 2 of Submissions); and Australian National University, *Submission*, p. S307 (Vol. 2 of Submissions).

<sup>10</sup> CAC Bill 1994, *Explanatory Memorandum*, p. 3.

<sup>11</sup> EFIC, *Submission*, p. S260 (Vol. 2 of Submissions).

<sup>12</sup> DoF, *Submission*, p. S343 (Vol. 2 of Submissions).

3.36 Once again, the Committee is reluctant to recommend that a clarification be made in the CAC Bill and not in Corporations Law, given the uncertain impact this could have on the interpretation by the Courts of Corporations Law.

3.37 Some confusion can be avoided, however, by stating in the Explanatory Memorandum that circumstances of a particular case will be relevant in determining whether an officer of a Commonwealth authority should be classified as an executive officer or not.

### 3.38 Recommendation 5

*The Explanatory Memorandum for the Commonwealth Authorities and Companies Bill 1994 (CAC Bill) should be amended to make clear that the meaning of the definition of 'executive officer' in the CAC Bill will be dependent upon the circumstances of each individual case.*

### Controlling Interest

3.39 The Auditor-General notes that the term 'control' is defined in Clause 5, but the term 'controlling interest', which is used in key clauses of the Bill, is not defined. The Auditor-General argues that the meaning of 'controlling interest' should be defined in the legislation.<sup>13</sup>

3.40 The Department of Finance has indicated to the Committee that 'controlling interest' refers to the capacity to exercise the majority of votes in a general meeting of the company, whereas 'control' refers to the capacity to dominate decision making directly or indirectly.<sup>14</sup>

3.41 The Committee accepts the advice of the Office of Parliamentary Counsel that various legal opinions have been developed for interpreting the phrase 'controlling interest' and that its meaning is well settled.<sup>15</sup>

<sup>13</sup> ANAO, *Submission*, p. S320 (Vol. 2 of Submissions).

<sup>14</sup> DoF, *Submission*, p. S334 (Vol. 2 of Submissions).

<sup>15</sup> DoF, *Submission*, p. S334 (Vol. 2 of Submissions).

## Reporting and Other Obligations for Commonwealth Authorities

### *Meaning of a Commonwealth Authority (Clause 7)*

3.42 In its submission to the Committee, the Seafarers Safety, Rehabilitation and Compensation Authority (Seacare) argued that it did not fall within the definition of a Commonwealth authority in Clause 7. The Authority stated that it had the right under its enabling legislation to hold its own money, but did in fact not as all running costs were met from the parliamentary appropriations of the Department of Transport.<sup>16</sup>

3.43 By passing the *Seafarers Rehabilitation and Compensation Act 1992*, Parliament had determined that Seacare should be funded as a separate statutory authority. It was clearly not Parliament's intention that Seacare's operating costs be met from the running cost appropriations for the Department of Transport.

3.44 Although, there is no evidence that the funding arrangements for Seacare were contrived to shield the expenditure from Parliament's scrutiny, it is of considerable concern to the Committee that such a practice could have developed.

### 3.45 Recommendation 6

*The Department of Finance should review the funding arrangements for all Commonwealth authorities to ensure that all authorities that should draw appropriations under their enabling Acts do so and do not rely on departmental appropriations.*

### *Directors must Prepare Annual Report (Clause 9)*

3.46 Clause 9(1) of the CAC Bill requires the directors of a Commonwealth authority to prepare an annual report and give it to the responsible Minister by the 15th day of the 5th month after the end of the financial year. Thus, with the

<sup>16</sup> Seacare, *Submission*, p. S12 (Vol. 1 of Submissions).

financial year ending on 30 June the deadline for annual reports will be 15 November. Clause 9(3) requires the responsible Minister to ensure that annual reports are tabled in each House of Parliament as soon as practicable.

3.47 The date of the deadline is consistent with Section 245(1) of the Corporations Law, which requires annual general meetings, at which annual accounts are presented, to be held within 5 months of the end of the financial year. However, the deadline is inconsistent with that set for Commonwealth departments, which must table their annual reports (and annual accounts) in Parliament by 31 October.<sup>17</sup>

3.48 Annual reports are one of the major mechanisms by which Commonwealth authorities are kept accountable to Parliament. The Committee considers that Clause 9 should include a deadline by which time the annual reports must be tabled in Parliament.

3.49 Furthermore, the Committee believes that the authorities should meet the same tabling deadline as Commonwealth departments. This will sharpen the focus of Parliament, by having annual reports coming in by the same date.

### 3.50 Recommendation 7

*Clause 9 of the Commonwealth Authorities and Companies Bill 1994 should be amended to add a deadline for the tabling in Parliament of annual reports of Commonwealth authorities, and that the deadline be specified as the end of the fourth month after the end of the financial year. Furthermore, authorities should be required to dispatch the annual reports to the responsible Minister not less than 14 days before the end of the fourth month after the end of the financial year.*

<sup>17</sup> Department of the Prime Minister & Cabinet, *Requirements for Departmental Annual Reports*, March 1994.

3.51 The Committee acknowledges that this recommendation is inconsistent with the letter of Corporations Law, but notes that it is now best practice in the commercial sector for companies to hold annual general meetings by the end of October.

3.52 Furthermore, the Committee judges that the benefits for parliamentary accountability of having a simultaneous deadline for tabling annual reports by departments and Commonwealth authorities outweighs the disadvantages of inconsistency with the Corporations Law.

### *Extension of Time to Prepare Annual Report (Clause 9(2))*

3.53 Clause 9(2) of the CAC Bill allows the responsible Minister to 'grant an extension of time [to present an annual report to him] in special circumstances'.

3.54 The Federal Airports Corporation (FAC) argues that the Minister should be given the general discretion to grant an extension of time and not just in 'special circumstances'.<sup>18</sup>

3.55 Given the importance of annual reports as an accountability mechanism, the Committee does not believe that the circumstances in which Ministers can grant extensions should be widened.

### *Annual Report for Commonwealth Authority (Schedule 1)*

3.56 Schedule 1 of the CAC Bill which details the requirements of annual reports requires the Auditor-General to state whether financial statements have been prepared in accordance with the FMOs and 'present a true and fair view' of the matters required by those orders.

<sup>18</sup> FAC, *Submission*, p. S220 (Vol. 2 of Submissions).

3.57 The ANAO has argued that the term 'present a true and fair view' should be replaced with 'present fairly' which reflects contemporary accounting and auditing requirements.<sup>19</sup> The Corporations Law requires that accounts give a 'true and fair' view of the state of a company, even though 'true and fair' is not defined in the Act.<sup>20</sup> In practice, the Courts have tended to accept the interpretation given by the accounting profession, which accepts the definition 'present fairly'.

3.58 The Department of Finance has advised that the FMOs will be based on the requirements of Schedule 5 of the Corporations Law. Given this fact and that the CAC Bill and Corporations Law phrases are identical, the Committee believes that the CAC Bill requirements should remain consistent with the Corporations Law, even if the Courts accept the narrower definition of 'present fairly'.

*Audit of Relevant Subsidiary's Financial Statements (Clauses 12 and 36)*

3.59 Clause 12 of the CAC Bill requires the directors of a Commonwealth authority to do 'whatever is necessary' to ensure that all relevant subsidiaries' financial statements are audited by the Auditor-General. The Auditor-General must prepare a report even if another auditor is appointed as auditor of the subsidiary.

3.60 Clause 36 places the same obligations on the directors of Commonwealth companies.

3.61 The Corporations Law also recognises the importance of the whole economic entity by requiring directors of controlling companies ('chief entities') to prepare consolidated financial statements for the group (s. 295) and to prepare a report on the activities of the group (s. 305). The CAC Bill goes further, however, by requiring the subsidiaries to use the same auditor (the Auditor-General).

<sup>19</sup> ANAO, *Submission*, p. S323 (Vol. 2 of Submissions).

<sup>20</sup> ss. 292, 293 & 294, Corporations Law.

3.62 The Independent Auditor argued that, by forcing subsidiaries to use the same auditors as the parent company, Clauses 12 and 36 are unduly onerous:

*I believe that Clauses 12 and 36 go too far in requiring that the Auditor-General audits all of the subsidiaries... It is interesting to compare this requirement with the Corporations Law, which does not require that a subsidiary company auditor be the same as the parent company auditor. Instead, the parent company auditor has a statutory right to inspect the subsidiary's records... for the purpose of expressing an opinion on the consolidated accounts. The parent company auditor is not required to separately report on the accounts of a subsidiary which are audited by another auditor.<sup>21</sup>*

3.63 The CAC Bill relies on keeping the subsidiaries of Commonwealth authorities and companies accountable through the parent body. Any weakening of this nexus reduces the chain of accountability from the subsidiary back to the Parliament, particularly if the subsidiaries are established or operate overseas. As expressed by the Auditor-General:

*the basic principle is that it should be possible to report to Parliament on the use of public power and public resources. The use of subsidiaries as a way of escaping that should not be allowed.<sup>22</sup>*

3.64 Given the importance of this accountability link, the Committee believes Clauses 12 and 36 appropriately place greater accountability requirements on the directors of public authorities and companies than does the Corporations Law.

<sup>21</sup> Independent Auditor, *Submission*, p. S16 (Vol. 1 of Submissions).

<sup>22</sup> Auditor-General, *Transcript*, p. 426 (Canberra, 17 August 1994).

## Other Reporting Obligations

### *Interim Financial Statements (Clauses 13 and 37)*

3.65 Clause 13 of the CAC Bill empowers the Finance Minister to require particular Commonwealth authorities or a class of Commonwealth authorities to prepare interim financial statements. If prepared, the responsible Minister must table them in Parliament.

3.66 Clause 37 gives the Finance Minister similar powers in relation to wholly-owned Commonwealth companies.

3.67 A number of authorities and companies believe that these clauses are unduly onerous. As the Australian Maritime College (AMC) described:

*To attempt to provide such reporting on a quarterly basis would be expensive and very disruptive... [and] allow undue interference in the detailed management of the College by the Canberra bureaucracy, which would be inappropriate and inefficient.*<sup>23</sup>

3.68 The Committee does not believe that Clauses 13 and 37 are unduly onerous, especially as the Finance Minister can request such information from some Commonwealth authorities already. For example, the Finance Minister already has the power to request financial information from GBEs under the *Accountability and Ministerial Oversight Arrangements for Commonwealth GBEs*.<sup>24</sup> Furthermore, publicly listed companies are required to provide interim financial statements under the Australian Stock Exchange's listing rules.

3.69 Given that Clauses 13 and 37 require the Minister to table interim financial statements in Parliament, the Committee believes Parliament should be confident that the state

<sup>23</sup> AMC, *Submission*, p. S187 (Vol. 2 of Submissions).

<sup>24</sup> Commonwealth Government, *Accountability and Ministerial Oversight Arrangements for Commonwealth Government Business Enterprises*, June 1993, principle 1(f). A list of GBEs is contained in Appendix 8.

ments are accurate. Accordingly, the Committee supports the suggestion made by the ANAO that interim financial statements should be audited.<sup>25</sup>

3.70 The Committee notes that in New Zealand, a similar provision requiring interim financial statements to be audited, has been deleted because of the expense of preparing fully audited interim financial statements.<sup>26</sup> The Committee believes that an appropriate compromise is to require interim statements to be audited or reviewed by the Auditor-General. This compromise has the advantage of being consistent with recent amendments to Corporations Law requiring the interim financial statements of companies that are disclosing entities to be either audited or reviewed.<sup>27 28</sup>

### 3.71 Recommendation 8

*Clauses 13 and 37 of the Commonwealth Authorities and Companies Bill 1994 should be amended to require interim financial statements to be audited or reviewed by the Auditor-General before tabling.*

3.72 Two Commonwealth companies are concerned that they may be forced to release commercially sensitive information when interim financial statements are tabled in Parliament under Clause 37(4).<sup>29</sup>

3.73 The Committee accepts that there may be cases where it is inappropriate for information to be tabled in Parliament. It seems likely, however, that any reports by the Finance Minister for access to commercially sensitive information would be made under Clauses 16 or 40, as there is no requirement under these clauses for the information to be tabled in Parliament.

<sup>25</sup> ANAO, *Submission*, p. S322 (Vol. 2 of Submissions).

<sup>26</sup> *New Zealand Public Finance Act 1989*.

<sup>27</sup> Items 41 & 42, of Schedule 1, *Corporate Law Reform Act 1994*.

<sup>28</sup> The term 'review' is defined in AUP/RS1.

<sup>29</sup> AeroSpace Technologies of Australia, *Submission*, p. S189 (Vol. 2 of Submissions); Australian Defence Industries, *Submission*, p. S120 (Vol. 1 of Submissions).



3.74 Nevertheless, the Committee believes it appropriate, however, that Commonwealth authorities and wholly-owned companies are not required to provide any more information under Clauses 13 and 37 than is required of public companies under the FMOs for annual reports and Australian Stock Exchange Listing rules for interim financial reports.

### 3.75 Recommendation 9

*The Finance Minister's Orders referred to in Clause 13(2) and 37(2) of the Commonwealth Authorities and Companies Bill 1994 (the CAC Bill) should be broadly consistent with the Finance Minister's Orders prepared under Schedule 1 of the CAC Bill and Australian Stock Exchange Listing Rules for interim financial reports.*

#### *Estimates of Receipts and Expenditure (Clauses 14 and 38)*

3.76 Clause 14 of the CAC Bill requires the directors of Commonwealth authorities, other than GBEs, to prepare estimates of receipts and expenditure for each financial year, and for any other periods directed by the responsible Minister.

3.77 Clause 38 places the same obligations on the directors of wholly-owned Commonwealth companies.

3.78 The Audit Office of NSW believes that the use of the word 'receipts' denotes a cash basis of accounting, and that the words 'income' or 'revenue', which are derived from the accrual basis of accounting, should be used instead.<sup>30</sup>

3.79 The purpose of the clauses is to enable the Government to estimate the demands that will be placed on the Commonwealth's annual appropriations from budget dependent authorities and companies. It has been put to the

<sup>30</sup> The Audit Office of NSW, *Submission*, p. 831 (Vol. 1 of Submissions).

Committee that as the annual appropriation bills are calculated on a cash basis and, thus, so too should the estimates of receipts and expenditure by budget dependent authorities and companies.<sup>31</sup> The Committee accepts this rationale.

#### *Responsible Minister to be Notified of Significant Events (Clauses 15 and 39)*

3.80 Clause 15 of the CAC Bill requires the directors of a Commonwealth authority to immediately give the responsible Minister written particulars of a range of 'significant events' proposed by the authority or any subsidiary.

3.81 The clause allows the Minister to give written guidelines to the directors to enable them to judge whether a proposal is significant or not.

3.82 Clause 39 places similar obligations on the directors of wholly-owned Commonwealth companies.

3.83 A number of authorities and companies have argued that the definition of the term 'significant' is unclear and should be defined in the legislation.<sup>32</sup> The Committee, however, believes that Clauses 15(2) & (3) and 39(2) & (3) provide the Minister with the necessary flexibility to allow him or her to clarify whether individual organisations should consider proposals to be significant or not.

3.84 Another concern raised, was that the risk of confidential or commercially sensitive information being inappropriately released would be significantly increased in complying with these clauses.<sup>33</sup>

<sup>31</sup> See Auditor-General, *Audit Report No. 18 of 1993-94, Aggregate Financial Statement Prepared by the Minister for Finance year ended 30 June 1993*, AGPS, Canberra, 1993, p. 2.

<sup>32</sup> National Library of Australia, *Submission*, p. S125 (Vol. 1 of Submissions); Commonwealth Fund Management, *Submission*, pp. S154 (Vol. 1 of Submissions); ADI Ltd, *Submission*, pp. S120 (Vol. 1 of Submissions).

<sup>33</sup> Australian Industry Development Corporation, *Submission*, p. S111 (Vol. 1 of Submissions); Grains Research & Development Corporation, *Submission*, p. S89 (Vol. 1 of Submissions).

3.85 The Committee believes that it is quite inappropriate to propose that information on significant events should be withheld from a Minister simply because of the risk of disclosure. Publicly funded organisations should remain accountable to the Government and through it, the taxpayer, at all times. The Committee is confident that ministers will be conscious of the sensitivity of 'commercial-in-confidence' information and will treat the information accordingly.

3.86 The Grains Council of Australia believes that it is unreasonable for Clause 15 to require directors for Commonwealth authorities to advise the responsible Minister of the proposals of subsidiaries. The Council pointed out that under the Corporations Law:

*the board of the subsidiary would be responsible for the activities of the subsidiary and would be responsible for various requirements. [The CAC Bill] imposes upon the parent not only the responsibility to report in relation to the activities of the authority itself but also the subsidiary. So it puts an extra responsibility on the directors of the authority to be across both organisations which, as I say, is quite distinct from the Corporations Law environment.<sup>34</sup>*

3.87 The Committee returns to the principle that all Commonwealth authorities and companies must be responsible to the appropriate Minister and ultimately the Parliament. The most effective way of keeping subsidiaries accountable is through their parent body. Given the importance of this accountability link, the Committee believes it appropriate that the directors of Commonwealth authorities and companies be responsible for overseeing the 'significant' events of subsidiaries and reporting them to the Minister.

34 GCA, Transcript, p. 143 (Canberra, 26 July 1994).

3.88 On a related issue, the Australian Industry Development Corporation expressed concern that the requirement for directors to immediately provide details to the responsible Minister of proposed significant activities of subsidiaries that are publicly listed companies may put the directors in conflict with Australian Stock Exchange Listing Rules.<sup>35</sup>

3.89 This concern is also relevant to the application of Clauses 15, 16, 39 and 40 of the CAC Bill.

### 3.90 Recommendation 10

*The Department of Finance should ensure that there is no conflict in the application of Clauses 15, 16, 39 & 40 of the Commonwealth Authorities and Companies Bill 1994 and the Australian Stock Exchange Listing Rules for Commonwealth authorities and wholly-owned companies that have publicly listed subsidiaries.*

3.91 This recommendation may be most appropriately implemented in the transitional legislation accompanying the CAC Bill.

### *Keeping Responsible Minister Informed (Clauses 16 and 40)*

3.92 Clause 16 requires the directors of a Commonwealth authority to keep the Minister informed of the operation of the authority and its subsidiaries and provide the responsible Minister and Finance Minister with any reports, documents and information they require.

3.93 Clause 40 places a similar obligation on the directors of wholly-owned Commonwealth companies.

3.94 A number of Commonwealth authorities and companies believe these clauses should be consistent with Corporations Law requirements.<sup>36</sup> The Accounting Bodies specifically

35 AIDC, Submission, p. S107 (Vol. 1 of Submissions).

36 Australian Technology Group, Submission, pp. S52-3 (Vol. 1 of Submissions); Aerospace Technologies of Australia, Submission, p. S190 (Vol. 2 of Submissions); GCA, Transcript, p. 143 (Canberra, 26 July 1994).

urge that these clauses be consistent with Sections 1001A and 1001B of the Corporations Law, dealing with continuous disclosure.<sup>37</sup>

3.95 The Department of Finance states that the purpose of the clauses is simply to keep the Minister informed of the operations of wholly owned Commonwealth entities for which he or she is responsible to Parliament. Sections 1001A and 1001B of the Corporations Law apply specifically to entities that have securities which are traded or offered for sale.<sup>38</sup>

3.96 The Committee accepts the explanation by the Department of Finance and believes that the clauses are acceptable in their current form.

#### *Corporate Plan for GBE (Clauses 17 and 41)*

3.97 Corporate plans are key elements in the Government's accountability arrangements applying to GBEs. Clause 17 of the CAC Bill requires Commonwealth authorities that are GBEs to prepare corporate plans at least annually. The Clause lists a range of topics that must be covered in corporate plans.

3.98 Clause 41 places similar obligations on the directors of wholly-owned Commonwealth companies that are GBEs.

3.99 Clauses 17(3) and 41(3) state that corporate plans must cover a period of at least 3 years and not more than 5 years. The Accounting Bodies and the ANAO recommend that the five year limit be deleted as it places an unnecessary restriction on long term planning by GBEs.<sup>39</sup>

3.100 The Department of Finance argues that the five year plan is not designed to limit long term planning by GBEs and that, in any event, the Minister can ask for longer term projections under Clauses 16(b), 16(c), 40(b) and 40(c).

37 The Accounting Bodies, *Submission*, p. S167 (Vol. 1 of Submissions).

38 DoF, *Submission*, p. S336 (Vol. 2 of Submissions).

39 The Accounting Bodies, *Submission*, p. S167 (Vol. 1 of Submissions); ANAO, *Submission*, p. S323 (Vol. 2 of Submissions).

3.101 The Committee acknowledges these points, but considers that there is no compelling reason to legislate for a five year upper limit on corporate plans.

#### 3.102 Recommendation 11

*The restrictions in Clauses 17(3) and 41(3) of the Commonwealth Authorities and Companies Bill 1994 that require corporate plans for Government Business Enterprises to cover a period of no more than five years should be removed.*

#### **Banking, Investment Etc.**

##### *Banking and Investment (Clauses 18 and 19)*

3.103 Clause 18 of the CAC Bill requires Commonwealth authorities which are not GBEs or Statutory Marketing Authorities (SMAs) to pay all moneys received into an approved bank. Surplus moneys can be invested in a range of specified ways.

3.104 Clause 19 of the CAC Bill is essentially similar to Clause 18, but applies to Commonwealth authorities which are GBEs or SMAs. Clause 19, however, allows GBEs and SMAs greater latitude in how they invest surplus money. Clause 19(3)(d) allows them to invest in any manner 'that is consistent with sound commercial practice'.

3.105 The Australian National University (ANU) and the FAC believe that Clause 18 should be less restrictive and that authorities which are not GBEs or SMAs should also be able to invest in a manner 'consistent with sound commercial practice'.<sup>40</sup>

3.106 Not all Commonwealth authorities agree, and one GBE, the Snowy Mountains Hydro-Electric Authority, commented that:

40 FAC, *Submission*, p. S222 (Vol. 2 of Submissions); ANU, *Submission*, pp. S300 & 309 (Vol. 2 of Submissions).

*It could be argued that the breadth of the investment power conferred by [Clause 19(3)(d)] may be seen as being at odds with the objective of fostering greater public accountability.<sup>41</sup>*

3.107 The Committee accepts that GBEs and SMAs have been categorised as such by the Government so that they are at arms length from day to day government oversight. However, Commonwealth authorities that are not GBEs or SMAs are not so commercially orientated and should be required to invest surplus public money conservatively. This appears prudent, particularly in light of the recent poor investment records of some State public entities.

### **Conduct of Executive Officers: Obligations**

#### *Directors Must Disclose Pecuniary Interests (Clause 21)*

3.108 Clause 21 of the CAC Bill requires a director of a Commonwealth authority to disclose whether he or she has a 'direct or indirect pecuniary interest' in any matter being considered by his or her Board.

3.109 The Committee considers that the word 'pecuniary' unnecessarily restricts the disclosure requirements of directors. It limits disclosure to those of a financial nature only and does not take into account non-financial interests, such as the ability to grant patronage. The Committee believes that the phrase 'direct or indirect pecuniary interest' could be more appropriately replaced with the broader expression 'material personal interest', as used in Section 232(A)(1) of the Corporations Law.

<sup>41</sup> Snowy Mountains Hydro-Electric Authority, *Submission*, p. 86 (Vol. 1 of Submissions).

### **3.110 Recommendation 12**

*The words 'direct or indirect pecuniary interest' be deleted from Clause 21 of the Commonwealth Authorities and Companies Bill 1994 and replaced with the words 'material personal interest'.*

#### *Executive Officers Must Act Honestly etc. (Clause 22)*

3.111 Clause 22(1) of the CAC Bill requires an executive officer of a Commonwealth authority to act honestly at all times in the exercise of his or her powers and the discharge of his or her duties. Clause 22(2) states that:

*An executive officer of a Commonwealth authority must at all times exercise a reasonable degree of care and diligence in the exercise of his or her powers and the discharge of his or her duties.*

3.112 Clause 22(2) is modelled on the pre-1993 wording of Section 232(4) of the Corporations Law, which was amended, with effect from 1 February 1993, to state:

*an officer of a corporation must exercise the degree of care and diligence that a reasonable person in a like position in a corporation would exercise in the corporation's circumstances.<sup>42</sup>*

3.113 Two concerns have been raised about the difference in wording between the CAC Bill and the Corporations Law.

3.114 The first concern is that Section 232(4) of the Corporations Law now implies that, under certain circumstances, a director could claim that his or her conduct could be excused, whilst Clause 22(2) of the CAC Bill does not.<sup>43</sup> This issue is discussed in greater detail below under the heading *Conduct of Executive Officers: Penalties*.

<sup>42</sup> s. 11, *Corporate Law Reform Act 1992*

<sup>43</sup> Research and Development Corporations and Councils, *Transcript*, pp. 158-59 (Canberra, 26 July 1994); CSIRO, *Submission*, pp. 865-6 (Vol. 1 of Submissions).

3.115 The second concern is that many of the directors on the Boards of Commonwealth authorities also serve as directors of Corporations Law companies. CSIRO believes that the differences between Clause 22(2) of the CAC Bill and Section 232(4) of the Corporations Law will lead to unnecessary confusion as to the differing responsibilities facing directors. As CSIRO pointed out:

*We are trying to point out that that has the potential to lead to ambiguity. The last thing one wants in a piece of legislation is any ambiguity or room for question over what the standard actually is.*<sup>44</sup>

3.116 The Department of Finance counters that, in practice, Clause 22(2) of the CAC Bill and Section 232(4) of the Corporations Law will be interpreted by the Courts in a similar way, especially as the Explanatory Memorandum for the CAC Bill states that Clause 22 is similar in principle to the corresponding provision in Section 232.<sup>45</sup>

3.117 Nonetheless, the Committee accepts the argument that if the Courts are expected to interpret Clause 22(2) of the CAC Bill and Section 232(4) of the Corporations Law in a similar way, then the words used in each should also be similar.

### 3.118 Recommendation 13

*Clause 22(2) of the Commonwealth Authorities and Companies Bill 1994 should be amended to conform more closely with the amendments made to Section 232(4) of the Corporations Law by the Corporate Law Reform Act 1992.*

<sup>44</sup> CSIRO, *Transcript*, p. 215 (Canberra, 27 July 1994).

<sup>45</sup> DoF, *Transcript*, pp. 380-381 (Canberra, 17 August 1994); CAC Bill 1994, *Explanatory Memorandum*, p. 8.

### *Improper Use of Inside Information or Position (Clause 23)*

3.119 Clause 23 of the CAC Bill prohibits an executive officer, or former executive officer from making improper use of inside information or of his or her position in order to gain personal advantage (Clause 23(1)(a)) or cause detriment to the authority (Clause 23(1)(b)).

3.120 The Department of Communications and the Arts points out that this clause will have implications for Departmental officers who are appointed as non-executive directors of Commonwealth authorities within their portfolio and who, in the course of their normal departmental duties, disclose information acquired as a director. In particular, conflict could arise where Government policy is being developed which is inconsistent with the commercial interests of a statutory authority.<sup>46</sup>

3.121 The Committee accepts this concern and believes that the Bill should allow a defence in such situations. It is important, however, the defence should only apply for Commonwealth officers in this situation under Clause 23(1)(b) and not Clause 23(1)(a).

### 3.122 Recommendation 14

*Clause 23 of the Commonwealth Authorities and Companies Bill 1994 should be amended to provide a defence from the operation of Clause 23(1)(b) for any Commonwealth officer who is acting in the normal course of his or her duties.*

### **Conduct of Executive Officers: Penalties**

3.123 The penalty regime applying to executive officers of Commonwealth authorities who either fail to act honestly or made improper use of inside information is described in Clauses 22, 23 and 24 of the CAC Bill.

<sup>46</sup> Department of Communications and the Arts, *Transcript*, p. 296 (Canberra, 8 August 1994); *Submission*, pp. S278-79 (Vol. 2 of Submissions).

3.124 The maximum penalty for contravening Clause 22 with intent to deceive or defraud is 5 years imprisonment. In any other case a maximum penalty of 50 penalty units applies.<sup>47</sup>

3.125 The maximum penalty for contravening Clause 23 is imprisonment for five years.

3.126 Further penalties can apply, however, for a breach of Clauses 22 or 23. Under Clause 24 of the CAC Bill, an executive officer who contravenes Clauses 22 or 23 may be required by a Court to pay compensation to the authority as well as receive a penalty. Furthermore, he or she may be liable to pay the authority an amount equal to any profit he or she gained, or the loss or damage to the authority. This liability applies whether or not the person has been convicted of an offence in respect of the contravention.

3.127 Many Commonwealth authorities have expressed concern that the penalty provisions of Clauses 22 and 23 are inconsistent with the penalty regime in the current Corporations Law, but instead reflect an earlier version of Corporations Law. The *Corporations Law Reform Act 1992* introduced civil penalties for cases where there is no criminal intent, so that there is now both a criminal and civil penalty regime. This duality is not reflected in the CAC Bill.

3.128 As the Department of Communications and the Arts explained:

*There would not appear to be any reason in principle why the directors of Commonwealth authorities should be treated any differently than the directors of Commonwealth companies where they have breached common statutory duties.*<sup>48</sup>

<sup>47</sup> s. 4AA, of the *Crimos Act 1914* sets the value of a penalty unit. One penalty unit is currently equal to \$100.

<sup>48</sup> Department of Communications and the Arts, *Submission*, p. S276 (Vol. 2 of Submissions).

3.129 Aside from the principle of consistency, others were concerned that the CAC Bill does not allow relief in the absence of criminal intent. The Research and Development Corporations and Councils commented:

*The most important point is that there does not appear to be written into the bill a provision for relief so that under certain circumstances directors could claim that their conduct could be excused.*<sup>49</sup>

3.130 A related concern is that the penalties are unduly harsh because of the stigma of having a criminal conviction, as CSIRO described:

*It is the use of a criminal sanction that is the concern. A criminal sanction has certain connotations and effects on an individual... and all of the normal notions that go with any sort of criminal conviction. It is the inconsistency between the public and private sector that is difficult to understand.*<sup>50</sup>

3.131 It should be pointed out that, while the CAC Bill makes the contravention of a number of clauses a criminal offence, the standard of proof is also higher ('beyond reasonable doubt') than that required for the equivalent civil offences under the Corporations Law ('on the balance of probabilities'). In addition, the maximum fines for criminal offences under the Corporations Law are imprisonment and/or a fine up to \$200 000 while they are imprisonment and/or a fine of \$30 000 under the CAC Bill. Moreover, under the Corporations Law, executive officers are also liable to pay compensation. In summary, it would be harder for the Crown to secure a conviction under the penalty regime proposed in the CAC Bill, and the penalties themselves are less stringent under the CAC Bill than the Corporations Law.

<sup>49</sup> RDCC, *Transcript*, p. 158 (Canberra, 26 July 1994).

<sup>50</sup> CSIRO, *Transcript*, p. 221 (Canberra, 27 July 1994).

*Defence of a Criminal Regime*

3.132 The Department of Finance has defended the penalty regime of the CAC Bill on the following grounds:

- criminal penalties are considered more appropriate, given the high level of trust expected from people in public office;
- criminal penalties are imposed for similar offences in the FMA Bill;
- the complexity of the Corporations Law provisions and their links with other parts of that law, makes it uncertain whether they can be translated into the CAC Bill without changing their intended effect; and
- the public sector controls over the appointments of directors makes it less likely that the provisions will need to be applied.<sup>51</sup>

3.133 The Committee is aware of the trend in the private sector towards Boards being filled by professionals skilled in financial management, as non-financial experts become reluctant to accept the more onerous obligations being placed on directors. The Committee believes it desirable that the Boards of Commonwealth authorities (and companies) should contain a mix of financial experts and community representatives with relevant, although not necessarily, financial expertise.

3.134 It is important that the penalty regime for executive officers in the CAC Bill should not discourage appropriate people from sitting on the Boards of Commonwealth authorities. But, on the other hand, it should also reflect the high standard of duty and care that Parliament expects of people undertaking a public duty.

3.135 Accordingly, the Committee has concluded that although the criminal penalty regime in the CAC Bill is appropriate, the Bill should allow the Courts the power to

<sup>51</sup> DoF, *Submission*, p. S339 (Vol. 2 of Submissions).

provide some form of relief from prosecution in circumstances where there are extenuating circumstances. Such provision would be along the lines of Sections 1317JA of the Corporations Law.

*3.136 Recommendation 15*

*Clauses 22, 23 and 24 of the Commonwealth Authorities and Companies Bill 1994 (the CAC Bill) be amended to include a provision allowing some relief in cases where there are extenuating circumstances. The Committee believes that the provisions in the CAC Bill should be broadly consistent with those in Section 1317JA of the Corporations Law.*

*CAC Bill Investigator*

3.137 The Committee notes that there is no Commonwealth entity to investigate complaints about possible breaches of the CAC Bill, in the way that the ASC's Investigations branches prepare briefs for the Director of Public Prosecutions on possible breaches of the Corporations Law.

3.138 The Committee is loathe to suggest establishment of another regulatory agency, but believes that there needs to be a central agency to which complaints about possible breaches of the CAC Bill can be brought. Accordingly, the Committee believes that the possibility of the investigations branches of the ASC being authorised to investigate possible breaches of the CAC Bill should be considered by the Government. Such an arrangement could be an interim measure until a more appropriate solution was found.

3.139 The Committee is aware of the potential conflict of interest that could arise if a complaint was raised against the ASC as a Commonwealth authority under the CAC Bill. If such a situation arose, any necessary investigation could be conducted by the Attorney-General's Department.

3.140 Recommendation 16

*The Department of Finance should liaise with the Attorney-General's Department to investigate the possibility of the investigations branches of the Australian Securities Commission being authorised to investigate alleged breaches of the Commonwealth Authorities and Companies Bill 1994.*

**Miscellaneous Provisions***Compliance with General Policies of the Government (Clauses 28 and 42)*

3.141 Clause 28 of the CAC Bill empowers the responsible Minister to notify the directors of a Commonwealth authority of general policies of the Commonwealth Government that are to apply to the authority.

3.142 Clause 42 applies in similar fashion to wholly-owned Commonwealth companies.

3.143 Several authorities and companies have expressed concern that the Clause is too 'open ended' and that compliance may force directors to conduct activities inconsistent with the objectives of the authority or company.<sup>52</sup>

3.144 The Explanatory Memorandum for the CAC Bill explains that the clause is intended to cover such situations as trade contact with foreign countries or equal employment opportunity policy. Furthermore, the Explanatory Memorandum states that 'such policies cannot be in conflict with any statutory obligations of an authority'.<sup>53</sup>

52 ADI Ltd, *Submission*, p. S121 (Vol. 1 of Submissions); ANU, *Submission*, p. S301 (Vol. 2 of Submissions); Grains Research and Development Corporations and Councils, *Submission*, p. S89 (Vol. 1 of Submissions).

53 CAC Bill, *Explanatory Memorandum*, p. 9.

3.145 The ABC and the Special Broadcasting Service (SBS) were both 'deeply concerned' about the threat of this clause to their editorial and programming independence.<sup>54</sup> The Department of Finance has advised the Committee, at one of its public hearings, that the consequential amendments legislation will make it 'abundantly clear that Clause 28 cannot affect the editorial policy and independence of the ABC. A similar amendment will be included in the SBS Act'.<sup>55</sup>

3.146 The Committee accepts that Clause 28 will not open a window for the Government to compromise the independence of individual authorities and companies.

*Audit Committee (Clauses 32 and 43)*

3.147 Clause 32 of the CAC Bill requires the directors of a Commonwealth authority to establish an audit committee. Clause 32(2) states that the audit committee must be constituted in accordance with 'the regulations'.

3.148 Clause 43 of the CAC Bill places an identical requirement on the directors of wholly-owned Commonwealth companies.

3.149 The National Standards Commission has argued, that the establishment of an audit committee should be discretionary rather than mandatory.<sup>56</sup>

3.150 The Committee accepts that directors of authorities are responsible for the management of their authority or company. However, the directors are also responsible for the expenditure of public moneys. The Committee believes that

54 SBS, *Submission*, pp. S24-25 (Vol. 1 of Submissions); ABC, *Submission*, pp. S133 & 135 (Vol. 1 of Submissions).

55 DoF, *Submission*, p. S340 (Vol. 2 of Submissions), *Transcript*, p. 384 (Canberra, 17 August 1994).

56 National Standards Commission, *Submission*, p. S44 (Vol. 1 of Submissions).



taxpayers, as 'non-voluntary shareholders', have the right to expect the extra safeguard of an audit committee within Commonwealth authorities and wholly-owned Commonwealth companies.

3.151 The Accounting Bodies have submitted that the regulation to be made under Clause 32(2) should 'outline the appropriate structure and mandate of the audit committee to ensure it operates effectively'.<sup>57</sup> The Committee accepts the best practice standards referred to by The Accounting Bodies, including that an audit committee should have a majority of non-executive directors and be chaired by a non-executive director, in those cases where authorities and companies have enough non-executive Board members. The standards referred to by The Accounting Bodies are derived from the *Statement of Auditing Practice AUP31: 'Audit Committees'* and the Australian Society of Certified Practising Accountants publication *Audit Committees: A Working Guide*.

### 3.152 Recommendation 17

*The regulations to be established under Clause 32(2) of the Commonwealth Authorities and Companies Bill 1994 should give consideration to the Statement of Auditing Practice AUP31: 'Audit Committees'.*

## Reporting and Other Obligations for Commonwealth Companies

### *Annual Report and Related Obligations (Clause 35)*

3.153 Clause 35 requires Commonwealth companies (wholly and partially owned) to provide the responsible Minister with a copy of their annual report and or annual general meeting documents. The Minister must cause the documents to be tabled in Parliament.

<sup>57</sup> The Accounting Bodies, *Submission*, p. 8168 (Vol. 1 of Submissions).

3.154 Clause 35(1) requires a Commonwealth company to provide the responsible Minister with the annual general meeting documents of the Company 'at least 14 days before each annual general meeting (AGM)'. Clause 35(4) requires the responsible Minister to table the AGM documents in Parliament 'as soon as practicable'.

3.155 The Commonwealth Bank has pointed out that, in the case of a Commonwealth company not wholly-owned by the Commonwealth, a Minister could pre-empt consideration of the AGM documents by all shareholders at the AGM in complying with Clause 35(4) and tabling the documents in Parliament before the AGM.<sup>58</sup>

3.156 In practice, this is unlikely to be a significant issue for publicly listed companies as AGM documents are widely distributed before AGMs. However, the issue is more relevant for partially owned companies that are not publicly listed, such as Qantas, which might not wish AGM documents widely published before AGMs.

### 3.157 Recommendation 18

*Clause 35(4) of the Commonwealth Authorities and Companies Bill 1994 should be amended so that, in the case of a Commonwealth company that is not wholly-owned by the Commonwealth, the responsible Minister is required to table annual general meeting documents in Parliament 'as soon as practicable after the annual general meeting'.*

## Other Reporting Obligations

3.158 Clauses 37 to 41 detail other reporting obligations for wholly-owned Commonwealth companies. Most issues of relevance to these clauses have already been discussed above in relation to the equivalent provisions affecting Commonwealth authorities.

<sup>58</sup> CBA, *Submission*, p. 820 (Vol. 1 of Submissions).

3.159 Several commentators have noted that Clauses 37 to 41 do not apply to Commonwealth companies that are not wholly-owned by the Commonwealth. This is because the Commonwealth cannot impose additional accountability requirements on partially-owned Commonwealth companies because of the need to ensure that the rights of minority shareholders are not oppressed.

3.160 The Committee accepts that special accountability requirements for Commonwealth companies which are not wholly-owned by the Commonwealth can be more appropriately put in place through the memoranda and articles of the companies concerned and/or through special shareholder agreements.

# 4

## THE AUDITOR-GENERAL BILL 1994

### Introduction

#### *Outline of the Auditor-General Bill 1994*

4.1 The AG Bill defines the powers, functions and role of the Commonwealth Auditor-General. The AG Bill complements the FMA and CAC Bills and there are a number of cross references between them.

4.2 As with the other two Bills, the AG Bill begins in Parts 1 and 2 with a preamble and list of definitions. Part 3 creates the Office of the Auditor-General and Schedule 1 details his or her appointment, remuneration and removal from office.

4.3 Part 4 of the AG Bill lists the Auditor-General's main functions and powers. His or her functions include auditing the financial statements of all Commonwealth agencies, authorities, companies and any relevant subsidiaries. The Auditor-General is also empowered to conduct performance audits of Commonwealth agencies, authorities, companies and subsidiaries, with the exception of those that are GBEs. The Auditor-General has a limited mandate to conduct performance audits of GBEs and this issue is discussed in greater detail below.

4.4 Part 5 details the Auditor-General's wide powers to obtain information and access premises, and details penalties for those who hinder his activities.

4.5 Part 6 establishes the ANAO as a statutory agency and clarifies staff terms and conditions.

4.6 Part 7 creates the position of Independent Auditor to audit the ANAO and details his or her functions and powers. Schedule 2 of the Bill outlines the method of appointing, remunerating and removing the Independent Auditor.

#### *JCPA Support for the AG Bill*

4.7 The JCPA welcomes the introduction of the AG Bill and supports the principles behind the legislation. In particular, the Committee welcomes the fact that the Auditor-General has been given an unambiguous mandate to audit the financial statements of all Commonwealth entities and almost as extensive a mandate to conduct performance audits. The decision to establish the ANAO as a statutory agency is also a positive step.

4.8 However, the Committee has reservations about several aspects of the AG Bill. The main concerns focus around the way in which the Bill:

- restricts the Auditor-General's mandate to conduct performance audits of GBEs;
- makes no provision for the Auditor-General to set the terms and conditions of ANAO staff; and
- does not explicitly provide Parliament with a role in the establishment of the ANAO's work priorities and annual estimates.

This last issue is explored in greater detail in the following chapter.

4.9 The remainder of this chapter examines those clauses of the AG Bill that have caused most comment.

## Statement Audit Mandate

### *Statement Audits: Commonwealth Agencies (Clause 9)*

4.10 Clause 9 of the AG Bill states that the Auditor-General's functions include auditing the financial statements of Commonwealth agencies. Clauses 10 and 11 state that the Auditor-General's functions include auditing financial statements *or reports* of Commonwealth authorities, their subsidiaries, and Commonwealth companies and their subsidiaries respectively. The direction to conduct these audits is given in Clauses 50 and 58 of the FMA Bill and Clauses 9, 12, 35 and 36 and 36 of the CAC Bill.

4.11 The ANAO has recommended that Clause 9 should also state that the Auditor-General's functions include auditing the Finance Minister's annual financial statement under Clause 57 of the FMA Bill.<sup>1</sup>

4.12 The Committee notes that Clause 57 of the FMA Bill already requires the Auditor-General to 'prepare an audit report in accordance with the regulations' for the Finance Minister's annual financial statements. Accordingly, the Committee believes it unnecessary to incorporate this function in Clause 9 of the AG Bill.

4.13 The ANAO recommends that Clause 9 be amended to state that the Auditor-General should audit the financial statements *and reports* of Agencies, to be consistent with Clauses 10 and 11.<sup>2</sup>

4.14 Some subsidiaries of Commonwealth authorities and companies are not required to prepare financial statements in the formal sense and prepare financial 'reports' only. Clauses 10 and 11 of the AG Bill are phrased to encompass these reports as well as formal financial statements. However, all Commonwealth agencies are required to prepare financial statements only and, thus, there is no need to include the requirement to audit the reports of agencies in Clause 9.

<sup>1</sup> ANAO, *Submission*, p. S320 (Vol. 2 of Submissions).

<sup>2</sup> ANAO, *Submission*, p. S320 (Vol. 2 of Submissions).

*Statement Audits: Commonwealth Authorities and Companies  
(Clauses 10 & 11)*

4.15 ADI Ltd is a Commonwealth company whose financial statements are currently jointly audited by the Auditor-General and Price Waterhouse, a private sector accounting firm. The Managing Director of ADI Ltd, Mr Ken Harris, argues that the arrangement works very well and should be sanctioned by the new legislation:

*We have never argued that the company's accounts should not be subject to audit by the Auditor-General. Quite the opposite. We have welcomed the joint audit arrangements we have had right from the beginning. If you look at our accounts for each year of our life you will see they are signed off by both. We do not have any difficulty whatsoever in having the Auditor-General sign off on the accounts. We do say, however, that as a company in the marketplace, in looking at our accounts and judging the performance of the company, we would want to see the signature of one of the big six audit firms. We are happy for the Auditor-General to do his work but the joint audit arrangements suit us best and I think they have worked well for the government too.<sup>3</sup>*

4.16 A joint audit is an audit that is jointly 'signed off' by a private sector auditor and the Auditor-General, with both taking responsibility for the audit. The Auditor-General, in the past, has entered into joint audit arrangements with a small number of Commonwealth entities.<sup>4</sup> Joint audits are distinguished from the more common form of cooperation between the ANAO and the private sector whereby the Auditor-General's signs off accounts that have been audited on his, or her, behalf by private sector contractors.

<sup>3</sup> ADI Ltd, *Transcript*, p. 349 (Canberra, 17 August 1994).

<sup>4</sup> Qantas Airways Limited, AIDC, and ADI Ltd. The ANAO also used to conduct joint audits of CSL Limited.

4.17 As a matter of principle, the Committee believes that the Auditor-General should have the mandate to audit the financial statements of all Commonwealth entities. As the Auditor-General stated:

*the Parliament [has] a right to have its auditor involved because public power and public resources [are] being involved.<sup>5</sup>*

4.18 A concomitant obligation is for the Auditor-General to take sole responsibility for 'signing off' all audits.

4.19 In practice of course, the Auditor-General is likely to continue to use private sector contract auditors to alleviate the ANAO's end of financial year work load and provide specialist expertise this is a practice that the Committee endorses. It is important to note, however, that in these situations the Auditor-General should continue to take sole responsibility for the audits.

*Audit Fees for Statement Audits (Clause 12)*

4.20 Clause 12 of the AG Bill requires Commonwealth authorities, & their subsidiaries, and Commonwealth companies, & their subsidiaries, to pay audit fees for financial statement audits.

4.21 Commonwealth agencies, on the other hand, receive supplementary funding from the CRF to pay audit fees. The ANAO's annual budget is calculated as equal to the sum of the supplementary funds. Plus an additional amount to cover the cost of performance audits and is paid out of the CRF to the ANAO in advance. When an agency has been audited, it pays its audit appropriation to the ANAO which reimburses the CRF.

<sup>5</sup> ANAO, *Transcript*, p. 414 (Canberra, 17 August 1994).

4.22 This Clause raises the wider issue of who should pay audit fees. The Auditor-General has argued that Parliament, as the ultimate Audit Office client, should pay for all audits, rather than the auditees, stating:

*the overriding principle is that the Auditor-General, in the final analysis, reports to and is responsible to Parliament. In this light, if the user-pays system is to prevail, audit fees should be paid by the Parliament.*<sup>6</sup>

4.23 It has been put to the Committee that there is a practical difficulty with this approach. Parliament authorises the Executive to spend money, but does not have money itself. For Parliament to pay audit fees, it would have to authorise the Executive to give Parliament money from the CRF to give back to the ANAO. As one Department of Finance official argued, the existing payment system is more practical:

*it seems to me that it becomes less of a question whether that money is paid direct to the Audit Office through a parliamentary appropriation or through a much more efficient mechanism whereby it can take in the fee receipts direct. That would be a much more responsive mechanism than, say the parliamentary appropriation system...<sup>7</sup>*

4.24 The Committee acknowledges the important principle of user-pays espoused by the ANAO and realises the importance of making the ANAO as immune as possible from any unnecessary financial constraints imposed by the Executive. However, the Committee also accepts the practical considerations raised by the Department of Finance.

4.25 In a media release of 20 June 1994, the Minister for Finance indicated that:

<sup>6</sup> Auditor-General, *Audit Report No. 43 of 1993-94*, pp. 21-22.

<sup>7</sup> DoF, *Transcript*, p. 387 (Canberra, 17 August 1994).

*the issues of charging for departmental financial statements and fee retention by the Audit Office were matters that the Audit Committee of Parliament might wish to consider.*<sup>8</sup>

4.26 The Committee believes that this issue requires greater examination and could be more appropriately considered by an audit committee of Parliament. Accordingly, the JCPA will defer comment on the issue.

4.27 What is even more important than the method of payment to the ANAO, is the level of input that Parliament can have in determining the actual amount. For this reason, the Committee welcomes the Government's decision to establish an audit committee of Parliament which will, inter alia, consider the appropriations of the ANAO as well as the method of payment. The functions of the audit committee and its possible composition are discussed in greater detail in the following chapter.

#### Performance Audit Mandate (Clauses 13, 14, 15 & 18)

4.28 Clause 13 of the AG Bill authorises the Auditor-General to conduct a performance audit of a Commonwealth agency 'at any time'. Clauses 14 and 15 allow the Auditor-General to conduct performance audits of Commonwealth authorities and companies respectively, and their subsidiaries, 'at any' time. Clause 18 allows the Auditor-General to enter into an arrangement with 'any person or body' to, inter alia, conduct a performance audit of that person or body.

4.29 However, Clauses 14 and 15 only allow the Auditor-General to conduct performance audits of Commonwealth authorities that are GBEs or Commonwealth companies that are GBEs at the request of both Houses of Parliament by resolution or of the responsible Minister.

<sup>8</sup> Minister for Finance, the Hon Kim Beazley MP, *Media Release*, 21/94, Canberra, 20 June 1994, p. 2.

4.30 As the Department of Finance explained:

*The government decided to exclude GBEs on the basis that under its GBE reforms the emphasis is on the bottom line. Boards are accountable for their performance to ministers. The government felt that having performance audits undertaken in that sort of environment would do little in the way of adding to the performance of the GBEs. For that reason it excluded GBEs.<sup>9</sup>*

4.31 This argument is supported in several other submissions.<sup>10</sup> Furthermore, under Clause 18, the managers of a GBE would be free to enter into an arrangement for the Auditor-General to conduct a performance audit of their GBE without needing to seek the approval of the responsible Minister or Parliament.

4.32 The Government has argued that the performance of GBEs is also monitored under agreements with the States, whereby selected data on GBEs is compiled and published annually by the Commonwealth/State Steering Committee on National Performance Monitoring of Government Trading Enterprises. The objective of the Steering Committee is the establishment of an agreed national performance monitoring framework.<sup>11</sup>

4.33 However, the Accounting Bodies argue that while GBEs may be accountable to their Minister under this proposal, they are not accountable to their 'shareholders' - the public:

*Entities that use or manage public resources must be held accountable to the public. Unlike shareholders of a company in the private sector, the ultimate owner of a GBE, being the public, cannot withdraw their funds at any time if*

<sup>9</sup> DoF, *Transcript*, p. 56 (Canberra, 7 July 1994).

<sup>10</sup> Coopers & Lybrand, *Submission*, p. 383 (Vol. 1 of Submissions); Aerospace Technologies of Australia, *Submission*, p. 3190 (Vol. 2 of Submissions).

<sup>11</sup> Minister for Finance, *Government Response to Audit Report No. 43*, p. 2.

*dissatisfied with management's performance. Therefore an alternative mechanism to protect the public interest is required. One such mechanism is an audit by the Auditor-General...<sup>12</sup>*

4.34 The Auditor-General, however, argues from another perspective, maintaining that Parliament has a right to oversee the expenditure of all public money:

*No matter how commercial these [GBEs] may be, they owe their existence to the Parliament... Under the proposed provisions of the Auditor-General Bill, the Parliament has diminished access to information about their operations and activities...<sup>13</sup>*

and that:

*The Auditor-General is not the important equation in this. The principle is parliament's right to know, not the Auditor-General's. The Auditor-General's office is merely a mechanism which works for ... [Parliament] to expose facts that otherwise would not be exposed.<sup>14</sup>*

4.35 Professor Finn of the ANU agreed:

*In form the GBE exception is a limitation on the powers of the Auditor-General. In substance it is a limitation on Parliament itself.<sup>15</sup>*

4.36 The Committee accepts that generally GBEs should operate at arms length from the Government and the Parliament, and that a GBE's performance should be judged on its capacity to achieve results in a commercial environment. Nevertheless, the Committee believes that Parliament has a right to be informed of the activities of all Commonwealth entities, including GBEs.

<sup>12</sup> The Accounting Bodies, *Submission*, p. S158 (Vol. 1 of Submissions)

<sup>13</sup> Auditor-General, *Audit Report No. 43 of 1993-94*, p. 8.

<sup>14</sup> ANAO, *Transcript*, p. 108 (Canberra, 8 July 1994).

<sup>15</sup> ANU, Finn, *Submission*, p. S211 (Vol. 2 of Submissions)

4.37 The Bill, as proposed, represents a limitation on the Parliament's capacity to make informed assessments about the efficiency with which taxpayers money is being used by GBEs.

4.38 Although the Bill allows Parliament to request a performance audit of a GBE, the proposed mechanism (which requires a resolution of both Houses) is cumbersome, time consuming and potentially impractical. The Committee believes that a more efficient way of ensuring Parliament's right to know about the activities of a GBE would be to allow an audit committee of Parliament to request the Auditor-General to conduct a performance audit of a GBE.

4.39 The Committee expects that this power would be exercised only rarely and after consultation with all parties involved. Furthermore, the highest priority for GBE performance audits would be those entities furthest from the discipline of the market.

#### 4.40 Recommendation 19

*Clause 14(2) of the Auditor-General Bill 1994 should be amended to state that the Auditor-General may conduct a performance audit of a Commonwealth authority that is a GBE, or of any of its subsidiaries, if:*

- (a) *both Houses of the Parliament, by resolution, request the audit; or*
- (b) *the responsible Minister requests the audit; or*
- (c) *an audit committee of Parliament requests the audit.*

#### 4.41 Recommendation 20

*Clause 15(2) of the Auditor-General Bill 1994 should be amended to state that the Auditor-General may conduct a performance audit of a Commonwealth company that is a GBE, or of any of its subsidiaries, if:*

- (a) *both Houses of the Parliament, by resolution, request the audit; or*
- (b) *the responsible Minister requests the audit; or*
- (c) *an audit committee of Parliament requests the audit.*

#### *Auditees Comments on Proposed Report (Clause 17)*

4.42 Clauses 17(1) and 17(2) of the AG Bill require the Auditor-General to give a proposed performance audit report to the agency being audited. Under Clause 17(4), the agency may provide the Auditor-General with written comments on the draft report, within 28 days after receiving the report, which the Auditor-General must consider in his final report.

4.43 Clause 17(3) allows the Auditor-General to give a copy of a report of a general performance audit under Clause 16 to 'any person or body who, in the Auditor-General's opinion, has a special interest in the report'. Clause 16 allows the Auditor-General to conduct a performance audit of a particular aspect of the operations of the whole or part of the Commonwealth public sector.

4.44 The Auditor-General has argued that he should be allowed to show all draft performance audits to anybody who, in the Auditor-General's opinion, has a special interest in the report.<sup>16</sup>

4.45 The Committee supports this recommendation, believing that any individual or entity referred to in a performance audit should be able to review the report before it is made public.

#### 4.46 Recommendation 21

*Clause 17(3) of the Auditor-General Bill 1994 should be amended to authorise the Auditor-General to show a proposed report on an audit conducted under Clauses 13, 14, 15 and 16 of the Bill to any person or body who, in the Auditor-General's opinion, has a special interest in the report.*

<sup>16</sup> ANAO, *Submission*, p. S238 (Vol. 2 of Submissions).

### Miscellaneous Powers and Functions

#### *Auditing Standards (Clause 21(1))*

4.47 Clause 21(1) of the AG Bill requires the Auditor-General to set auditing standards for, inter alia, financial statement and performance audits.

4.48 The Accounting Bodies believe that Clause 21(1) should be amended to require the Auditor-General's auditing standards to comply, at a minimum, with the accounting profession's Statement of Auditing Standards (AUS) and Statements of Auditing Practice (AUP).<sup>17</sup>

4.49 As has been mentioned in Chapter 2, the Committee does not believe it appropriate for the Commonwealth to abrogate its right to set its own standards. Accordingly, the Committee believes that Clause 21(1) be retained in its present form.

#### *Breaches of Auditing Standards (Clause 21(2))*

4.50 Clause 21(2) requires the Auditor-General to report to Parliament on any breaches of the standards established under Clause 21(1). However, Clauses 40 and 41 give the Independent Auditor power to report on any breaches by the Auditor-General of the standards he or she has set under Clause 21.

4.51 Clause 21(2) thus appears redundant and, the Committee believes, it should be deleted. In any event, the Committee believes it is more appropriate for the Independent Auditor (rather than the Auditor-General himself) to be required to report on any breaches of standards by the ANAO in the performance of an audit function.

<sup>17</sup> The Accounting Bodies, *Submission*, pp. S158-160 (Vol. 1 of Submissions) and *Transcript*, p. 188 (Canberra, 27 July 1994).

### 4.52 Recommendation 22

*Clause 21(2) of the Auditor-General Bill 1994 should be deleted, as it is made redundant by Clauses 40 and 41.*

#### *Extra Reports to Ministers (Clause 23)*

4.53 Clause 23 of the AG Bill requires the Auditor-General to bring to the attention of the responsible Minister any 'important matter' that comes to the Auditor-General's attention while carrying out his functions. An 'important matter' is any matter that, in the Auditor-General's opinion, is important enough to justify being brought to the attention of the responsible Minister.

4.54 Several submissions have argued that the definition of an 'important matter' should be more precise.<sup>18</sup>

4.55 The Committee is confident that the Auditor-General will be able to judge appropriately whether a matter is important enough to be brought to the Minister's attention. Accordingly, the Committee believes that Clause 23 should be retained in its present form.

### Information-Gathering Powers and Secrecy

#### *Information-Gathering Powers not Limited by Other Laws (Clause 27)*

4.56 Clause 27 of the AG Bill states that the Auditor-General's powers under Clauses 29 and 30 are not limited by any other law, except to the extent that the other law expressly excludes those powers. Clause 29 details the power of the Auditor-General to obtain information and Clause 30 details his power to access premises.

<sup>18</sup> Aboriginal and Torres Strait Islander Commission, *Submission*, p. S285 (Vol. 2 of Submissions); ANU, *Submission*, p. S305 (Vol. 2 of Submissions).



4.57 As Professor Parker of the ANU observed, the extent to which Clause 27 is employed could potentially reduce the effective mandate of the Auditor-General.<sup>19</sup>

4.58 The Committee has received informal advice from the Department of Finance that the only legislation forbidding the Auditor-General to use his or her powers to obtain information is that of intelligence/security agencies. If this is the case, then the Committee believes it should be clarified in the Explanatory Memorandum.

#### 4.59 Recommendation 23

*The Explanatory Memorandum for Clause 27 of the Auditor-General Bill 1994 should be amended to indicate the nature of 'the other laws' that exclude the operation of Clauses 29 and 30.*

#### *The Connection between Clauses 22, 23, 28, 29 and 30*

4.60 As already mentioned, Clauses 29 and 30 give the Auditor-General power to obtain information and access premises. Under Clause 22, the Auditor-General can prepare a report 'on any matter' for Parliament and, under Clause 23, on an 'important matter' for the responsible Minister. Clause 28(b) states, in effect, that the Auditor-General cannot use the information gathering powers given to him in Clauses 29 and 30 when referring a report on matters under Clauses 22 and 23.

4.61 The Auditor-General believes that Clause 28(b), thus, limits the ANAO's powers to gather information and should be deleted.<sup>20</sup>

<sup>19</sup> ANU, *Submission*, p. S10 (Vol. 1 of Submissions).

<sup>20</sup> ANAO, *Submission*, p. S321 (Vol. 2 of Submissions).

4.62 Clauses 22 and 23 give the Auditor-General the power to provide extra reports. It is expected that the contents of such reports will be based on information gained while conducting financial statement and performance audits. The Auditor-General needs the powers conferred by Clauses 29 and 30 to gather the basic data, but he or she does not need the powers to prepare the report.

4.63 Furthermore, Clauses 22 and 23 give the Auditor-General powers to comment, at his or her discretion, on a very wide range of matters. The Committee believes that to couple the wide scope of these clauses with the extensive information gathering and access rights of Clauses 29 and 30. Such an amendment would give the Auditor-General inappropriately broad investigative powers.

4.64 For these reasons, the Committee believes that Clause 28 should be retained in its present form.

## Confidentiality of Information

### *Confidentiality of Information (Clause 33(1))*

4.65 Clause 33(1) of the AG Bill specifies that information obtained by a person in the course of performing a function of the Auditor-General must not be disclosed except in the course of performing that function. Clause 17 of the Bill requires the Auditor-General to show proposed performance audit reports to the auditees for comment.

4.66 The Auditor-General is concerned that the operations of Clauses 17 and 33 together will ensure that the contents of a draft performance audit report will not be publicly released by the Auditor-General, but that they could be released by the auditee. As the Auditor-General explained:

*to minimise the possibility of premature disclosure of preliminary conclusions, which have not been considered by relevant parties, or potentially sensitive information, it is essential there be some mechanism to limit the release of this information.*<sup>21</sup>

4.67 It could be argued that an auditee will own the information on which a performance audit is based and, as such, should be able to release the Auditor-General's proposed conclusions about that information. However, the Auditor-General's comments and extrapolations from that data are 'owned' by the Auditor-General rather than the auditee. Furthermore, it would be inappropriate for an auditee to prematurely release comments about any third parties mentioned in the report, without the third parties having the opportunity to review the proposed report themselves.

4.68 For these reasons, the Committee believes that there should be a restriction placed on auditees releasing proposed reports under Clause 17.

#### 4.69 Recommendation 24

*Clause 33(1) of the Auditor-General Bill 1994 should be amended to also prohibit disclosure of proposed performance audit reports by those receiving them under Clause 17 of the Bill.*

4.70 The Independent Auditor and the Auditor-General NSW have argued that the limitations of Clause 33(1) would prohibit the Auditor-General, or ANAO staff, from giving public speeches or statements about the functions of the Auditor-General or, more generally, about the operations of the public sector.<sup>22</sup>

<sup>21</sup> ANAO, *Submission*, p. 8237 (Vol. 2 of Submissions).

<sup>22</sup> Independent Auditor, *Submission*, p. 816 (Vol. 1 of Submissions); The Audit Office of NSW, *Submission*, p. 84 (Vol. 1 of Submissions).

4.71 The ANAO, however, has received legal advice from the Attorney-General's Department that satisfies the Auditor-General that Clause 33(1) will not unduly restrict the Auditor-General or ANAO staff from taking part in public debate.<sup>23</sup>

4.72 The Committee accepts this advice.

#### *Disclosure of Information in the Public Interest (Clause 33(2))*

4.73 Clause 33(2) authorises the Auditor-General to disclose information to the Commissioner of the Australian Federal Police (AFP), if the Auditor-General is of the opinion that the disclosure is in the public interest.

4.74 The Auditor-General argues that his powers to distribute such information should not be limited to the AFP:

*It is important that disclosure of information obtained by the Auditor-General be restricted to appropriate recipients. However, the Auditor-General should be able to refer matters to appropriate security and intelligence organisations or law enforcement agencies in addition to the Australian Federal Police (AFP). For example, the AFP's jurisdiction does not extend to States.*<sup>24</sup>

4.75 The Independent Auditor agrees, noting that the AFP may not be the most appropriate organisation to receive all likely classes of information.<sup>25</sup>

4.76 The Committee believes that Clause 33(2) should be retained unamended. The AFP already has liaison mechanisms in place to ensure that any information is passed to the most appropriate security or law enforcement agency, be they Commonwealth, State or Territorial. Furthermore, Clause 23 of the AG Bill requires the Auditor-General to report to the responsible Minister any important matter than comes to the Auditor-General's attention. In the case of alleged breaches of

<sup>23</sup> ANAO to Secretary, JCPA, *Correspondence*, 31 August 1994.

<sup>24</sup> The Auditor-General, *Audit Report No. 43 of 1993-94*, p. 26.

<sup>25</sup> Independent Auditor, *Submission*, p. 816 (Vol. 1 of Submissions).

the *Crimes Act 1914* or alleged cases of fraud, the Auditor-General would report to the Attorney-General or Minister for Justice respectively.

*Sensitive Information and the 'Public Interest' (Clause 34(1))*

4.77 Clause 34 of the AG Bill states the Auditor-General must not release particular information if the Auditor-General is 'of the opinion' that the information is 'sensitive' or if the Attorney-General has issued a certificate stating that the information is sensitive. Clause 34(3) defines 'sensitive information' as information whose disclosure would be 'contrary to the public interest'. Clauses 34(3)(a)-(f) list types of information that should be treated as sensitive, such as Cabinet deliberations or information that would prejudice relations between the Commonwealth and a State.

4.78 Neither Clause 34 nor the Explanatory Memorandum give guidance on the limits of the Auditor-General's discretion to determine whether information is sensitive or not. The Clause can be interpreted as limiting the Auditor-General's discretion to deciding only whether information fits into the categories of Clauses 34(3)(a)-(e) which thus, automatically becomes sensitive. Alternatively, the Clause can be interpreted as giving the Auditor-General the discretion to decide that information actually within the categories is not sensitive and should be released.

4.79 The Auditor-General has obtained legal advice from the Attorney-General's Department that 'the nature of the discretion vested in the Auditor-General under Clause 34 in its present form is uncertain'.<sup>26</sup>

<sup>26</sup> ANAO to Secretary, JCPA, *Correspondence*, 31 August 1994.

4.80 The Department of Finance has advised that Clause 34(3):

*limits the reasons for which an Auditor-General may issue a certificate requiring particular information to be excluded.*<sup>27</sup>

4.81 This explanation suggests that the Auditor-General does not have the discretion to challenge the sensitivity of information that falls within the categories. Whatever the case, the Committee believes that the relationship between Clauses 34(1) and 34(3) needs to be clarified to remove potential confusion over the limits of the Auditor-General's powers of discretion.

**4.82 Recommendation 25**

*Clause 34 of the Auditor-General Bill 1994 should be amended to clarify the Auditor-General's powers of discretion and the relationship between Clause 34(1)(a) and Clause 34(3) of the Bill.*

4.83 The Committee believes that the more restrictive interpretation, whereby the Auditor-General can only determine whether or not information fits into the categories in Clause 34(3), is the most appropriate.

*Definitions of Sensitive Information (Clause 34(3))*

4.84 Quite apart from the issue of the relationship between Clauses 34(1)(a) and 34(3), is the question of the appropriateness of the classifications of information used in Clause 34(3).

4.85 Clause 34(3)(e) defines information as sensitive if its disclosure 'would prejudice the commercial interests of any body or person'. Several commentators believe that the Clause is too broad. The Auditor-General of NSW stated that:

<sup>27</sup> DoF, *Submission*, p. S330 (Vol. 2 of Submissions).

*It is not clear why information that 'would prejudice the commercial interests of any body' should always be protected from disclosure. A similar clause in the Corporations Law affecting private auditors would be seen as odd.<sup>28</sup>*

4.86 Professor Finn of the ANU agreed, and noted:

*Many people's privacy interests and some corporations' or governments' commercial interests get prejudiced, but it is not at all unfair; in fact, it is very fair.<sup>29</sup>*

4.87 The Department of Finance indicated that Clauses 34(a)-(e) have been extracted unchanged from the Audit Act:

*The definition for sensitive information in Clause 34 has its origins in paragraphs (a) to (f) of subsection 48F(5) of the Audit Act which was inserted in 1979. That subsection has not caused difficulties in the past... We are not aware that the Australian National Audit Office has had any difficulty with the scope of matters covered in that subsection, nor, in particular, whether the subsection created, for them, any tension with the Corporations Law. Accordingly, no changes were made.<sup>30</sup>*

4.88 The Committee believes that Clause 34(3)(e) is unnecessarily broad as it stands and could be amended to allow the Auditor-General the discretion to determine whether the release of information would unfairly prejudice commercial interests.

#### 4.89 Recommendation 26

*Clause 34(3)(e) of the Auditor-General Bill 1994 be amended to only classify information as sensitive if it unfairly prejudices the commercial interests of any body or person.*

<sup>28</sup> The Audit Office of NSW, *Submission*, p. S4 (Vol. 1 of Submissions).

<sup>29</sup> Professor Finn, *Transcript*, p. 284 (Canberra, 8 August 1994).

<sup>30</sup> DoF, *Submission*, p. S330 (Vol. 2 of Submissions).

#### *Sensitive Information in a Report (Clause 34(2))*

4.90 Clause 34(2) allows the Auditor-General to prepare a private report including sensitive information. If such a report has been prepared, then the Auditor-General must give copies to the Prime Minister, the Finance Minister and the responsible Minister or Minister (if any).

4.91 However, there is no opportunity for the Auditor-General to share reports containing sensitive information with Parliament or its Committees. As the Auditor-General explained:

*I am rather uncomfortable about the fact that it is possible... that I might feel a need to inform the Parliament about something that is sensitive. There is no way for me to do that... I could go to the Prime Minister, the Minister for Finance or the Attorney-General, but that does not involve the Parliament...<sup>31</sup>*

4.92 The JCPA believes that, as a matter of principle, the Auditor-General should also have the ability to refer sensitive reports to Parliament. The most appropriate way to achieve this is if the Auditor-General is also required to show sensitive reports to the Chairman of the JCPA.

#### 4.93 Recommendation 27

*Clause 34(2) of the Auditor-General Bill 1994 should be amended to require the Auditor-General to give a copy of a report containing 'sensitive' information to the Chairman of the Joint Committee of Public Accounts as well as to the Prime Minister, the Finance Minister and the responsible Minister or Ministers (if any).*

<sup>31</sup> The Auditor-General, *Transcript*, p. 422 (Canberra, 17 August 1994).

## The Australian National Audit Office

### Staff of the ANAO (Clause 37)

4.94 Clause 35 of the AG Bill establishes the ANAO as a statutory office. Clause 37 states that the staff of the ANAO are to be appointed or employed under the *Public Service Act 1992*, which effectively denies the Auditor-General the power to set the terms and conditions of ANAO staff.

4.95 The Auditor-General argues that he needs to be able to set terms and conditions for his staff that are competitive with private sector equivalents and would give him or her, the flexibility to meet changing requirements. The Committee recognised this need in *Report 296* and recommended that the Auditor-General have the power to set the terms and conditions of his staff, as the Auditor-General recalled:

*It was recommended back in Report 296 to address a specific problem the Committee at that time believed we had - that it was difficult to retain people, it was difficult to attract people, it was difficult to maintain the skills level of the Australian National Audit Office and, therefore it was becoming increasingly difficult to maintain the quality of the service that we provided to the Parliament. That is what the question of statutory terms and conditions was all about. It was trying to address that specific problem.*<sup>32</sup>

4.96 Many witnesses and submissions have supported the Auditor-General's argument that he should be able to determine the terms and conditions of his staff. The Independent Auditor stated:

*One of the major problems of the Audit Office is that it must compete with private sector auditing firms for key staff. In my opinion, the Audit Office should be able to compete freely and at its own discretion....*<sup>33</sup>

<sup>32</sup> ANAO, *Transcript*, p. 401 (Canberra, 17 August 1994); JCPA, *Report 296*, pp. 82-84.

<sup>33</sup> Independent Auditor, *Submission*, p. S15 (Vol. 1 of Submissions).

4.97 Likewise, Professor Finn of the ANU believes:

*To the extent that Public Service Act type limitations and finance type limitations impose constraints on a proper discharge of the functions of the Audit Office then it seems they should not be countenanced.*<sup>34</sup>

4.98 The Department of Finance, on the other hand, argues that ANAO staff should remain under the Public Service Act:

*[The ANAO] should be staffed under the Public Service Act, unless there is good reason to change. I think it probably reflects the fact that the Auditor-General will now have a monopoly of audits, in a sense. He will not be excluded from any particular audit. So in that sense, he is not facing a competitive environment...the government is concerned about flow-on effects. Perhaps departments such as Treasury, the Tax Office, the Attorney-General's Department and even the Department of Finance may face pressure on remuneration. There is a question of where you draw the line and why you draw the line. I think another point was that there is probably an additional overhead in handling industrial relations issues if you have your staff under your own legislation vis-a-vis, the Public Service Act. They are some of the issues that influenced the government decision.*<sup>35</sup>

4.99 Further, the Minister for Finance, argues that ANAO staff should remain under the Public Service Act because:

*the Government's 1987 "Policy Guidelines for Commonwealth Statutory Authorities and Government Business Enterprises" [states] that statutory authorities should be staffed under the Public Service Act 1922 unless there are strong reasons for doing otherwise... In the Government's view the case has not been made to exempt ANAO from this policy position.*<sup>36</sup>

<sup>34</sup> Professor Finn, *Transcript*, p. 282 (Canberra, 8 August 1994).

<sup>35</sup> DoF, *Transcript*, p. 58 (Canberra, 7 July 1994).

<sup>36</sup> Minister for Finance, *Government Response to Audit Report No.432*, p. 3.

4.100 The Committee believes that the widespread nature of this problem should not preclude consideration of the ANAO's case. Furthermore, the Auditor-General is in a unique position in the public sector, given his, or her, vital role in strengthening the accountability of the Executive to Parliament and improving public sector efficiency. The Committee believes that the Auditor-General's capacity to undertake these functions would be enhanced if he, or she, had greater flexibility to negotiate competitive remuneration packages. This would assist the Auditor-General in attracting and retaining the highest quality staff.

#### *A Possible Model for the ANAO*

4.101 The ANAO provided the JCPA with a proposed structure for the ANAO which would allow the Auditor-General to set the terms and conditions of the staff of the ANAO. Under the proposal:

- the ANAO would be a body corporate, able to sue and be sued;
- the ANAO would be a budget funded Commonwealth authority, operating its own bank account;
- the Auditor-General would be able to appoint staff as considered necessary to assist in the discharge of his or her functions; and
- staff of the ANAO would be appointed at such remuneration and on other terms and conditions as the Auditor-General determines.<sup>37</sup>

4.102 In evidence to the Committee, the Auditor-General discussed his proposed model, stating:

*...the Auditor-General would have the power to set terms and conditions which would be not unique but unusual in the Australian situation. I emphasise that does not mean licence for the Auditor-General to do whatever he or she*

<sup>37</sup> ANAO to Secretary, JCPA, *Correspondence*, 12 August 1994.

would wish with respect to staff. The reality is you cannot escape the fact that we live in an industrial relations environment that the government has laid down and which should apply to the public sector.<sup>38</sup>

#### *Precedents in the Public Sector*

4.103 The Committee recognises that the difficulty of offering competitive remuneration packages is widespread in the public sector.

4.104 However, a number of Commonwealth agencies and authorities do not employ staff under the Public Service Act and have the freedom to set the terms and conditions of their staff, although within limits.

4.105 For example, the *Australian Federal Police Act 1979*, empowers the Commissioner of Police to determine in writing the terms and conditions of service of members and staff members, but also provides that 'the Minister may give the Commissioner written general policy guidelines on all or any of the matters about which the Commissioner may make a determination under this section'.<sup>39</sup>

4.106 The *Federal Airports Corporation Act 1986* (FAC Act) enables the FAC to determine the terms and conditions of staff,<sup>40</sup> but also outlines the standards expected of the Corporation as an employer, by requiring the Corporation to:

*endeavour to achieve and maintain high standards as an employer in relation to terms and conditions of employment, occupational health, industrial safety, industrial democracy, non-discriminatory employment practices and other matters.*<sup>41</sup>

<sup>38</sup> ANAO, *Transcript*, p. 401 (Canberra, 17 August 1994).

<sup>39</sup> s. 30, *Australian Federal Police Act 1979*.

<sup>40</sup> s. 61, *FAC Act 1986*.

<sup>41</sup> s. 62, *FAC Act 1986*.

4.107 The Community and Public Sector Union (CPSU) has expressed concern that the terms and conditions of staff will be eroded if they can be determined by the Auditor-General.<sup>42</sup>

4.108 However, the ANAO has received advice from the Department of Industrial Relations (DIR) that agencies that do not employ staff under the Public Service Act, are required to consult with DIR in order to ensure that they act in a manner consistent with Government industrial relations and employment policies.<sup>43</sup>

4.109 The Committee believes that it should be possible to balance the Auditor-General's wish to have the freedom to determine competitive packages for ANAO staff, with the requirement to protect their basic terms and conditions.

4.110 This can be achieved by giving the Auditor-General the power to determine the terms and conditions of his staff, while placing safeguards in the legislation along the lines of those included in the enabling legislation of other budget funded Commonwealth authorities not employing staff under the Public Service Act.

4.111 The Committee recognises, however, that the process of establishing the terms and conditions of ANAO staff will be a complex and lengthy process involving negotiation between all relevant parties.

4.112 Accordingly, the Committee believes that ANAO staff should continue to be employed under the Public Service Act until such time as agreement is reached. This should be reflected in the consequential amendments legislation.

42 CPSU, *Transcript*, p. 182 (Canberra, 26 July 1994).

43 ANAO to Secretary, JCPA, *Correspondence*, 12 August 1994.

#### 4.113 Recommendation 28

*Clause 37 of the Auditor-General Bill 1994 should be amended to empower the Auditor-General to negotiate the terms and conditions of staff of the Australian National Audit Office. Clause 37 should also include a proviso that the terms and conditions set by the Auditor-General be consistent with Government industrial relations and employment policies and the principles decided by the Australian Industrial Relations Commission from time to time.*

*The consequential amendments legislation should provide that ANAO staff continue to be employed and appointed under the Public Service Act 1922 until such time as an agreement is established.*

### Audit of the Australian National Audit Office

#### *Independent Auditor*

4.114 Clause 38 of the AG Bill requires the appointment of an Independent Auditor and Schedule 2 of the Bill details the terms of office and conditions of the appointment. Clause 40 requires the Independent Auditor to audit the financial statements of the ANAO and Clause 41 allows the Independent Auditor to conduct performance audits of the ANAO. The Independent Auditor also has the same powers to conduct and report on audits as the Auditor-General.

4.115 Clause 41 of the AG Bill, requires the Independent Auditor to cause a copy of any performance audit to be tabled in Parliament. However, there is no requirement, analogous to Clause 17 of the Bill, requiring the Independent Auditor to show the Auditor-General the proposed audit report before it is tabled.

4.116 This difference has been noticed in a number of submissions.<sup>44</sup> The Committee has supported the principle that auditees should be given the opportunity to comment on proposed reports of performance audits, as expressed in Clause 17. This principle should also apply to the Independent Auditor.

#### 4.117 Recommendation 29

*Clause 41(2) of the Auditor-General Bill 1994 should be amended to require the Independent Auditor to show a copy of a proposed performance audit report to the Auditor-General for comment. The amendment should be broadly consistent with Clause 17 of the Bill.*

#### *Sensitive Information not to be included in Public Reports (Clause 42)*

4.118 Clause 42 of the AG Bill states that Clause 34 applies to the Independent Auditor as if references in that section to the Auditor-General were references to the Independent Auditor.

4.119 The Committee has recommended a number of amendments to Clause 34 in Recommendations No. 25, 26 & 27 above and believes that the recommendations apply equally to the powers and obligations of the Independent Auditor.

#### 4.120 Recommendation 30

*Clause 42 of the Auditor-General Bill 1994 should remain unamended, irrespective of any amendments made to Clause 34 of the Bill.*

<sup>44</sup> CSIRO, *Submission*, p. S72 (Vol. 1 of Submissions); The Accounting Bodies, *Submission*, p. S164 (Vol. 1 of Submissions); The Audit Office of Tasmania, *Submission*, p. S180 (Vol. 2 of Submissions); Institute of Internal Auditors, *Submission*, p. S185 (Vol. 2 of Submissions); ANAO, *Submission*, p. S237 (Vol. 2 of Submissions).

## Miscellaneous

### *Finances of the ANAO*

4.121 Clause 46 of the AG Bill guarantees the availability of parliamentary appropriations to the ANAO. These appropriations are normally permissive appropriations.<sup>45</sup> Clause 47 provides a statutory power to the Auditor-General to approve, in his, or her own right, the spending of public money on behalf of the Commonwealth against ANAO appropriations. Clause 48 limits the power of the Finance Minister to cancel or vary a net appropriation agreement with the Auditor-General.

4.122 These clauses provide worthwhile safeguards for the operational independence of the Auditor-General from possible interference from the Executive.

4.123 However, the Committee believes that Parliament should have a closer involvement in determining the appropriations and priorities of the ANAO. This issue is discussed in greater detail in the following chapter, in the context of an audit committee of Parliament.

### *Modification of Act for Intelligence or Security Agencies (Clause 51)*

4.124 Clause 51 of the AG Bill states that the application of the AG Bill for intelligence or security agencies is subject to any modifications that are prescribed by the regulations.

4.125 The Auditor-General argues that, with appropriate restrictions, the ANAO should audit security agencies:

*There is no intelligence or security argument against review by the Auditor-General... we are now talking about the future and we are talking about principle... I am saying that it is about time that some arrangement was set up to open*

<sup>45</sup> See paragraph 2.29 of Chapter 2 for an explanation of permissive appropriations.



*the windows that have been closed. We would do that in a way that completely meets whatever security considerations the heads of those particular agencies felt appropriate.*<sup>46</sup>

4.126 The Committee is aware that there is currently an Inquiry into the Australian Secret Intelligence Service (ASIS), with terms of reference to examine, inter alia, the management and accountability mechanisms of the Service. The recommendations arising from the Inquiry will have a broader application in the security and intelligence community and the Committee believes that it is not appropriate to comment in detail on matters that might come before the Inquiry.

4.127 Nonetheless, the Committee believes in principle, that the Auditor-General should be able to audit all financial statements of security, or 'exempt' and intelligence agencies, including secret accounts. Such audits should be conducted with the appropriate security precautions.

#### 4.128 Recommendation 31

*Clause 51(1) of the Auditor-General Bill 1994 should be amended to require the Auditor-General to audit the financial statements of intelligence and security agencies, including any exempt accounts.*

### Appointment, Conditions of Appointment Etc for Auditor-General

#### *Length of Term of Office of Auditor-General (Clause 1(1), Schedule 1)*

4.129 Clause 1(1) of Schedule 1 of the AG Bill establishes the term of office for the Auditor-General as being 'up to 7 years'. This provision contrasts with Section 5A of the Audit Act which simply requires the Auditor-General to cease to hold office upon attaining the age of sixty-five years'.

<sup>46</sup> ANAO, *Transcript*, p. 123 (Canberra, 8 July 1994).

4.130 In evidence to the Committee, the Auditor-General recommended that the AG Bill be amended to ensure future appointments to the Office of Auditor-General be for a set term of 10 years. He argued that a 10 year term would balance the need for continuity without stagnation:

*I think one of the problems we have faced in the [ANAO] is the revolving door of the appointees... nobody was staying around long enough to actually change the culture.*<sup>47</sup>

and that:

*As it stands, the [AG] Bill will allow appointments for short periods of time. This is inconsistent with the need to provide continuity for the ANAO and protect the position of the Auditor-General.*<sup>48</sup>

4.131 The Department of Finance has defended the Bill as it now stands, arguing that a set term would be too inflexible and would not provide for a person wishing to take on the position for a shorter period.<sup>49</sup>

4.132 The Committee is aware that the *Industrial Relations Act 1988* was amended in 1994 by the *Industrial Relations Amendment Act (No. 2) 1994* to allow the appointment of a candidate who was only prepared to serve as President of the Commission for a limited period and that the Commonwealth Ombudsman and Commissioner of Taxation are appointed for seven years.<sup>50</sup> Furthermore, the Auditor-General of New South Wales is only appointed for a term of 7 years.<sup>51</sup>

<sup>47</sup> Auditor-General, *Transcript*, p. 71 (Canberra, 8 July 1994).

<sup>48</sup> Auditor-General, *Audit Report No. 43 of 1993-94*, p. 25.

<sup>49</sup> DoF, *Transcript*, pp. 52-3 (Canberra, 7 July 1994).

<sup>50</sup> s. 22(1), *Ombudsman Act 1976*, s. 5(1); *Taxation Administration Act 1953*.

<sup>51</sup> The Audit Office of NSW, *Submissions*, p. 85 (Vol. 1 of Submissions).

4.133 The Committee believes that it is appropriate that the Auditor-General only have tenure for a maximum of 7 years, to be consistent with other set public sector positions. However, the Committee also acknowledges that there needs to be continuity in the Office.

4.134 Recommendation 32

*Clause 1(1) of Schedule 1 of the Auditor-General Bill 1994 should be amended to require the appointment of the Auditor-General to be for a term up to 7 years with a minimum term of 5 years.*

*Consultation on Appointment of the Auditor-General (Clause 1(2), Schedule 1)*

4.135 Clause 1(1) of Schedule 1 of the AG Bill requires the Auditor-General to be appointed by the Governor-General on the advice of the Minister. Clause 1(2) of Schedule 1 requires the Minister to consult the Finance Minister; a nominee of the Leader of the Opposition in the House of Representatives; and, the Chairman of the JCPA.

4.136 The Auditor-General has argued that Parliament should have a more significant role in the appointment of the Auditor-General. He considered the consultation process set out in the AG Bill 1994 to be inadequate:

*If it is not possible for the Parliament itself in some way to appoint the Auditor-General - and that may be difficult in a practical sense - there has to be rather more than just consultation with the nominee of the Leader of the Opposition and the chairman of the JCPA... It is very heavily weighted towards the executive, but do not forget that it is merely consultation. You could consult with everyone in Parliament, but you would do what you like.<sup>52</sup>*

<sup>52</sup> ANAO, *Transcript*, p. 83 (Canberra, 8 July 1994).

4.137 The Auditor-General of NSW concurs, arguing:

*The Auditor-General is part of the accountability mechanisms which Parliament uses to hold the government accountable. Therefore, it really should be Parliament that appoints the Auditor-General. It is the shareholders that appoint the auditor, at least nominally, in the private sector.<sup>53</sup>*

4.138 The Committee agrees that Parliament should have greater involvement in the appointment of the Auditor-General.

4.139 One approach would be to allow the Parliament, or its representatives, the opportunity to veto a nomination for appointment to the position of Auditor-General. It would be possible to confer a right of veto over an appointment by making the instrument of appointment a disallowable instrument. This would be an awkward, potentially unfair and probably rarely used procedure. In the Committee's view it would be preferable if representatives of the Parliament were given the right to veto a nomination for Auditor-General. Examples of this practice can be found in the NSW and UK Parliaments, where the Chairman of their public accounts committees have such a right.<sup>54</sup> The JCPA believes that it would be appropriate for both the JCPA and an audit committee of Parliament to fulfil this task in the Commonwealth Parliament.

<sup>53</sup> The Audit Office of NSW, *Transcript*, p. 255 (Canberra, 27 July 1994).

<sup>54</sup> UK: Section 1(1) of the *National Audit Act 1983*; NSW: Section 28A, *Public Finance and Audit Act 1983*. It should be noted that in the UK, the Chairman of the Committee of Public Accounts is a member of the Opposition. Similar procedures apply in relation to the appointment of the Ombudsman and the Independent Commissioner Against Corruption in NSW.

4.140 Recommendation 33

Clause 1(2) of Schedule 1 of the Auditor-General Bill 1994 should be amended so that the Clause reads as follows:

'(2) Before making a recommendation to the Governor-General, the Minister must seek the approval of the following:

- (a) the Leader of the Opposition in the House of Representatives, or his or her nominee;
- (b) the Joint Committee of Public Accounts; and
- (c) an audit committee of Parliament.'

4.141 The Committee does not believe it necessary that the Finance Minister be mentioned in the process as it can be assumed that the Finance Minister will be consulted in the normal decision making process.

4.142 In an analogous mechanism, the JCPA, under the Public Service Act, is required to give approval to Departmental annual report requirements before they are tabled by the Prime Minister. In this procedure, the JCPA's involvement has successfully increased Parliamentary involvement in the consultation process and enhanced the quality of the final results. The Committee believes that the JCPA's involvement in the appointment of the Auditor-General would be equally beneficial.

*Remuneration of Auditor-General (Clause 3, Schedule 1)*

4.143 Clause 3 of Schedule 1 of the AG Bill states that the Auditor-General is to be paid the remuneration that is determined by the Remuneration Tribunal. Currently, the Auditor-General's remuneration is pegged with the second tier of remuneration of Departmental secretaries.<sup>55</sup>

<sup>55</sup> Auditor-General, *Audit Report No. 43 of 1993-94*, p. 19.

4.144 Several Auditors-General have commented that an Auditor-General should be remunerated at no less than that received by departmental Chief Executive Officers. The Auditor-General of the Northern Territory recommended:

*to avoid the 'pulling of rank' or lessening of the significance of an Auditor-General's recommendations... I would favour the remuneration of the Auditor-General being set no lower than that of the chief executive officer of any department of state.<sup>56</sup>*

4.145 The Auditor-General of Queensland stated that:

*As to the level of remuneration, it is necessary that such should at least be tied to the highest tier of the relevant Chief Executive band as it is an insult to the Office holder to be paid less than those officers he/she is auditing.<sup>57</sup>*

4.146 The Committee recognises the importance of the Office of the Auditor-General and believes that the question of remuneration levels is appropriately dealt with by the Remuneration Tribunal.

*Acting Appointment (Clause 7, Schedule 1)*

4.147 Clause 7 of Schedule 1 details the steps for appointment of an acting Auditor-General if there is a vacancy in the office of Auditor-General or if the Auditor-General is absent from duty. The Clause does not limit the tenure of an acting appointment.

<sup>56</sup> The Audit Office of the Northern Territory, *Submission*, p. S289 (Vol. 2 of Submissions).

<sup>57</sup> The Audit Office of Queensland, *Submission*, p. S49 (Vol. 1 of Submissions).

4.148 Under Section 8 of the Audit Act, an Acting Auditor-General is appointed by the Governor-General and can only act in the capacity for up to six months. The Auditor-General has recommended that this arrangement should be continued in the AG Bill for a vacancy in the office.<sup>58</sup>

4.149 The Department of Finance explained that a six month limit was not included in the AG Bill because:

*The appointment process for an Auditor-General under the Auditor-General Bill is more complex than the process currently permitted under the Audit Act... Under the Auditor-General Bill, Parliament will have a greater involvement in the process. While we would agree that the office of Auditor-General should be filled as soon as practicable after the office becomes vacant, we see a "6 months" period may be too limiting given the obstacles that can arise in any appointment process...*<sup>59</sup>

4.150 The Committee believes that it is appropriate for the Minister, rather than the Governor-General, to appoint an acting Auditor-General, as the appointment process should be prompt. The Committee also believes that it is appropriate that the tenure for an acting Auditor-General should be limited, but not unrealistically so, when there is a vacancy in the Office of Auditor-General.

#### 4.151 Recommendation 34

*Clause 7(1) of Schedule 1 of the Auditor-General Bill 1994 should be amended to state that the position of Auditor-General should be filled permanently as soon as practicable if a vacancy occurs under Clause 7(1)(a) of Schedule 1 of the Bill.*

<sup>58</sup> Auditor-General, *Audit Report No. 43 of 1993-94*, p. 25; The Audit Office of the NT, *Submission*, p. S165 (Vol. 1 of Submissions).

<sup>59</sup> DoF, *Submissions*, p. S332 (Volume 2 of Submissions).

#### *Officer of the Parliament Status for Auditor-General*

4.152 In *Audit Report No. 43*, the Auditor-General indicated support for making the Auditor-General an Officer of the Parliament, but considered it to be a matter for the Parliament to decide.<sup>60</sup>

4.153 This recommendation is based on the fact that the Comptroller & Auditor-General in the United Kingdom is classified as an 'officer of the House of Commons' and a recommendation made by the JCPA in *Report 296*.<sup>61</sup>

4.154 However, there appears to be little agreement on what Officer of the Parliament status confers. Even the ANAO agreed:

*We have some legal advice on the question of Officer of the Parliament. It does not say a lot. It essentially says that it really is... a symbolic issue, if you like. In practical terms it does not add much, if anything, to the position of Auditor-General.*<sup>62</sup>

4.155 Professor Parker from the ANU concurred:

*I have not discovered what that expression [Officer of the Parliament] would mean in practice. It seems to imply that the Auditor-General would in some sense be 'responsible to the Parliament', suggesting that this official could in some manner be appointed by and report only to the Parliament... it is not clear to me how a change in the Auditor-General's status would further enhance the accountability of the Commonwealth Executive any further.*<sup>63</sup>

<sup>60</sup> Auditor-General, *Audit Report No. 43 of 1993-94*, p. 20.

<sup>61</sup> UK: s. 1(2), National Audit Act; JCPA, *Report 296*, pp. 75-76.

<sup>62</sup> ANAO, *Transcript*, p. 80 (Canberra, 8 July 1994).

<sup>63</sup> ANU, Parker, *Submission*, p. S10 (Vol. 1 of Submissions).

4.156 The Committee believes that the Auditor-General has a unique and important relationship with Parliament. Giving the Auditor-General Officer of the Parliament status would be a symbolic gesture. However, given the uncertainty of its meaning, the Committee does not believe it is practical to confirm Officer of the Parliament status in legislation

#### *Office of Profit Under the Crown*

4.157 Neither the Audit Act nor the AG Bill prohibit a former Auditor-General from obtaining employment in the public sector (holding an office of profit under the Crown).

4.158 This has not been a relevant issue to date because Auditors-General are currently appointed until retirement at age 65, and thus are ineligible to obtain further employment in the public sector. However, the AG Bill now sets the limit of an Auditor-General's tenure to 7 years and therefore former Auditors-General may complete their contract before age 65.

4.159 In evidence to the Committee, the Auditor-General asserted that former Auditors-General should not be able to take up an office of profit under the Crown:

*While the [AG] Bill prohibits the reappointment of the Auditor-General, it does not exclude the option of appointment to another position under the Crown following completion of the Auditor-General's term. If an Auditor-General is reliant on the Executive for future employment when the term of appointment has been completed, there would be seen to be implications for the independence of the Auditor-General.<sup>64</sup>*

<sup>64</sup> ANAO, *Submission*, p. S234 (Vol. 2 of Submissions).

4.160 The Department of Finance argues that such a prohibition is unnecessary:

*Re-employment within the public sector is not seen as an important matter justifying legislation to prohibit re-employment. At retirement an Auditor-General may still be able to make a valuable contribution in the public sector. Whether that was the case, would depend upon the individual. Furthermore, a conflict of interest would depend on the job opportunity being offered at the time in the public sector. This matter is best, in our view, left to the administrative processes for employing persons in the public sector and the merits of each case. Certainly the inevitable transparency of any such re-employment could be expected to attract the scrutiny of Parliament.<sup>65</sup>*

4.161 The Committee acknowledges that the position of Auditor-General is unique and has a special place within the system of government. However, inclusion of such an amendment to the Bill would prevent a former Auditor-General from making a further and valuable contribution to Commonwealth administration. Accordingly, the Committee believes that there should not be a restriction on former Auditors-General seeking offices of profit under the Crown.

#### **Appointment, Conditions of Appointment Etc for Independent Auditor**

4.162 Schedule 2 of the AG Bill details the method of appointment and terms of employment for the Independent Auditor. Clause 1(2) of Schedule 2 requires the Minister to consult the chairman of the JCPA before making a recommendation to the Governor-General on the appointment of the Independent Auditor.

<sup>65</sup> DoF, *Submission*, p. S331 (Vol. 2 of Submissions).

4.163 In Recommendation No.33, the Committee recommended that Parliament, through the JCPA and an audit committee, should have the authority to veto a nomination for Auditor-General. The Committee believes that this principle should be extended to the process of appointing the Independent Auditor.

4.164 Recommendation 35

*Clause 1(2) of Schedule 2 of the Auditor-General Bill 1994 should be amended to state:*

*'Before making a recommendation to the Governor-General, the Minister must seek the approval of the Joint Committee of Public Accounts and an audit committee of Parliament.'*

**C o n c l u s i o n**

4.165 This chapter has already discussed some amendments to the AG Bill that the Committee believes, if adopted, will enhance the role and independence of the Auditor-General. The next chapter examines the potential role for an audit committee of Parliament, a mechanism which the Committee believes will enhance the Auditor-General's already close links with his major client - the Parliament.

**5**

**AUDIT COMMITTEE OF  
PARLIAMENT**

**I n t r o d u c t i o n**

5.1 On 28 June 1994, Senator the Hon Robert Ray gave notice of a government motion in the Senate to establish a joint standing committee to be known as the Audit Committee of Parliament.<sup>1</sup>

5.2 The notice of motion detailed the functions of the Audit Committee, in summary, as being to:

- advise the Auditor-General of the Committee's audit priorities;
- advise the responsible Minister when the Committee wishes a performance audit conducted on a GBE;
- consider the resources of the ANAO; and
- report to the Parliament on any issue arising out of the Committee's consideration of ANAO resources, the performance of the Auditor-General's functions or reports of the Independent Auditor that the Committee believes should be drawn to the attention of Parliament.

5.3 The Notice of Motion also proposed that the Committee's membership be:

- the Speaker of the House of Representatives and the President of the Senate, alternating as chairman and deputy chairman;
- the chairman of the JCPA;
- two Government and three Opposition members of the House of Representatives; and

<sup>1</sup> See Appendix 2.

- one Government Senator, one Opposition Senator and one Senator to be nominated by any minority groups or independent senators.

5.4 On 29 June 1994, prior to considering Senator Ray's motion, the Senate passed the following motion moved by Senator Brian Gibson:

*That the proposed resolution for the establishment of an Audit Committee be referred to the Joint Committee of Public Accounts for inquiry and report by 23 August 1994, and that the Committee, in conducting its inquiry, give particular attention to the appropriateness of establishing a separate committee rather than conferring the functions of the proposed committee on the Joint Committee of Public Accounts.<sup>2 3</sup>*

5.5 This chapter provides some background to the proposal to establish an audit committee and then considers the type of duties which would be appropriate for such a committee to perform. The final sections of the chapter consider whether the duties of an audit committee should be performed by a new and separate parliamentary committee, or whether the responsibility should be conferred on the JCPA.

#### *Background*

5.6 The formal motion to establish an audit committee of Parliament draws heavily on a proposal to establish such a committee made by the JCPA in *Report 296* in 1989.

5.7 In that year, the Joint Committee of Public Accounts, reviewed the Audit Office and, in *Report 296*, recommended the establishment of a separate parliamentary audit committee.<sup>4</sup> This recommendation was based on the precedent of the

<sup>2</sup> See Appendix 3.

<sup>3</sup> The Senate subsequently extended the deadline for reporting back to Thursday 22 September 1994.

<sup>4</sup> JCPA, *Report 296*, paras. 5.54 - 5.60.

UK House of Commons which had established a statutory audit committee called the Public Accounts Commission in 1983.<sup>5</sup>

5.8 In its response to the JCPA's proposal, the Government stated that:

*The establishment of such a Committee is a matter for Parliament to determine. While the Government would be prepared to consider any comments that the [Audit] Committee might make, it would reserve for itself the right to accept or reject such comments... Care would need to be exercised that such a Committee was not seen to put pressure on the Auditor-General to pursue particular topics.<sup>6</sup>*

5.9 Recently the JCPA has had cause to reconsider the proposal put by the Committee in *Report 296*. As explained below, the current JCPA believes that the reasons to establish a separate audit committee are less valid today than they were in 1989.

#### **Duties of an Audit Committee of Parliament**

##### *Additional Responsibilities for an Audit Committee*

5.10 The JCPA believes it appropriate that the Audit Committee have the authority to advise the Independent Auditor of the Committee's audit priorities in respect of the ANAO. This is equivalent to the Audit Committee's agreed function of advising the Auditor-General of the Committee's audit priorities in respect of GBEs.

<sup>5</sup> s. 2, UK National Audit Act.

<sup>6</sup> Senator the Hon Peter Walsh, *Ministerial Statement, Government Response to JCPA Report 296*, 1 November 1989, p. 2.

### 5.11 Recommendation 36

*An audit committee of Parliament should have the additional function of advising the Independent Auditor of the Committee's audit priorities in respect of the Australian National Audit Office.*

### **The JCPA Performing the Functions of the Audit Committee of Parliament**

5.12 As mentioned above, *Report 296* recommended that a separate audit committee be established. The recommendation was part of a package of recommendations aimed at making the Auditor-General, more responsive to Parliament.

5.13 The JCPA has since reconsidered this specific recommendation and now considers that, for reasons of efficiency and effectiveness, the functions of an audit committee could be more appropriately conducted by the JCPA itself.

5.14 The JCPA has come to this view because:

- the JCPA has a long history of liaison with the Auditor-General. This has given the JCPA members a strong understanding of the issues affecting the Auditor-General and his office;
- the JCPA has a statutory obligation to examine the reports of the Auditor-General. JCPA members have developed a detailed insight into the Auditor-General's levels of activity and the efficiency with which they are carried out. With this information the JCPA members are well placed to comment on the Auditor-General's proposed levels of future activity;
- the JCPA already acts informally as a conduit for parliamentarians, to indicate aspects of public administration that they would like the Auditor-General to examine. If the Audit Committee functions were added to its responsibilities, the JCPA would undertake this task on a formal basis;

- Members and Senators already have difficulty meeting their commitments, and creating another parliamentary committee will only increase the demands on their time;
- it would place an additional demand on the time of Presiding Officers;
- it would be less costly administratively to expand the role of the JCPA than to create another parliamentary committee; and
- the reasons for the UK having a separate audit committee are not applicable in Australia.

### *The United Kingdom Precedent*

5.15 As was mentioned above, the UK has separated the functions of its public accounts committee (the Committee of Public Accounts) and its audit committee (the Public Accounts Commission). It has been suggested that the UK model allows each committee to focus clearly as its responsibilities, and provides for a beneficial separation between the committee advising the Auditor-General on the Parliament's audit priorities and the committee examining the Auditor-General's reports. As described above, the JCPA believes that its responsibility to examine any matter affecting the public account, and its experience of examining audit reports, gives it a broad perspective on the administration of the public sector. This perspective means that the JCPA is well placed to make suggestions about areas and issues warranting the Auditor-General's attention.

5.16 The principal reason for the separation in the UK Parliament between its public accounts committee and its audit committee is that the chairman of the Committee of Public Accounts is, by convention, always a member of the Opposition.<sup>7</sup> It was not considered appropriate for the Opposition to preside over a committee reviewing the appropriations of an agency of State and, thus, the function was given to a separate, government controlled committee.

<sup>7</sup> Erskine May, *Parliamentary Practice*, 21st Edition, Butterworths, London, 1989, p. 660.



5.17 The JCPA does not believe that the separation of the public accounts role and the audit committee role, as occurs in the UK, is necessary in Australia, given that the Chair of the JCPA is always a government member.

5.18 Furthermore, the JCPA notes that the House of Commons has 651 members from which members of the separate audit committee were drawn. The Australian Parliament only has 223 Members and Senators, which is a very much smaller pool from which to fill a new Committee. Utilising an existing committee (the JCPA) to fulfil the function would obviate the need for Members and Senators to sit on a further committee.

#### *Support for the JCPA from the Presiding Officers*

5.19 Presiding Officers of the Parliament have given long standing support to the view that the JCPA itself should perform the functions of the audit committee of Parliament.

5.20 In September 1991, the then Speaker of the House of Representatives, the Hon Leo McLeay MP, wrote to the then Chairman of the JCPA, the Hon Gary Punch MP, commenting on the need for a separate audit committee:

*it would be neither necessary nor appropriate for the Presiding Officers to participate, but it would be desirable for the members of a committee of this nature to have a sound knowledge of the operations of the Audit Office.*

*If the Parliament is to scrutinise the activities of the Audit Office more closely than it does at present, the President and I share the view that the best solution is for the role to be performed by the Joint Committee of Public Accounts. Your committee has the power to undertake the task and its members have developed relevant knowledge through the committee's ongoing activities in scrutinising public administration and examining reports of the Auditor-General.<sup>8</sup>*

<sup>8</sup> Speaker of the House of Representatives, the Hon Leo McLeay MP, to the Chairman, JCPA, the Hon Garry Punch MP, *Correspondence*, 2 September 1991.

5.21 More recently, the current President of the Senate, Senator the Hon Michael Beahan, stated in correspondence to the Committee that:

*In my view the functions of such a committee should be discharged by the Public Accounts Committee which already has the necessary skills and experience. The establishment of a new committee with all that that involves in terms of costs and demands on members' time is not justified.*

*I also believe that my involvement in a separate audit committee would not be appropriate... the committee should reflect the views of backbench members of parliament rather than parliamentary office-holders.<sup>9</sup>*

5.22 In correspondence to the Committee, the current Speaker of the House of Representatives, the Hon Stephen Martin MP, declined to comment on the issue as Senator Ray's motion was currently before the Senate.<sup>10</sup>

#### *Support for the JCPA from Others*

5.23 In his response to *Report 296*, the Auditor-General supported the JCPA's recommendation for the creation of an audit committee of Parliament.<sup>11</sup>

5.24 In his formal response to the introduction of the financial management and audit legislation, the Auditor-General offered the codicil that:

<sup>9</sup> The President of the Senate, Senator the Hon Michael Beahan to Chairman of the JCPA, Mr Les Scott MP, *Correspondence*, 30 August 1994.

<sup>10</sup> Speaker of the House of Representatives, the Hon Stephen Martin MP, to Chairman of the JCPA, Mr Les Scott, MP, *Correspondence*, 5 August 1994.

<sup>11</sup> Auditor-General, *Accountability, Independence and Objectivity - A response to Report 296 of the Parliamentary Joint Committee of Public Accounts*, AGPS, Canberra, September 1989, pp. 35-6.

*It should be noted that the Audit Committee could be constituted by the Joint Committee of Public Accounts. I would be happy to support such a decision by the Parliament.<sup>12</sup>*

5.25 The Auditor-General of New South Wales echoed this sentiment, stating that giving the JCPA the functions of an audit committee would be 'a better result than that which is proposed.'<sup>13</sup>

5.26 Professor Finn of the Australian National University has also commented that:

*it seems to me that the JCPA in our system is properly positioned to discharge the type of role that I would envisage for an audit committee.<sup>14</sup>*

### **Amendments to the Public Accounts Committee Act 1951**

#### *Statutory Recognition of an Audit Committee*

5.27 The Auditor-General believes that an audit committee of Parliament should be given statutory recognition, arguing that:

*Given its importance, it is considered appropriate that the Audit Committee be established by legislation and its responsibilities, membership and reporting arrangements also be set out in the legislation rather than be left for decision by each new Parliament.<sup>15</sup>*

<sup>12</sup> Auditor-General, *Audit Report No. 43 of 1993-94*, p. 10.

<sup>13</sup> Auditor-General of NSW, *Transcript*, p. 256 (Canberra, 27 July 1994).

<sup>14</sup> Professor Finn, *Transcript*, p. 272 (Canberra, 8 August 1994).

<sup>15</sup> Auditor-General, *Audit Report No. 43 of 1993-94*, p. 10.

5.28 The Government, on the other hand believes that the establishment of such a committee is 'a matter for the Parliament under its own procedures, not a matter for legislation' as 'this approach allows the Parliament greater flexibility to vary [an audit committee's] charter in response to changing circumstances'.<sup>16</sup>

5.29 The JCPA believes it highly desirable that an audit committee of Parliament be given statutory recognition to give the necessary permanence to such an important committee.

5.30 The Committee believes that statutory recognition can be most appropriately achieved by amending the *Public Accounts Committee Act 1951*. This Act details the membership, duties and functions of the JCPA and should be amended to give the JCPA the additional powers to perform the functions of a parliamentary audit committee.

5.31 However, the JCPA believes it important that the JCPA's function as an audit committee should be clearly distinct from its traditional functions. To clarify the distinction, the JCPA believes that the Public Accounts Committee Act should require the JCPA to convene as the Audit Committee of Parliament when performing audit committee functions. This proposal is somewhat analogous to the practice adopted by the Senate, and formerly adopted by the House, of dissolving into Committees of the whole when considering legislation in detail.

5.32 The distinction could be further emphasised by an amendment to the Public Accounts Committee Act to change the Committee's name to Joint Committee of Public Accounts and Audit.

5.33 The functions of the JCPA, when convening as the Audit Committee of Parliament, should include those contained in the Notice of Motion moved in the Senate by Senator the Hon Robert Ray on 28 June 1994, as modified by Recommendations No. 19, 20, 33, 35 and 36 above.

<sup>16</sup> Minister for Finance, *Government Response to Audit Report No.432*, pp. 2-3.

5.34 Accordingly, the Committee makes the following recommendations:

5.35 Recommendation 37

*The Public Accounts Committee Act 1951 should be amended by inclusion of a separate section empowering the Joint Committee of Public Accounts to perform the functions of the Audit Committee of Parliament. The amendment should:*

- (a) *change the name of the Committee to Joint Committee of Public Accounts and Audit;*
- (b) *list the functions to be performed by the JCPA when convening as the Audit Committee of Parliament; and*
- (c) *confer the same powers and privileges to the Joint Committee of Public Accounts when carrying out its audit committee functions as when carrying out its traditional duties.*

5.36 Recommendation 38

*The functions of the JCPA, when convening as the Audit Committee of Parliament, should be the same as those proposed in the Notice of Motion moved in the Senate by Senator the Hon Robert Ray on 28 June 1994, as modified by Recommendations No. 19, 20, 33, 35 and 36.*

*Membership of the JCPA*

5.37 In Report 296, the JCPA was conscious of the need to ensure representation for minor parties on the audit committee, and recommended that one of the nine members be:

*a Parliamentarian who is a member of a minority party which is not part of the Government or Opposition.<sup>17</sup>*

<sup>17</sup> JCPA, Report 296, para. 5.57.

5.38 The Government's model reserves a position on the audit committee for 'one Senator to be nominated by any minority groups or independent Senators'.<sup>18</sup>

5.39 The JCPA believes it is important that minority parties and independents should be represented on the audit committee. This is most appropriately achieved by increasing the membership of the JCPA by one and reserving the extra position for a representative of any minority groups or independents in Parliament. The JCPA believes the position should be available for any parliamentarian and not just a Senator, as in the Government model. If no such person exists, then the position should be filled according to the practice of the Parliament at that time for joint committees.

5.40 Recommendation 39

*Section 5 of the Public Accounts Committee Act 1951 be amended to increase membership of the Joint Committee of Public Accounts to 16 members. The Act should state that the extra position is to be reserved for a parliamentarian nominated by any minority groups or independents in the Parliament. If no such person exists, then the position should be filled according to the practice of the Parliament at that time for joint committees.*

*Transitional Arrangements*

5.41 The Committee believes that it is desirable to set in place transitional arrangements pending the passage of the necessary amendments to the Public Accounts Committee Act.

5.42 Section 8(1) of the Public Accounts Committee Act empowers the JCPA to conduct 'other duties as are assigned to the Committee by Joint Standing Orders approved by both Houses of Parliament'. This power could be used to confer on

<sup>18</sup> See Appendix 2.

the JCPA the duties and functions of an audit committee. The Joint Standing Orders could be repealed as soon as the necessary amendments to the Public Accounts Committee Act have been made.

5.43 The Committee proposes that, in due course, its Chairman shall move the following motion in the House of Representatives:

(1) That, pursuant to section 8(1) of the *Public Accounts Committee Act 1951*, the following additional duties be assigned to the Joint Committee of Public Accounts:

- (a) to advise the Auditor-General of the Committee's audit priorities in respect of Commonwealth bodies;
- (b) to advise the responsible Minister in relation to a government business enterprise (GBE) that the Committee attaches a priority to a performance audit being undertaken of certain activities of that GBE, and, where appropriate, to request that the Auditor-General undertake the performance audit; and
- (c) consider the resources of the ANAO for the purposes of assessing the effectiveness of the ANAO in undertaking its charter and the adequacy of resource levels, including charge-out rates, to undertake an appropriate program of audit coverage; and as appropriate, make recommendations to the Auditor-General and/or the Executive Government;
- (d) to advise the Independent Auditor of the Committee's audit priorities in respect of the Australian National Audit Office; and
- (e) report to both Houses on any matters arising out of the Committee's consideration of ANAO resources, reports of the Independent Auditor on the operation of the ANAO, or other matters relating to the performance of the Auditor-General's functions which the Committee considers should be drawn to the attention of the Parliament.

(2) That when performing the duties described above the Joint Committee of Public Accounts shall convene as the Audit Committee of Parliament.

(3) That the membership of the Joint Committee of Public Accounts shall be supplemented by one Member of the House of Representatives or Senate to be nominated by any minority group or independent Member or Senator.

(4) That a message be sent to the Senate acquainting it of this resolution and requesting that it concur and take action accordingly.



Les Scott, MP  
Chairman

19 September 1994



## APPENDIX I - REFERRAL OF BILLS TO THE JCPA

### FINANCIAL MANAGEMENT AND ACCOUNTABILITY BILL 1994

#### First Reading

Bill presented by Mr Beazley, and read a first time.

Explanatory memorandum presented by Mr Beazley; ordered that the second reading be made an order of the day for the next sitting.

### COMMONWEALTH AUTHORITIES AND COMPANIES BILL 1994

#### First Reading

Bill presented by Mr Beazley, and read a first time.

Explanatory memorandum presented by Mr Beazley; ordered that the second reading be made an order of the day for the next sitting.

### AUDITOR-GENERAL BILL 1994

#### First Reading

Bill presented by Mr Beazley, and read a first time.

Explanatory memorandum presented by Mr Beazley; ordered that the second reading be made an order of the day for the next sitting.

### FINANCIAL MANAGEMENT AND ACCOUNTABILITY BILL 1994

### COMMONWEALTH AUTHORITIES AND COMPANIES BILL 1994

### AUDITOR-GENERAL BILL 1994

#### Reference to Committee

Mr BEAZLEY (Swan—Leader of the House) (5.04 p.m.)—I move:

- (1) That:
  - (a) subsequent to the presentation and first reading of the Financial Management and Accountability Bill 1994, the Commonwealth Authorities and Companies Bill 1994 and the Auditor-General Bill 1994 and associated memoranda, the Bills be referred to the Joint Committee of Public Accounts for consideration and an advisory report to the House by 23 August 1994; and
  - (b) the terms of this resolution, so far as they are inconsistent with the standing and sessional orders, have effect notwithstanding anything contained in the standing and sessional orders.
- (2) That a message be sent to the Senate acquainting it of this reference to the committee.

In moving that the package of bills be referred to the Joint Committee of Public Accounts for examination and report by the fourth week of the spring sittings, I need to

point out that in accordance with standing orders the second readings of this package of bills will take place in the next week of sittings; that is, in the first week of the spring sittings. These bills, like few others, will ultimately have an impact on the entire field of government activity, simply because almost every action of the government has a financial implication.

The JCPA was the body which initiated action to replace the Audit Act and the government believes that it should be the body to formally examine, in the first instance and on behalf of the parliament, the proposed outcome of this action. The government believes that with these bills having a large technical content input from the JCPA, it will assist the debate, which, as I have previously announced, is intended to take place in the spring sittings.

The government sees the referral of bills to the JCPA as akin to issuing them as an exposure draft. Members wishing to contribute to the consideration of the package should feel encouraged to do so, either through the proceedings of the JCPA or direct

to the government. Either way, their views will be taken into account. Further consideration of this package will also occur in the government's own committee process. Our committees will be giving more detailed consideration to this package and any amendments forthcoming from the other channels that I referred to.

This is a most important set of changes to the Audit Act, which I do not think has been much altered since it was first put in place in 1901. I think it behoves us to give this process a leg along, which means that we have to proceed with a reasonable degree of expedition. Otherwise it will get bogged down and then nothing will be achieved. I should point out that the committee that gave this consideration did so some years ago. It has taken a long time to get to this point because there has had to be an infinite variety of consultation through departments, through government business enterprises and, of course, with the Auditor-General's office and other aspects more informal of the political process.

Cabinet has had a look at the matter and I think we are now in a situation where some structure has to be put into those considerations. These bills do put that structure into the further consideration. The Joint Committee of Public Accounts has done a fine job in this area thus far, so I think it is totally appropriate that we and the Senate should have its advice on how it thinks we have measured up to the sorts of things it thinks are important in this area.

I might say that members of my own party will want a bit of a further look at these things—I am sure members of the opposition parties also will want a bit of a look at these things—but the way in which we have ordered business in this place, which I think is very much for the better, means that if we are actually going to have this package through by Christmas there needs to be a formal introduction effectively right now.

A whole series of purposes is served by this process. The way in which we are doing it effectively creates something of the nature of an exposure draft without actually formally entitling it as such. From the arrangements we have informally with colleagues on all sides of the Senate, the passage of this by Christmas will be comfortable, provided that at the end of the day they like the product. The way in which attention has been paid these matters by all the people that I have referred to, I think, amply justifies decent handling of it by the parliament.

As I have indicated, virtually by implication in the things that I have been saying, the government is not so proud of its authorship in this regard that it is going to take umbrage at getting additional advice from any sources and we look forward to the consultative processes yet in hand.

Question resolved in the affirmative.



## APPENDIX II - MOTION BY SENATOR ROBERT RAY TO ESTABLISH AN AUDIT COMMITTEE

### NOTICES OF MOTION

#### Audit Committee of Parliament

Senator ROBERT RAY (Victoria—  
Minister for Defence)—I give notice that, on  
the next day of sitting, I shall move:

- (1) That a joint standing committee, to be known as the Audit Committee of Parliament, be appointed to:
  - (a) advise the Auditor-General of the committee's audit priorities in respect of Commonwealth bodies;
  - (b) advise the responsible Minister in relation to a government business enterprise (GBE) that the committee attaches a priority to a performance audit being undertaken of certain activities of that GBE, for the purpose of requesting that Minister, where appropriate, to seek the Auditor-General's agreement to undertake the performance audit;
  - (c) consider the resources of the Australian National Audit Office (ANAO) for the purposes of assessing the effectiveness of the ANAO in undertaking its charter and the adequacy of resource levels, including charge-out rates, to undertake an appropriate program of audit coverage; and as appropriate, make recommendations to the Auditor-General and/or the Executive Government; and
  - (d) report to both Houses on any matters arising out of the committee's consideration of ANAO resources, reports of the Independent Auditor on the operations of the ANAO, or other matters relating to the performance of the Auditor-General's functions which the committee considers should be drawn to the attention of the Parliament.
- (2) That the committee consist of:
  - (a) the Speaker of the House and the President of the Senate each alternating as chairman and deputy chairman for periods determined by the committee;
  - (b) the chairman of the Joint Committee of Public Accounts;
  - (c) two Members of the House of Representatives to be nominated by the Government Whip or Whips, three Members of the House of Representatives to be nominated by the Opposition Whip or Whips; and
  - (d) one Senator to be nominated by the Leader of the Government in the Senate, one Senator to be nominated by the Leader of the Opposition in the Senate, and one Senator to be nominated by any minority groups or independent Senators.
- (3) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.
- (4) That the members of the committee hold office as a joint standing committee until the House of Representatives is dissolved or expires by effluxion of time.
- (5) That the deputy chairman shall act as chairman of the committee at any time when the chairman is not present at a meeting of the committee, and that at any time when the chairman and deputy chairman are not present at a meeting of the committee, the members present shall elect another member to act as chairman at that meeting.
- (6) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any of the matters which the committee is empowered to examine.
- (7) That the committee appoint the chairman of each subcommittee who shall have a casting vote only, and at the time when the chairman of a subcommittee is not present at a meeting of a subcommittee, the members of the subcommittee present shall elect another member of that subcommittee to act as chairman at that meeting.
- (8) That the committee or any subcommittee have power to send for persons, papers and records, to move from place to place, to adjourn from time to time, and to sit during any adjournment of the Senate and the House of Representatives.
- (9) That five members of the committee constitute a quorum of the committee, and a majority of members of a subcommittee constitute a quorum of that subcommittee.

- (10) That in matters of procedure the chairman or deputy chairman presiding at the meeting have a deliberative vote and, in the event of an equality of voting, have a casting vote, and that, in other matters, the chairman or deputy chairman have a deliberative vote only.
- (11) That members of the committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.
- (12) That the committee have leave to report from time to time.
- (13) That a message be sent to the House of Representatives acquainting it of this resolution and requesting that it concur and take action accordingly.



APPENDIX III - MOTION BY  
SENATOR BRIAN GIBSON TO  
REFER THE PROPOSED  
ESTABLISHMENT OF AN AUDIT  
COMMITTEE TO THE JCPA

COMMITTEES

Public Accounts Committee

Reference

Motion (by Senator Gibson)—by leave—  
agreed to:

That the proposed resolution for the establishment of an Audit Committee be referred to the Joint Committee of Public Accounts for inquiry and report by 23 August 1994, and that the committee, in conducting its inquiry, give particular attention to the appropriateness of establishing a separate committee rather than conferring the functions of the proposed committee on the Joint Committee of Public Accounts.



## APPENDIX IV - SUBMISSIONS

## Submissions

1	Auditor-General of New South Wales	17	Department of Defence
2	Snowy Mountains Hydro-Electric Authority	18	Australian Maritime Safety Authority
3	Professor R S Parker,	19	CSIRO Australia
4	Seafarers Safety, Rehabilitation and Compensation	20	Defence Housing Authority
5	Independent Auditor of the Audit Office, Ernst & Young	21	Coopers & Lybrand
6	Professor R Coombes, University of South Queensland	22	Grains Research and Development Corporation
7	Commonwealth Bank of Australia	23	Australian Industry Development Corporation
8	Special Broadcasting Service	24	Australian Defence Industries Ltd
9	National Road Transport Commission	25	Department of Industry, Science and Technology
10	Auditor-General of New South Wales	26	National Library of Australia
11	Civil Aviation Authority	27	Australian Broadcasting Corporation
12	Acting Auditor-General of Western Australia	28	ANL Limited
13	National Standards Commission	29	Department of Transport
14	Dr J Uhr, Australian National University	30	Commonwealth Funds Management Limited
15	Auditor-General of Queensland	31	The Institute of Chartered Accountants in Australia and Australian Society of CPAs
16	Australian Technology Group Ltd	32	Community and Public Sector Union
		33	Auditor-General for Tasmania
		34	The Institute of Internal Auditors - Australia, Canberra Branch
		35	Australian Maritime College
		36	AeroSpace Technologies of Australia Limited

- 37 Department of Foreign Affairs and Trade
- 38 Department of Veterans' Affairs
- 39 Grains Council of Australia
- 40 The Australian National University
- 41 Australasian Council of Auditors-General
- 42 Federal Airports Corporation
- 43 Australian National Audit Office
- 44 Grains Research and Development Corporation
- 45 Export Finance and Insurance Corporation
- 46 University of New South Wales
- 47 Australian Film Finance Corporation
- 48 Department of Human Services & Health
- 49 Department of Communications and the Arts
- 50 Telstra
- 51 Aboriginal and Torres Strait Islander Commission
- 52 Community and Public Sector Union
- 53 Department of Housing and Regional Development
- 54 Auditor-General for the Northern Territory
- 55 Professor Allan Barton, Australian National University
- 56 Australian Maritime College
- 57 Australian National Audit Office

- 58 Australian Dairy Industry Council Inc
- 59 Commonwealth Bank of Australia
- 60 Department of Finance
- 61 Mr W Funnell, University of Wollongong
- 62 National Farmers Federation
- 63 Australian Defence Industries
- 64 Department of Finance
- 65 Australian Dairy Corporation
- 66 National Gallery of Australia



APPENDIX V - EXHIBITS

**Exhibits**

- 1 Australian National Audit Office, 'Performance Audit Savings 1993-94'



APPENDIX VI - WITNESSES AT  
PUBLIC HEARINGS

**Thursday, 7 July 1994**

*Department of Finance*

Mr Ian McPhee, First Assistant Secretary, Financial Management Division  
Mr George Carter, Special Adviser, Accounting  
Mr Maurice Kennedy, Assistant Secretary, Financial Administration Advisory Branch  
Mr Dean Wallace, Assistant Secretary, Public Administration and Accounting Development Branch

**Friday, 8 July 1994**

*Australian National Audit Office*

Mr John Taylor, Auditor-General  
Mr Warren Cochrane, Acting National Business Director  
Mr Russell Coleman, Executive Director, Policy and Evaluation Branch  
Mr Edward Hay, Group Director  
Mr William Nelson, Acting National Business Director, Financial Audit

**Tuesday, 26 July 1994**

*Community and Public Sector Union*

Ms Julie Pagonis, National Industrial Officer  
Mr James Grenfell, Workplace Delegate

*Department of Transport*

Mr Mike Waller, Deputy Secretary (Transport Policy)  
 Miss Joanne Blackburn, Assistant Secretary, Legal and  
 Coordination Branch  
 Dr David Stephens, Director, GBE Policy and Coordination  
 Mr Neil Williams, Assistant Director, GBE Policy and  
 Coordination

*Grains Council of Australia*

Mr Robert Barry, Non-executive Director, Australian Wheat  
 Board  
 Mr Mitchell Hooke, Executive Director  
 Mr Jock Kreitals, Senior Economist  
 Mr Peter McKeown, Board Secretary and General Legal  
 Counsel, Australian Wheat Board  
 Mr Charles Norris, Senior Management Audit, Australian  
 Wheat Board

*Grains Research and Development Corporation*

Mr Andrew Inglis, Chairman of Chairs of Research and  
 Development Corporations and Council  
 Mr Stephen Penhall, Business Manager  
 Mr William Conley, Partner, Blake Dawson Waldron  
 Solicitors

**Wednesday, 27 July 1994**

*Australian Society of Certified Practising Accountants*

Mr Francis Alfredson, Chairman, Audit Centre for  
 Excellence  
 Mr Michael McKenna, Executive Director

*Australian Maritime College*

Mr John Foster, Company Manager  
 Mr David Crockett, Deputy Director Corporate Services -  
 Finance and Property  
 Mr Christopher Chenoweth, Partner, Mallesons Stephens  
 Jaques, Canberra, Adviser to Australian Maritime College

*Commonwealth Bank of Australia*

Mr David Murray, Managing Director and Chief Executive  
 Officer  
 Mr Leslie Taylor, Chief Solicitor and General Counsel

*CSIRO*

Ms Michelle Narracott, Assistant Manager, Legal Affairs  
 Mr Michael Parkinson, Manager, Corporate Audit

*Independent Auditor of the Audit Office*

Mr David Boymal, Partner and National Director of  
 Accounting and Auditing, Ernst & Young

*Institute of Chartered Accountants in Australia*

Mr Ian Mackintosh, Representative  
 Mr Alan Talbot, Representative

*Auditor-General of New South Wales*

Mr Anthony Harris

**Monday, 8 August 1994**

*Australian National University*

Professor Allan Barton, Pro Vice-Chancellor (Finance and Fabric)

*Department of Communications and the Arts*

Mr Michael Hutchinson, Deputy Secretary, Communications Section

Mr Michael Coley, Director, Film Support and Broadcasting Section

Mr Colin Lyons, Principal Solicitor, Legal Section

Mr Antony Martin, Acting Director, Cultural Access Section

Mr Richard Thwaites, Special Adviser, Corporate Management

*Federal Airports Corporation*

Ms Helen Burgess, Corporate Solicitor

*Private Citizens*

Professor Paul Finn

**Wednesday, 17 August 1994**

*Australian Defence Industries*

Mr Ken Harris, Managing Director

*Department of Finance*

Mr Ian McPhee, First Assistant Secretary, Financial Management Division

Mr George Carter, Special Adviser (Accounting), Public Administration and Accounting Development

Mr Gavin Ford, Director, Government Business Enterprise Policy Section, Transport and Government Division

Mr Maurice Kennedy, Assistant Secretary, Financial Administration Advisory

Mr Dean Wallace, Assistant Secretary, Public Administration and Accounting Development

*Australian National Audit Office*

Mr John Taylor, Auditor-General

Mr Warren Cochrane, Acting National Business Director

Mr Russell Coleman, Executive Director, Policy and Evaluation Branch

Mr Edward Hay, Group Director

## APPENDIX VII - PROPOSED FMA AGENCIES

The following list of organisations represents the list of *Proposed Agencies* under the FMA Act (ie., Commonwealth Bodies dealing in Public Moneys - refer to Note 2 Definitions).

### FMA Agencies - General

1. Administrative Appeals Tribunal
2. Affirmative Action Agency
3. AUSTRAC
4. Australia-Japan Foundation \*\*
5. Australian Bureau of Statistics
6. Australian Centre for International Agricultural Research \*\*
7. Australian Customs Service
8. Australian Electoral Commission
9. Australian Federal Police
10. Australian Industrial Registry
11. Australian National Audit Office
12. Australian Secret Intelligence Service
13. Australian Security Intelligence Organisation
14. Australian Taxation Office
15. Commonwealth Ombudsman Office
16. ComSuper
17. Family Court of Australia
18. Federal Court of Australia
19. Human Rights & Equal Opportunity Commission
20. The Industrial Relations Court
21. Industry Commission
22. Insurance & Superannuation Commission
23. Inter-State Commission
24. Merit Protection & Review Agency
25. National Capital Planning Authority
26. National Crime Authority
27. National Native Title Tribunal

28. Office of Inspector-General of Intelligence & Security
29. Office of National Assessments
30. Office of Parliamentary Counsel
31. Office of Director of Public Prosecutions
32. Office of Public Service Commission
33. Official Secretary to the Governor-General
34. Prices Surveillance Authority
35. Professional Services Review Panel
36. Textiles, Clothing & Footwear Development Authority
37. Trade Practices Commission \*\*
38. Spectrum Management Agency

### CAC Bodies Prescribed as 'FMA Agencies' for Public Money that they Handle

39. Aboriginal & Torres Strait Islander Commission \*
40. Australian Securities Commission \*

### Parliamentary Departments and Departments of States

41. Department of the Senate
42. Department of the House of Representatives
43. Department of the Parliamentary Reporting Staff
44. Department of the Parliamentary Library
45. Joint House Department
46. Department of Administrative Services
47. Attorney-General's Department
48. Department of Communications & the Arts
49. Department of Defence
50. Department of Environment, Sport & Territories
51. Department of Employment, Education & Training
52. Department of Finance
53. Department of Foreign Affairs & Trade
54. Department of Housing & Regional Development
55. Department of Human Services & Health
56. Department of Immigration & Ethnic Affairs
57. Department of Industrial Relations
58. Department of Industry, Science & Technology
59. Department of Primary Industries & Energy
60. Department of Prime Minister & Cabinet

- 61. Department of Social Security
- 62. Department of Tourism
- 63. Department of Transport
- 64. Department of the Treasury
- 65. Department of Veterans' Affairs

**Note:**

1. Certain organisations which, on the face of it, are not FMA Agencies, may nonetheless, be affected by the FMA Act. For example:

\* ATSIIC and the ASC are subject to both the FMA Act and the Commonwealth Authorities & Companies Act (CAC Act): - the ASC for instance collects significant amounts of revenue (eg. filing fees) on behalf of the Commonwealth and therefore it would be required to deal with those monies and report annually on them in accordance with the FMA Act. For the money that the ASC holds in its own right, the CAC Act would apply. This is similar for the ATSIIC.

\*\* The Australia-Japan Foundation, the Australian Centre for International Agricultural Research and the Trade Practices Commission are all Bodies Corporate, but deal with public monies only - they will operate under the FMA Act only.

2. The definition under the Act describes 'Agency' to mean:
- (a) a Department of State, including persons who are allocated to the Department (for the purposes of this Act) by regulations made for the purposes of this paragraph;
  - (b) a Department of the Parliament, including persons who are allocated to the Department (for the purposes of this Act) by regulations made for the purposes of this paragraph;
  - (c) a prescribed Agency.

TABLE 14 - COMMONWEALTH DEPARTMENTS, TRUSTS, OTHER AGENCIES AND ENTITIES as at 30 JUNE 1993

DEPARTMENTS OF STATE AND OTHER STATE DEPARTMENTS (N) = does not operate on CPA	TRUSTS (all operating on CPA) (may or may not be budget funded)	OTHER PREDOMINANTLY BUDGET FUNDED AGENCIES OPERATING ON THE CPA	PREDOMINANTLY BUDGET FUNDED ENTITIES NOT OPERATING ON THE CPA	OTHER ENTITIES - NOT OPERATING ON THE CPA AND NOT NORMALLY RECEIVING BUDGET FUNDING # = received funds in 1992/93
Senate	Senate - Services for other governments and non-departmental bodies	National Film and Sound Archive	Australian Film Commission	Australian Film Finance Corp P/L
House of Representatives	OTM - House of Representatives Training Assistance to other Parliaments House of Representatives - Services for other governments and non-departmental bodies Parliamentary Reporting Staff - Services for other governments and non-departmental bodies	National Science and Technology Centre	Australian Film, Television and Radio School National Gallery of Australia Australia Council National Library of Australia National Museum of Australia Australian National Maritime Museum	Film Australia P/L Australian Children's Television Foundation -ACTF Productions Ltd National Institute of Dramatic Art National Australia Day Council
Parliamentary Reporting Staff	Parliamentary Reporting Staff - Services for other governments and non-departmental bodies			
Parliamentary Library	Parliamentary Library - Services for other governments and non-departmental bodies			
Joint House	Joint House - Services for other governments and non-departmental bodies			
Arts and Administrative Services	OTM - Arts and Administrative Services Arts and Administrative Services - Services for other governments and non-departmental bodies Artsbank Trust Account Arts Commissions National Film and Sound Archive Fund Caulfield Reserve T/A Contributions to the National Science and Technology Centre Australian Film Industry Cultural Ministers' Council Political Exchange Program Australia Prosperity Group T/A Australian Government Publishing Service T/A Business Services T/A Transport and Storage Group Property Rationalisation T/A			
Australian Electoral Commission	Australian Electoral Commission - Services for other governments and non-departmental bodies OTM - Australian Electoral Commission			

\* THESE ENTITIES INCLUDE COMPANIES AND INCORPORATED ASSOCIATIONS WHICH THE GOVERNMENT CONTROLS. 'Control' means the capacity of an entity to dominate decision making, directly or indirectly, in relation to the financial and operating policies of another entity so as to enable that other entity to operate with it in achieving the objectives of the controlling entity. 'G' indicates a company limited by guarantee.  
N.B. Shaded area represents those departments, trusts, agencies and entities operating on the Commonwealth Public Account.

Table 14 - Commonwealth Departments, Trusts, Other Agencies and Entities as at 30 June 1993 - continued

Attorney-Generals	Attorney-Generals Department - Services for other governments and non-departmental bodies Common Investment Fund Equalisation OTM - Attorney-Generals Office of Film and Literature Classification Public Awareness Campaign Companies Liquidation Account Client Money's Trust Account Australia Australian Protective Service T/A Companies Undisputed Money Confiscated Assets Trust Legal Practice Trust Account	Australian Bureau of Criminal Intelligence Australian Investigation Reports and Analysis Centre Commonwealth Reporting Service	Australian Institute of Criminology Australian Securities Commission Companies and Securities Advisory Committee Criminology Research Council Co-operative Companies and Securities Scheme High Court of Australia Law Reform Commission	Law Courts Ltd	G
Administrative Appeals Tribunal	Administrative Appeals Tribunal - Services for other governments and non-departmental bodies				
Australian Federal Police	OTM - Australian Federal Police Law Enforcement Projects Australian Federal Police - Services for other governments and non-departmental bodies				
Family Court of Australia	OTM - Family Court of Australia Family Court of Australia - Services for other governments and non-departmental bodies				
Federal Court of Australia	OTM - Federal Court of Australia Federal Court of Australia - Services for other governments and non-departmental bodies				
National Crime Authority	National Crime Authority - Services for other governments and non-departmental bodies				
Office of the Director of Public Prosecutions	OTM - Director of Public Prosecutions Law Enforcement Projects Director of Public Prosecutions - Services for other governments and non-departmental bodies				
Human Rights and Equal Opportunity Commission Australian Security Intelligence Organization (NSI)					
Office of Parliamentary Counsel	Office of Parliamentary Counsel - Services for other governments and non-departmental bodies				

Table 14 - Commonwealth Departments, Trusts, Other Agencies and Entities as at 30 June 1993 - continued

Defence	Defence - Projects for other governments and international bodies Defence - Services for non-departmental bodies Employment - Defence Polozhenko Legacy Fund OTM - Defence Young Endeavour Youth Program Defence Support Centre, Woomera	National Board of Employment, Education and Training	The Australian National University University of Canberra Anglo Australian Telescope Board Australian Maritime College Australian National Training Authority	Army and Air Force Canteen Service Defence Housing Authority Australian Military Forces Relief Trust Fund Royal Australian Air Force Veterans' Residences Trust Fund Royal Australian Air Force Welfare Trust Fund Royal Australian Navy Relief T/F CNITEK P/L Aerospace Technologies of Australia Pty Pacific Aerospace Properties Ltd Aero Chrome Plac Ltd Australian Defence Industries Limited Rudersan P/L Defence Technology Australia P/L -ANUTECH P/L	64% 100% 100% 100% -9%
Employment, Education and Training	Defence Science and Technology Organisation Commercial Activities Trust/Associations Employment, Education and Training - Services for other governments and non-departmental bodies OTM - Employment, Education and Training Higher Education T/A OTM - Aboriginal Affairs National Youth Affairs Research Scheme				G G G G
Environment, Sport and Territories	Environment, Sport and Territories - Services for other governments and non-departmental bodies OTM - Environment, Sport and Territories Christmas Island Trust Account Christmas Island Special Fund Australia and New Zealand Environment Council Fund/Account National Fitness Fund Steering Committee on Recreation and Sport Consultancy Fund Australian Capital Territory Government	Commonwealth Bureau of Meteorology	Australian National Parks and Wildlife Service Great Barrier Reef Marine Park Authority Australian Sports Drug Agency Australian Heritage Commission Australian Sports Commission	Phosphate Mining Co of Christmas Island Ltd	100% G



Table 14 - Commonwealth Departments, Trusts, Other Agencies and Entities as at 30 June 1993 - continued

Supervising Scientist and the Alligator Rivers Region Research Institute Finance	Supervising Scientist - Services for other governments and non-departmental bodies Public Trustee and Custodian Finance: Services for other governments and non-departmental bodies OTM: Finance Finance: Provision of Accounting Services to Concord Hospital, New South Wales Finance: Accounting Services Finance: Provision of accounting services to the ACT Government			
Australian National Audit Office	Australian National Audit Office: Services for other governments and non-departmental bodies			
Retirement Benefits Office	OTM: Retirement Benefits Office Retirement Benefits Office: Services for other governments and non-departmental bodies Commonwealth Superannuation Fund No.2		Commonwealth Superannuation Board of Trustees No.1	100% Commonwealth Funds Management Ltd 100% CFM (ADF) Ltd 100% CFM Balanced Funds 100% CFM Australian Equities Fund 100% CFM Fixed Interest Trust 100% CFM Cash Management Trust 100% CFM Cotton Fund 100% CFML Nominees P/L 100% Agriculture Australia P/L 100% Besoko P/L 100% Besome P/L 100% Bestori P/L 100% Besumi P/L 100% Besuro P/L 100% Betabu P/L 100% Betale P/L 100% Betako P/L 100% Berekren P/L 100% Betepa P/L 100% Betili P/L 100% Betimal P/L 100% Colly Farms Gin P/L 100% Colly Farms Marketing P/L 100% Colly Farms Risk Management P/L 100% Colly Farms Nominees P/L 100% The Colly Trust 100% Colly Hoochin Trading Co 100% Idamenco (NO.156) P/L 100% Idamenco (NO.158) P/L

Table 14 - Commonwealth Departments, Trusts, Other Agencies and Entities as at 30 June 1993 - continued

Foreign Affairs and Trade	OTM - Australian International Development Assistance Bureau OTM: Foreign Affairs and Trade Australia Abroad Council Ministerial Publications Foreign Affairs and Trade: Services for other governments and non-departmental bodies Australian-Indonesian Institute T/A Australia-China Council T/A Australia-France Endowment Australia-Japan Fund Australia-Japan Council T/A Australia-Korea Foundation T/A Australian International Development Assistance Bureau: Services for other governments and non-departmental bodies Consulting Services T/A Australia-New Zealand Foundation	Australian International Development Assistance Bureau Australia Japan Foundation		
Australian Centre for International Research (N)	Australian Centre for International Agricultural Research Trust Account			
Australian Secret Intelligence Service (N)				
Health, Housing, Local Government and Community Services	Australian Housing Research Centres The Nationally Funded Medical Specialty Centres Therapeutic Goods Administration National Child Care Strategy Australian Capital Territory New South Wales Northern Territory Queensland South Australia Tasmania Victoria Western Australia OTM: Health, Housing, Local Government and Community Services Health, Housing, Local Government and Community Services: Services for other governments and non-departmental bodies Commonwealth Rehabilitation Services Medical Research Endowment Fund Endowments: Health	Australian Institute of Health and Welfare Health Insurance Commission -Medicare -Pharmaceutical Benefits National Food Authority Australian Hearing Services Authority Albury-Wodonga Development Corporation	Commonwealth Serum Laboratories Ltd -Coeslo Finance P/L -Coeslo Insurance P/L -Filtren P/L -Mimitech Ltd Health Insurance Commission -Truck Dock P/L Health Insurance Commission -Medibank Private National Health and Medical Research Council Private Health Insurance Administration Council	100% 100% 100% 100% 50%
National Capital Planning Authority	OTM: National Capital Planning Authority			

Table 14 - Commonwealth Departments, Trusts, Other Agencies and Entities as at 30 June 1993 - continued

<p><b>Veterans Affairs</b></p> <p>OTM - Veterans Affairs                  Repatriation - Overseas Administrations                  Benefits T/A                  Veterans Affairs - Services for other governments and non-departmental bodies                  Repatriation Centres T/A                  Repatriation Hospitals                  Concord T/A                  Daw Park T/A                  Greenhalgh T/A                  Heidelberg T/A                  Hobart T/A                  Hollywood T/A                  Kempsie T/A                  Lady Davidson                  Macleod T/A                  Defence Service Homes Insurance T/A</p>	<p>Immigration Review Tribunal                  Refugee Review Tribunal</p>	<p>Australian War Memorial</p>	<p>G                  G</p> <p>Committee for the Allocation of Loan Funds to Refugees in Centres                  National Accreditation Authority</p>
<p><b>Immigration and Ethnic Affairs</b></p> <p>OTM - Immigration and Ethnic Affairs                  Immigration and Ethnic Affairs - Services for other governments and non-departmental bodies (COMCARE)                  Australian Population and Migration Research Program T/A</p>	<p>Remuneration Tribunal</p>	<p>Australian Trade Union Training Authority                  National Occupational Health and Safety Commission                  Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees                  Construction Industry Development Authority</p>	<p>Stevenson Industry Finance Committee</p>
<p><b>Industrial Relations</b></p> <p>Coal Mining Industry Long Service Leave                  Provision of Payroll Services to National Occupational Health and Safety Commission                  Industrial Relations - Services for other governments and non-departmental bodies (GOMCARE)                  Industrial Relations - services for other governments and non-departmental bodies                  OTM - Industrial Relations</p>			
<p><b>Affirmative Action Agency</b></p> <p>Australian Industrial Registry</p>			
<p><b>Industry, Technology and Regional Development</b></p> <p>Industry, Technology and Regional Development - Projects for other governments and international bodies                  OTM - Industry, Technology and Regional Development                  Asia Links                  Joint Accreditation Scheme                  Australia/New Zealand Building Research                  Australian Industrial Property Organisation                  Trust Account</p>	<p>Anti-Dumping Authority                  Australian Manufacturing Council Secretariat                  Patent, Trade Marks and Design Office                  Office of Northern Development</p>	<p>Australian Institute of Marine Science                  National Standards Commission                  Australian Nuclear Science and Technology Organisation                  Nuclear Safety Bureau</p>	<p>Export Finance &amp; Insurance Corp.                  Advance Australia Foundation</p> <p>100%                  G</p> <p>100%                  70%                  49%                  50%</p>

Table 14 - Commonwealth Departments, Trusts, Other Agencies and Entities as at 30 June 1993 - continued

<p><b>Industry, Technology and Regional Development (contd)</b></p> <p>Australian Manufacturing Council Secretariat (Industry Development Project)                  Australian Uniform Building Regulations                  Co-ordinating Council Research Fund                  Industry, Technology and Regional Development - Services for other governments and non-departmental bodies                  OTM - Patent, Trade Marks and Design Office                  Patent, Trade Marks and Design Office - services for other governments and non-departmental bodies                  Australia-Japan Joint Feasibility Study into the Multifunction Polls Proposal</p>	<p>Australian Outrigger and Inspection Service                  Australian Bureau of Agricultural and Resource Economics                  Bureau of Resources Systems                  Australian Geological Survey Organisation</p>	<p>Commonwealth Scientific and Industrial Research Organisation</p>	<p>100%                  100%                  35.1%                  50%                  16.1%                  34.7%                  17.2%                  100%                  100%                  25%                  100%                  80.6%                  80.6%</p> <p>-Dunlea P/L                  -Sirotech Ltd                  -Gropp P/L                  -Cassiro P/L                  -Preston Group Ltd                  -Genetech P/L                  -Bio-coat Biotechnique Co Ltd                  Snowy Mountains Engineering Corporation Ltd                  -SMEC (Malaysia) SDN BHD P/L                  -High Speed Rail Engineers P/L                  Australian Industry Development Corporation                  -AIDC Ltd                  -AIDC Executive Superannuation P/L                  -AIDC Leasing P/L                  -AIDC Securities Ltd                  -AIDC Staff Superannuation P/L                  -AIDC Telecommunications Fund Management P/L                  -Austind Develop (UK) Ltd                  -Southern Alloys Venture P/L                  -Development Fund Management P/L                  -Denon P/L                  -Managed Security Arrangers P/L</p>
<p><b>Australian Customs Services</b></p> <p>OTM - Customs                  Tradeable Fees                  Security Deposits                  Australian Customs Services - Services for other governments and non-departmental bodies</p>			
<p><b>Automotive Industry Authority</b></p> <p>Textiles, Clothing and Footwear Development Authority</p>			
<p><b>Primary Industries and Energy</b></p> <p>Bureau of Mineral Resources, Geology and Geophysics Research Trust Fund                  OTM - Pyramy Industries and Energy                  Primary Industries and Energy - Services for other governments and non-departmental bodies                  Income Equalization Deposits T/A                  Ranges Rehabilitation Trust Fund</p>	<p>Australian Outrigger and Inspection Service                  Australian Bureau of Agricultural and Resource Economics                  Bureau of Resources Systems                  Australian Geological Survey Organisation</p>	<p>Joint Coal Board                  Australian Fisheries Management Authority                  Australian Horticultural Corp.                  Meat Research Corp.                  Australian Pork Corporation                  Australian Wheat Board</p>	<p>100%                  100%                  100%                  100%</p> <p>Coal Mines Insurance P/L                  Snowy Mountains Hydro-electric Authority                  Pipeline Authority                  Australian Wine Research Institute</p> <p>100%                  G</p>

Table 14 - Commonwealth Departments, Trusts, Other Agencies and Entities as at 30 June 1993 - continued

Primary Industries and Energy (contd)	Coal Research Trust Account Exotic Animal Disease Preparedness T/A Forestry Trust Fund National Energy Conservation Publicity Campaign T/A National Resources Management Fund National Cattle Disease Eradication T/A Rabbit Industry Trust Fund Australian Quarantine and Inspection Service Trust Account Australia and New Zealand Minerals and Energy Council (ANZMIEC) Trust Account Trust Account	Australian Wine and Brandy Corp. 100% Dairy Research and Development Corporation 100% Australian Wool Corporation 100% Horticultural Research and Development Corporation Australian Tobacco Marketing Advisory Committee Honey Bee Research and Development Corporation Grape and Wine Research and Development Corp. Sugar Research and Development Corporation Rural Industries Research and Development Corp. Land and Water Resources Research and Development Corporation National Registration Authority Grains Research and Development Corporation Energy Research and Development Corporation Pig Research and Development Corp. Egg Research and Development Corp. Cotton Research and Development Corporation Murray-Darling Basin Commission Fisheries Research and Development Corporation Australian Wool Realisation Commission Wool Research and Development Corporation Australian Dairy Corporation 100%	Australian Wool 100% Thai Dairy Industry Co Ltd 31% G Australian Bicentennial Authority Edward River Crocodile Farm P/L 100% Danwei Enterprises P/L 51% Moor Moor Pastoral Co P/L 100% Saline P/L 100% Smith's General Contracting P/L 100% Yepermye P/L 100% Imparja Television P/L (1964-88 non-voting TV preference shares)
Prime Minister and Cabinet	OTM: Prime Minister and Cabinet Prime Minister and Cabinet - Services for other governments and non-departmental bodies Aboriginal Benefit T/A Governor-General's Office - Services for other governments and non-departmental bodies	Economic Planning Advisory Council Resources Assessment Commission Governor-General's Office with establishments	

Table 14 - Commonwealth Departments, Trusts, Other Agencies and Entities as at 30 June 1993 - continued

Prime Minister and Cabinet (contd)		Aboriginal and Torres Strait Islander Commercial Development Corp.	-Relkenet P/L -Peake P/L -Apwintive Pastoral Co. P/L	
Office of National Assessments				
Commonwealth Ombudsman				
Aspiration Science and Technology Council				
Marine Protection and Research Assoc.				
Office of the Inspector-General of Intelligence and Security		Australian Institute of Family Studies		
Office of the Public Service Commissioner				
Social Security	Public Service Commission - Services for other governments and non-departmental bodies The Public Service Management Course T/A OTM: Social Security Social Security - Victorian Government Education Expenses Allowance Louisa Jane Cave Prerogative Fund Social Security - Services for other governments and non-departmental bodies	Australian Tourist Commission		
Tourism	OTM: Tourism Tourism - Services for other governments and non-departmental bodies Australian Pavilion Expo 92, Seattle Australian Pavilion Expo 92, Seattle Bureau of Tourism Research T/A Omega Navigation Facility			
Transport and Communications	OTM: Transport and Communications Transport and Communications - Services for other governments and non-departmental bodies Australian Land Transport Development Incentive Trust Universal Service Fund	Australian Broadcasting Corp. Australian Broadcasting Tribunal Australian Telecommunications Authority Special Broadcasting Service AUSTEL 100%	-Datacast P/L -ABC Marketing P/L -Australian National Railways Commission -National Rail Corporation -Australian Maritime Safety Authority -Federal Airports Corporation -Badgers Creek Airport P/L -FAC Investment P/L -Airport Fine Foods P/L -Civil Aviation Authority -Intellitouch P/L -CAA Assets P/L -Australian Postal Corporation -Sprintpak P/L -GeoSpand -Australian Air Express	100% 100% 100% 100% 100% 52.5% 50% 100% 100% 100% 50%



