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Art Indemnity in Australia

1.1 During the course of this Parliament we have visited national, State and regional art galleries to discuss issues of concern to those working in this important sector of the arts industry.

1.2 A common theme that developed in our discussions with representatives of the galleries was art indemnity. Art Indemnity Australia (AIA) is the Commonwealth’s program and some States have indemnity schemes of their own. We discuss the Commonwealth and the State art indemnity schemes further in this Chapter.

1.3 Two issues of concern were raised with us by the State galleries. Firstly, some galleries were anxious to have direct access to the Commonwealth scheme and not be required to negotiate with one of the two managing organisations. In Chapter 2 we expand on this issue.

1.4 Secondly, some galleries were critical that they were not having Commonwealth indemnified major exhibitions visiting their venues as frequently as they would like. We discuss this issue in Chapter 3.

The Commonwealth scheme

Purpose

1.5 The Art Indemnity Australia (AIA) scheme was established in 1979. Under the AIA, the Commonwealth insures for compensation in the event of loss or damage to objects touring within Australia as part of major international exhibitions.

1.6 By indemnifying an exhibition, the Commonwealth removes the burden of the insurance and the cost of premiums from galleries and museums.

Therefore, AIA makes possible large, costly and time-consuming exhibitions. It assists in bringing major cultural exhibitions to Australia. The Department of Communications, Information Technology and the Arts (DCITA) stated that the purpose of the program is to:

- provide wide access by Australians to the most significant international and Australian cultural treasures; and
- promote bilateral cultural relations with other Nation States.[1]

Managing organisations

1.7 An essential feature of AIA is that access to the indemnity is restricted to two Managing Organisations (MOs): the National Gallery of Australia (NGA) and Art Exhibitions Australia (AEA). This limitation is on the basis that they are national organisations which operate a nation-wide program of exhibitions.

1.8 Following a review of AIA in 1990-91, the Commonwealth felt that by limiting AIA to two MOs, it could control and minimise the risk.[2] A further government review of the AIA in 1997 resulted in maintaining the limits to the two MOs.

1.9 The funding arrangements for the two MOs during an AIA exhibition differ. The financial arrangements of NGA managed exhibitions are based on shared risk-shared profit agreements with participating venues; costs are divided between the NGA and the other participating venues with each venue determining its own revenue arrangements through admissions and merchandise. Each venue works collaboratively for sponsorship for the national event.[3]

1.10 AEA is a self-funding body. It does not receive any money from the public sector, rather it relies on sponsorship from the corporate sector, admissions to exhibitions and remuneration from retail outlets. The AEA has raised $35 million from sponsors, had 15 million visitors to exhibitions and had a total turnover of $120 million.[4] Of 48 exhibitions managed by AEA up to July 2000, 31 ran at a loss and 17 resulted in a profit. According to AEA, the successful exhibitions cross-subsidised the less popular exhibitions.[5]

1 DCITA, *Submission No. 1*, p. 2.

2 Mr Marsden, DCITA, *Transcript*, 25 July 2000, p. CTA 3.

3 Mr Froud, NGA, *Transcript*, 25 July 2000, p. CTA 8.

4 Dr Edwards, AEA, *Transcript*, 20 July 2001, p. CTA 9.

5 Dr Edwards, AEA, *Transcript*, 25 July 2000, p. CTA 5.

1.11 All AIA exhibitions provide State galleries with the following benefits:

- profits for State and Territory venues, which receive at least 20% share of admission charges even if the exhibition makes a loss;
- shop revenues;
- flow-on benefits to local economies (*Van Gogh* exhibition contributed an estimated $23.6m to the Victorian economy);
- extending marketing;
- encouraging education programs and scholarships;
- widening the range of gallery visitors; and
- developing specialist skills of museum personnel.

Guidelines

1.12 DCITA is responsible for developing and enforcing the AIA's operational guidelines. Guidelines exist for policy, procedures, security and publicity. These guidelines have been developed over the course of the scheme (since 1979) with input from the MOs and the Australian Protective Service (APS). According to DCITA, they represent the world's best practice in art handling, exhibition security and management.[6]

1.13 The policy guidelines outline the criteria for the eligibility and suitability of an exhibition under the AIA scheme, including:

- the access objective - to provide the people of Australia with wide access to significant international and Australian cultural exhibitions;
- the exhibition must be of cultural, diplomatic and national significance;
- an exhibition must travel to at least two States or Territories;
- each venue must comply with AIA standards and procedures;
- the maximum indemnity limit is $2 billion (as of 1 July 2001);
- the minimum exhibition value is $20 million; and
- individual consignment is limited to $70 million, except in exceptional circumstances.[7]

1.14 DCITA takes advice from the APS in order to form a view and provide advice to the Minister on the security risks for every exhibition. Every

6 DCITA, *Submission No. 1.04*, p. 1.

7 DCITA, *Submission No. 1*, Attachment (Draft AIA Policy Guidelines, 9/4/01).

venue that shows an indemnified exhibition must be inspected by the APS. The security guidelines of the AIA include requirements on:

- the APS and MOs in ensuring the physical safety of the exhibits;
- vetting and professional expertise of personnel and organisations involved in exhibitions;
- regular assessments of exhibition venues;
- security assessments of each exhibition;
- procedures during transportation; and
- standards for storage and exhibition facilities.[8]

1.15 Every exhibition arranged under the auspices of the AIA is subjected to this thorough, well documented and long established security assessment and control process.[9]

The application process

1.16 To qualify for the AIA indemnity, each of the MOs are required to submit to the DCITA a 5-year schedule[10] of exhibitions annually and also to submit applications for each exhibition individually.

1.17 The DCITA reviews the applications, takes specialist advice from the APS, Interpol and ASIO on the transport and security arrangements, and advises the Minister on the priorities to be attached to the proposed schedules.

1.18 According to the AEA, ideas for exhibitions come from the galleries, museums, overseas institutions and the general public. When a proposal is forwarded to the AEA it is circulated to the major galleries to evaluate whether those projects would be of interest to their respective communities. When the galleries have determined whether they feel it is suitable, AEA looks at the feasibility of whether it can be carried out.[11]

1.19 The NGA described its exhibition development process as involving collaboration and consultation with state galleries, AEA and the DCITA.[12]

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8 DCITA, *Submission No. 1*, p. 3.

9 Dr Edwards, AEA, *Transcript*, 20 June 2001, p. CTA 12. See also Alan Froud, NGA, *Transcript*, 20 June 2001, p. CTA 13.

10 Mr McKay, Deputy Chairman of AEA referred to the life cycle of an exhibition which can be up to five years long in order for negotiations with lenders, curators and galleries to take place. *Transcript*, 8 August 2001, p. CTA2.

11 Dr Edwards, AEA, *Transcript*, 25 July 2000, p. CTA6.

12 Mr Froud, NGA, *Transcript*, 25 July 2000, p. CTA 7.

1.20 A flowchart of the application process is at Appendix B.

Cover

1.21 The indemnity limit in 1979 was $100m. This has been progressively increased over the ensuing years to $2 billion in July 2001.

1.22 The Commonwealth had always provided a guarantee against loss or damage under the AIA scheme. This self-insurance process meant that no premiums were paid and any successful claim would have been paid by the Commonwealth out of consolidated revenue. The loss of a significant indemnified work may have cost the Commonwealth many millions of dollars.

1.23 In 1998, the Commonwealth Government determined a general policy position to apply to all areas of government activity (not just the AIA), that it would identify and insure against all significant exposed risks. As a result Comcover was established within the portfolio of the Minister for Finance and Administration to coordinate the provision of insurance to cover the Commonwealth's exposed risk.[13]

1.24 Within the requirements of this general policy framework, the DCITA negotiated with Comcover to provide insurance for the AIA scheme starting on 1 July 2001.

1.25 DCITA stated that the new Comcover arrangements do not affect the administration or management of the scheme, nor the nature of cover offered to lenders.[14] Comcover representatives confirmed that they had no intention of interfering in the very effective day-to-day management of the scheme.[15]

Premiums

1.26 The exemplary record and reputation of the two MOs has enabled Comcover to negotiate a good deal for premiums to be paid for the AIA scheme. Further, Comcover, as the insurance provider for the Commonwealth, can go to the world market and obtain premiums that are very competitive compared to individual organisations.

13 Comcover was established in 1998 following a government decision that it would be proactive about identifying and insuring against exposed risks. All agencies in the general Commonwealth government sector are protected against major loss by Comcover. This means the overall budget is not subject to major fluctuations. See also www.dofa.gov.au/comcover.

14 Karen Gosling, DCITA, *Submission No. 1.04*, p. 5 & *Transcript*, 8 August 2001, p. CTA 6.

15 Mr Knapp, Comcover, *Transcript*, 8 August 2001, pp. CTA 8-9.

1.27 Comcover calculates its premiums by assessing the forward schedule of exhibitions provided by DCITA every year; the value of works, the duration of exhibitions and transit arrangements. Comcover operates on a cost recovery basis - with its premiums covering the cost of buying the insurance and its own administrative costs.

1.28 Premiums are to be paid by DCITA to Comcover annually. DCITA is currently being supplemented through the budget process to pay the premium. In the year 2001-2002, DCITA was supplemented $1.1 million for the AIA premium. DCITA claimed that the current information from the Minister for Finance is that on-going supplementation of $1.5 million will be provided in future years.[16]

1.29 The invoice from Comcover for the 2001-2002 financial year was $877,000. The premium for the 2002-2003 financial year is estimated to be $1.165 million, based on exhibitions totalling $2.6 billion.[17] Undoubtedly, in the event of a major incident involving damage to works of art, premiums would rise. However, the DCITA stated that at the current premium rates it expected to be able to cover $2 to $3 billion in total exhibitions per year.[18]

1.30 In the event of a claim, Comcover itself meets the first $1 million. An excess, calculated on a sliding scale of between $50,000 and $500,000 depending on the value of the damage, is paid by the relevant MO.[19] Anything in excess of this would be covered by commercial insurance.

1.31 The Deputy Director of AEA was concerned that in the future the cost of premiums will be passed on to the galleries and AEA. This, he claimed, would destroy the scheme because neither the AEA nor the galleries could sustain such costs. Also, he claimed that this would undermine the reputation of the scheme because exhibitions previously planned could not go ahead:

> Our fear is … that, as it now becomes an item in the department of art's budget, the user-pays principle may cause that premium to bring about a change in government policy. Our fear is that if the government policy of the past 21 years were to change and charges were to be made then we believe that will destroy what has been built up over the last 21 years. The economics of the industry cannot carry the cost.[20]

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16 Karen Gosling, DCITA, *Transcript*, 8 August 2001, p. CTA 10.

17 Mr Shepherd, Comcover, *Transcript*, 8 August 2001, p. CTA 20.

18 DCITA, *Submission No. 1.05*, p.2.

19 DCITA, *Submission No. 1*, Attachment (Draft AIA Policy Guidelines, 9/4/01).

20 Robert McKay, AEA, *Transcript*, 8 August 2001, p. CTA 22.

Comments on the new Comcover arrangements

1.32 We understand the reasons for the Government's policy decision to identify and explicitly provide insurance cover for all its exposed risk. Generally, it is a prudent approach to financial management.

1.33 In the particular instance of AIA, the move to insure against the risk of loss or damage to works of art in touring exhibitions does mean that the financial consequences of any catastrophic loss can be met without impact on the Commonwealth's budgetary position.

1.34 However, the move from self-insurance to purchased insurance for the AIA is not without cost to the Commonwealth and, potentially, to the scheme itself.

1.35 The AIA has operated with great success over the last 21 years, bringing exhibitions of extraordinary art to Australia – exhibitions which otherwise would not have been seen in Australia. The professionalism of those involved in the scheme is demonstrated by the fact that there have only been two, relatively minor, instances of damage to touring art works over the years, resulting in claims on the indemnity to the value of just $382 000. Amortised over the 22 years in which the scheme has operated this represents a direct cost to the Commonwealth of only $17 300 per year.

1.36 This admirable track-record, produced as a result of the expertise and professionalism of the MO's, suggests that self-insurance has worked to the Commonwealth's advantage.

1.37 The move to purchase insurance means that the Commonwealth will now be paying $1.5 million per year to achieve what it has achieved at no direct cost (other than the cost of prudent management) over the last 20 years. In our view, it is very difficult to assert confidently that this represents good value for money for the Commonwealth.

1.38 Of greater concern, however, is the fact that the insurance premium to be paid by DCITA could, potentially, be exposed to the vagaries of the Commonwealth's annual budgetary process.

1.39 Although DCITA is currently receiving budget supplementation to cover the cost of the AIA insurance premiums, the processes of government are such that it is inevitable that there will be pressure in future years from the central budget agencies to review the level of supplementation and to seek cost recovery from the users of AIA – that is, the two managing organisations.

1.40 Seeking to recover the cost of insurance premiums from the managing organisations would dramatically increase the cost of bringing major international works of art to Australia, undermining the viability of such exhibitions and, ultimately, defeating the original purpose of AIA (which was to ensure that Australians have access to exhibitions that would otherwise be too expensive to bring to Australia).

1.41 In our view, the new purchased insurance arrangements place the continuing successful operation of AIA in jeopardy.

1.42 The Commonwealth should not risk the collapse of the scheme by exposing it, on annual basis, to the over-zealous application of the user-pays principle.

1.43 A clear distinction can be drawn between the risks of claim against AIA and the many other exposed risks the Commonwealth is now seeking to cover by commercial insurance. For example, the AIA:

- has operated with great success and at almost no cost to the Commonwealth for over 20 years;
- the risk of claim has been managed extremely carefully and professionally, the two MO's in particular have demonstrated an extraordinary degree of diligence and expertise in applying the strict guidelines of the scheme, in managing safely and securely the transport, storage and display of the priceless art works in their care; and
- is directed at achieving an important cultural policy objective, that is to provide wide access to art works of international and national significance.

1.44 As identified by the Auditor-General, in his *Audit Report No. 47, 1997-98*, the vast majority of other Commonwealth indemnities relate to either:

- the business operations of government enterprises; or
- Defence acquisition programs.

1.45 Moreover, the exposure that some of these indemnities present to the Commonwealth cannot be specified and is therefore unlimited. We accept that it is appropriate to seek commercial insurance for these business-related risks. They are, however, very different from a risk that has been assumed for cultural policy reasons (that is, to provide wide access to art works of international and national significance) and in respect of which highly regarded and proven management expertise is in place.

1.46 Accordingly, we consider that the former self-insurance arrangements should be restored and we call on the Minister for Finance and Administration to exempt AIA from the Commonwealth's general policy of taking commercial insurance to cover exposed risk.

Recommendation 1

1.47 **The Minister for the Arts should ask the Minister for Finance and Administration to exempt Art Indemnity Australia from the Commonwealth's general policy of taking commercial insurance to cover exposed risk and to reinstitute self-insurance arrangements for the scheme.**

State indemnity schemes

1.48 All States have insurance arrangements in place to provide cover for the display of objects of material culture. Most States (NSW, WA, SA, QLD, VIC, TAS) have established specific programs for the insurance of touring art exhibitions. The ACT and NT provide indemnity for touring art exhibitions on an ad hoc basis.

1.49 The larger States (on a per capita basis) have large or no coverage limits, whereas the smaller States have reduced coverage limits. Most of the schemes cover exhibitions drawn from local, interstate, or international sources. Generally, insurance is provided for intra-state touring only.

1.50 A summary of State and Territory indemnity schemes is at Appendix B.