

## REPORTING AND ACCOUNTABILITY

### Introduction

- 5.1 A key requirement of GBEs is to report and account for their performance to shareholder Ministers and the Parliament. A range of reporting devices are used to keep both shareholder Ministers and the Parliament informed. These include, for example, statements of corporate intent, annual reports and, for shareholder Ministers, corporate plans.
- 5.2 The Parliament, through its committees, also has the opportunity to scrutinise GBEs through dedicated inquiries or annually through Senate Legislation Committees performing their estimates function. Some GBEs, including Telstra, have questioned the appropriateness of off-Budget agencies having to appear at estimates hearings. Telstra, for example, claims that it could be forced in Senate Estimates to release information which could disadvantage the corporation.
- 5.3 In addition, some GBEs claim that government reporting requirements are onerous and disadvantage them against their private sector competitors. These GBEs claim that, on the grounds of competitive neutrality, they should be subject solely to the Corporations Law. The Committee will examine these issues and make conclusions about the appropriateness of the Senate Estimates process and other reporting requirements.

## Background

- 5.4 A central feature of public accountability of GBEs is the tabling in Parliament of an annual report which includes audited financial statements. Humphry, in examining the 1993 GBE governance arrangements, indicated that accountability to Parliament is broader than the information provided in annual reports. Humphry stated that accountability to the Parliament is achieved through:
- the portfolio Minister, on behalf of the Government, through Parliamentary questions;
  - tabled reports of the Auditor-General; and
  - the operation of Parliamentary Committees including the various Senate Legislation Committees, the Public Works Committee and the JCPAA.<sup>1</sup>
- 5.5 A notable addition to the reporting and public accountability requirements for GBEs, recommended by Humphry<sup>2</sup> and included in the 1997 Governance Arrangements,<sup>3</sup> is the requirement for an annual Statement of Corporate Intent (SCI), to be tabled in Parliament.
- 5.6 The detailed reporting and public accountability requirements in the CAC Act, 1997 Governance Arrangements, and Corporations Law are highlighted in the following sections.

## Statement of Corporate Intent

- 5.7 The purpose of SCIs, identified by Humphry, is 'to establish an annual operating framework for each GBE' which should 'provide for greater clarity for Parliament, shareholder Ministers and a GBE's board and management as to the high level framework within which a GBE is to operate'.<sup>4</sup> Humphry noted that Parliament's scrutiny of GBEs was limited to ex-post information contained in annual reports. SCIs seek to change this by providing Parliament with non-commercial corporate information at the beginning of each financial year.<sup>5</sup>

---

1 Humphry, R., *Review of GBE Governance Arrangements*, March 1997, p. 32.

2 Humphry, R., *Review of GBE Governance Arrangements*, March 1997, p. 33.

3 *Governance Arrangements for Commonwealth GBEs*, June 1997, p. 6.

4 Humphry, R., *Review of GBE Governance Arrangements*, March 1997, p. 33.

5 Humphry, R., *Review of GBE Governance Arrangements*, March 1997, p. 33.

- 5.8 Many GBEs expressed, in their submissions to the Humphry Review, 'the desirability for the Government to, in consultation with the Board, clarify their mandate and objectives'.<sup>6</sup> Humphry reasoned that if the Government agreed to implement an SCI, matters such as mandate and objectives should be incorporated.<sup>7</sup> The 1997 Governance Arrangements state:

The SCI is a brief (no more than five pages), high level, plain English document expressed in terms of outputs or outcomes. It is an integral part of the Corporate Plan, but does not include commercial-in-confidence information. An SCI would normally contain a business description and mission statement, corporate vision, objectives, code of ethics, statement of accountability (including reporting obligations) and broad expectations on financial and non-financial performance.<sup>8</sup>

- 5.9 The SCI is expected to be 'tabled in Parliament within 15 sitting days of the Parliament, following the start of the new financial year'.<sup>9</sup> GBEs prepared their first SCIs which were tabled in Parliament during the first sitting of the 1998-99 financial year. SCIs for 1999-2000 have been prepared and tabled in Parliament.
- 5.10 DoFA, in evidence to the Committee, commented that prior to the implementation of the new governance arrangements, 'Parliament was only provided with ex-post GBE performance information, such as annual reports'.<sup>10</sup> While the primary responsibility for appropriate GBE oversight and accountability to Parliament and the public rests with shareholder Ministers, Parliament has a direct role in GBE oversight through the review of SCIs and annual reports.<sup>11</sup> The Australian National Audit Office (ANAO) noted that SCIs have gone some way to informing 'the Parliament about the overall strategic directions of GBEs' and provide a broad summary of corporate plan information.<sup>12</sup>
- 5.11 One of the challenges for GBEs in preparing SCIs is to provide useful information while not breaching commercial-in-confidence requirements. The Defence Housing Authority, for example, noted that the challenge with SCIs 'is to provide a clear picture of strategy and future plans within

---

6 Humphry, R., *Review of GBE Governance Arrangements*, March 1997, p. 33.

7 Humphry, R., *Review of GBE Governance Arrangements*, March 1997, p. 33.

8 *Governance Arrangements for Commonwealth GBEs*, June 1997, Section 2.6, p. 6.

9 *Governance Arrangements for Commonwealth GBEs*, June 1997, p. 6. The requirement for the SCI only applies to wholly owned GBEs. Therefore Telstra is not required to, and does not, prepare one.

10 Department of Finance and Administration, *Submission*, p. S29.

11 Department of Finance and Administration, *Submission*, p. S29.

12 Mr Ian McPhee, *Transcript* p. 39.

the restraints of protecting commercial confidentiality'.<sup>13</sup> Australia Post warned against widening the scope and detail of SCIs commenting that 'care should be taken not to require public disclosure of commercially sensitive information, the release of which would place a GBE at a competitive disadvantage'.<sup>14</sup>

- 5.12 The ANAO advised the Committee that the form and content of SCIs, which had not previously been reviewed by the ANAO, will be included in a proposed performance audit of *Agencies' Monitoring of the Performance of GBEs*. The audit is planned to commence during the current financial year.<sup>15</sup>

## Conclusions

- 5.13 Annual Reports of GBEs provide Parliament with ex-post information. Statements of Corporate Intent (SCI) are tabled in Parliament early in the financial year and provide information on the overall strategic directions of GBEs.
- 5.14 The Committee notes that GBEs have responded positively to the requirement to prepare SCIs as set out in section 2.5 of the 1997 Governance Arrangements. Several GBEs, however, did refer to the need to strike a balance in providing a clear picture of strategy without disclosing commercially sensitive information. It was suggested to the Committee that any widening of the scope and detail of SCIs should be approached with care, so that GBEs were not placed in a position of competitive disadvantage. The Committee supports this view.

## Annual Report

- 5.15 The CAC Act and 1997 Governance Arrangements set out reporting requirements for Commonwealth authorities and companies. In addition, Commonwealth companies must also comply with requirements under the Corporations Law. The CAC Act and Governance Arrangements require the directors of a GBE to provide an annual report, or, for companies, annual general meeting documents to shareholder Ministers. The portfolio Minister then tables the report or documents in each House of Parliament. The content of company annual reports is governed by the

---

13 Defence Housing Authority, *Submission*, p. S119.

14 Australia Post, *Submission*, pp. S160-161.

15 Australian National Audit Office, *Submission*, p. S12.

Corporations Law, and, for authorities, guidance circulated by the Finance Minister as part of the Finance Minister's Orders.<sup>16</sup>

- 5.16 The Finance Minister may require the directors of a wholly owned GBE to prepare an interim report for the first six months or for the first three, six and nine months of each financial year. The portfolio Minister also tables the interim report in each House of Parliament. Financial statements of GBEs and their subsidiaries, associated with annual reports, or interim reports are audited and reported on by the Auditor-General.<sup>17</sup>
- 5.17 As Telstra is only partly owned by the Commonwealth, it is not subject to some obligations under the CAC Act and the 1997 Governance Arrangements. However, similar reporting requirements are included in Telstra's enabling legislation, which operates in addition to the Corporations Law.<sup>18</sup>

### Corporations Law reporting requirements for company GBEs

- 5.18 Key reporting requirements under the Corporations Law require company GBEs to:
- prepare an annual financial report (financial statements, disclosures required by the regulations, notes required by the accounting standards, and directors' declaration that the financial statements and notes comply with accounting standards, give a true and fair view, and whether debts can be paid when they become due and payable);
  - prepare a directors' report for each financial year with details of specific and general information to be included;
  - have the financial report audited and obtain the auditor's report;
  - send the financial report, directors' report and auditor's report to members; and
  - lodge the financial report, directors' report and auditor's report with the Australian Securities and Investment Commission (ASIC).<sup>19</sup>
- 5.19 General and specific information that must form part of the directors' report includes:

---

16 *Commonwealth Companies and Authorities Act 1997*, s. 9 for authority GBEs, s. 36 for company GBEs; *Governance Arrangements for Commonwealth GBEs*, June 1997, pp. 6-7.

17 *Commonwealth Companies and Authorities Act 1997*, s. 8 and 13 for authority GBEs, s. 35 and 38 for company GBEs; *Governance Arrangements for Commonwealth GBEs*, June 1997, pp. 6-7.

18 *Telstra Corporation Act 1991*, section 8AD.

19 *The Corporations Law (Cth) 1989*, Act No. 109 of 1989, as subsequently amended, s. 295, 298-301, 307-308, 314 and 319.

- a review of operations during the year and results of those operations;
  - details of significant changes in the state of affairs during the year;
  - principal activities during the year and any significant changes in nature of those activities;
  - details of any matter or circumstance that has arisen since the end of the year that has or may significantly affect operations, results of operations or state of affairs in future years;
  - reference to likely developments in operations in future years and expected results of those operations; and
  - details of each director's qualifications, experience, special responsibilities, and the number of meetings of the Board and each Board committee, and each director's attendance at those meetings.<sup>20</sup>
- 5.20 Telstra, as a listed public company, is also required to:
- prepare a half year financial report, directors' report, have the financial report audited and lodge half-yearly reports with ASIC; and
  - lay the annual financial report, directors' report and auditor's report before an annual general meeting of members.<sup>21</sup>
- 5.21 As a listed public company, Telstra is also required to comply with the Australian Stock Exchange (ASX) *Listing Rules*. In relation to reporting, these rules include a requirement for a statement of the main corporate governance practices that the entity had in place during the reporting period. As well as Telstra, this requirement applies to all GBEs in accordance with the 1997 Governance Arrangements. The *Listing Rules* include an indicative list of corporate governance matters that an entity may take into account when making the corporate governance statement in its annual report. This list addresses:
- the Board composition, including procedures for devising criteria for membership, reviewing membership and nominating representatives;
  - the resources available to directors in seeking independent advice in carrying out their duties;
  - the main procedures for establishing and reviewing the compensation arrangements for the CEO and non-executive members of the Board,

---

20 *The Corporations Law (Cth) 1989*, Act No. 109 of 1989, as subsequently amended, s. 299 and 300.

21 *The Corporations Law (Cth) 1989*, Act No. 109 of 1989, as subsequently amended, s. 306, 309, 317 and 320.

including the main responsibilities and rights, and names of members of a remuneration committee, if one exists;

- the main procedures for the nomination of external auditors and for reviewing the adequacy of existing external audit arrangements, including the main responsibilities and rights, and names of members of an audit committee, if one exists;
- the approach to identifying areas of significant business risk, including putting arrangements in place to manage them; and
- the policy on the establishment and maintenance of appropriate ethical standards.<sup>22</sup>

## Reporting requirements for authority GBEs – CAC Act and Finance Minister's Orders

5.22 Schedule 1 to the CAC Act sets out requirements for the contents of the annual report for a Commonwealth authority which must include:

- a directors' report of operations, prepared in accordance with Finance Minister's Orders;
- financial statements, prepared in accordance with Finance Minister's Orders, and with a directors' statement as to whether the financial statements give a true and fair view of the matters required by the Finance Minister's Orders and whether debts can be paid when they fall due; and
- the Auditor-General's report on the financial statements, in accordance with the Schedule.<sup>23</sup>

5.23 Finance Minister's Orders on the content of the directors' report of operations refer to general and specific information along the lines of the requirements of Corporations Law, with some additional information to meet Government needs. Notable additional requirements to those of Corporations Law include:

- an outline of organisational structure;
- more explicit requirements on a review of how the Commonwealth authority has performed during the year;
- more explicit information on factors influencing performance, particularly, risks and opportunities, and strategies to manage them;

---

<sup>22</sup> Australian Stock Exchange Listing Rules, s. 4.10.3 and Appendix 4A.

<sup>23</sup> *Commonwealth Companies and Authorities Act 1997*, Schedule 1, Parts 1 and 2.

- significant events notified to the responsible Minister in accordance with s.15 of the CAC Act;
- more explicit requirements regarding the operational and financial results for the year;
- details of judicial decisions and reviews by outside bodies;
- effects of Ministerial directions; and
- description of any community service obligations, with an outline of strategies to achieve the obligations and an assessment of their cost over the financial year.

### Agency Comments on annual reporting requirements

- 5.24 Most agencies, including a number of GBEs, commented that the annual reporting requirements were appropriate and adequate. The ANAO stated that the requirement for GBEs to provide their annual reports to the responsible Minister, who must then table them in Parliament, is important, particularly in aiding the transparency of GBE operations.<sup>24</sup> Australia Post commented that while its annual reporting requirements exceed those of the private sector they 'provide for a comprehensive accounting of the Corporation's operational and financial performance, as well as of the discharge of its community service obligations.'<sup>25</sup>
- 5.25 Some GBEs, however, indicated that the level of public accountability was excessive. The Snowy Mountains Hydro-Electric Authority commented that 'reporting requirements which exceed those imposed on private sector organisations should not be applied to GBEs'.<sup>26</sup> Telstra argues that the reporting requirements which are additional to those applying to its competitors 'should apply only where there is a clearly demonstrated need and a resultant net benefit to the public'.<sup>27</sup> Telstra believes that it is desirable for it to adopt the governance and accountability framework of a publicly listed company. Under this framework, Telstra argues that it should not be subject to:
- corporate planning requirements;
  - requirements for additional financial statements for periods specified by the Minister;

---

24 Australian National Audit Office, *Submission*, p. S9.

25 Australia Post, *Submission*, p. S161.

26 Snowy Mountains Hydro Electric Authority, *Submission*, p. S3.

27 Telstra, *Submission*, p. S75.



- obligations for notification of significant events;
- reporting obligations in relation to Telstra's own operations and those of its subsidiaries;
- the requirement for tabling of Telstra's annual report in the Parliament; and
- the mandatory use of the Auditor-General to audit Telstra's accounts.<sup>28</sup>

## Conclusions

5.26 The CAC Act, Corporations Law and the 1997 Governance Arrangements set out the requirements for annual reporting by GBEs. Most GBEs indicated that the reporting requirements were appropriate. Some GBEs, however, indicated that the reporting requirements were excessive and went beyond what their competitors were required to do. The Committee notes the latter concerns but cautions against measures that may reduce the accountability of GBEs to Parliament. As stated previously in this report, GBEs control assets of some \$40 billion. The responsibility and accountability for these assets cannot be taken lightly. It seems fair to the Committee that shareholder Ministers and the Parliament may demand and require more information than what would be the norm in the private sector.

## Additional requirements faced by GBEs

5.27 As well as the formal reporting and accountability requirements under the CAC Act and 1997 Governance Arrangements, there are other requirements that GBEs must comply with. These include:

- appearances before Parliamentary Committees including Senate Legislation Committees performing their estimates function;
- complying with competitive neutrality provisions relating to GBEs; and
- balancing the requirement for public reporting against the need to protect commercially sensitive information.

---

28 Telstra, *Submission*, p. S78.

## The Senate Estimates process

5.28 In 1997 Humphry stated that GBEs are accountable to the Australian public through the Parliament. He acknowledged that accountability is achieved, among other things, through the operation of Parliamentary Committees. Humphry, however, was opposed to GBEs appearing at Senate Estimates hearings stating:

Where it can be avoided, it is appropriate that the board and management of GBEs not be drawn into the accountability relationship that exists between shareholder Ministers and the Parliament. For example, only in extraordinary circumstances should the management of GBEs be requested, by a shareholder Minister, to attend Senate Estimates.<sup>29</sup>

5.29 Humphry's reasons for this conclusion relate to the possible release of commercially sensitive information. Telstra, for example, advised Humphry that the operations of Senate Estimates can 'result in commercially sensitive information on matters such as confidentiality joint venture agreements becoming public prematurely, thereby reducing the confidence of investors and private sector business partners'.<sup>30</sup>

5.30 During the inquiry Telstra continued to question the appropriateness of 'the Estimates process as a way for the accountability between company and shareholders to be expressed'.<sup>31</sup> Telstra argues that 'under the GBE accountability model, the shareholder Ministers, rather than the company, are directly accountable to Parliament'.<sup>32</sup> In addition, Telstra maintains that the release of commercially sensitive information could disadvantage it against its competitors. Telstra argues that as its competitors are not subject to the same type of scrutiny, then there is not a level playing field and competitive neutrality is not being applied.<sup>33</sup>

5.31 During public hearings, Telstra was requested to provide information on all occurrences in which it has been forced in Senate Estimates to release information that was to the corporation's disadvantage. Telstra indicated that to date they have not been forced to release information in Senate Estimates that would disadvantage the corporation. Telstra, however, stressed that 'the potential for Telstra to be questioned in such forums on matters that are commercial in nature remains of concern'.<sup>34</sup> In view of

<sup>29</sup> Humphry, R., *Review of GBE Governance Arrangements*, March 1997, p. 32.

<sup>30</sup> Humphry, R., *Review of GBE Governance Arrangements*, March 1997, p. 32.

<sup>31</sup> Telstra, *Submission*, p. S80.

<sup>32</sup> Telstra, *Submission*, p. S81.

<sup>33</sup> Telstra, *Submission*, p. S80.

<sup>34</sup> Telstra, *Submission*, p. S (page nos to be added after publication of supplementary submission).

these concerns, Telstra stated that it 'should be exempt from the Senate Estimates process.'<sup>35</sup>

- 5.32 The Department of Communications, Information Technology and the Arts (DoCITA), the portfolio department for Telstra, indicated that last year, it proposed to the relevant Senate Legislation Committee that Telstra be scrutinised outside the estimates process. The scrutiny would have included examination of Telstra's annual report and be supplemented by a briefing on Telstra's half-yearly results. The relevant Senate Legislation Committee turned down this proposal and indicated its preference in continuing with the estimates process.<sup>36</sup>
- 5.33 Telstra also pointed out that it is subject to governance and accountability requirements that do not apply to its publicly listed competitors.<sup>37</sup> In addition, Telstra advised that legislative amendments had been necessary to remove any doubt that the disclosure to the Government, as required under the Telstra Corporation Act, would oblige Telstra to disclose that information to the ASX under the *Listing Rules*.<sup>38</sup>
- 5.34 Australia Post indicated that Parliament's accountability requirements can be met by the annual report, SCI, the ANAO audits and a GBE's appearance before parliamentary committees conducting specific inquiries rather than a 'grab bag of issues' addressed in the Senate Estimates process.<sup>39</sup>
- 5.35 Employment National (EN) indicated that it was reporting regularly on its operations both under Corporations Law and under the 1997 Governance Arrangements. EN pointed out that it is not Budget funded and 'there are no financial figures in Budget documentation or in the portfolio statements that relate to EN.'<sup>40</sup> In relation to the value of appearing at Senate Estimates, EN stated that the questions that they get asked at Senate Estimates hearings 'are more about operational performance and positioning than they are about financial matters'.<sup>41</sup>
- 5.36 EN indicated that there were cases in Senate Estimates that had broached commercial-in-confidence matters. This included questions relating to expenditure patterns, strategic positioning, market segments that may or

---

35 Telstra, *Submission*, p. S81.

36 Mr John Neil, Department of Communications, Information Technology and the Arts, *Transcript*, pp. 79–80.

37 Telstra, *Submission*, p. S (page nos to be added after publication of supplementary submission).

38 Section 8AY, Telstra Corporation Act 1991.

39 Mr Gerry Ryan, Australia Post, *Transcript*, pp. 126-127.

40 Mr Rod Halstead, Employment National, *Transcript*, p. 14.

41 Mr Rod Halstead, Employment National, *Transcript*, p. 14.

may not be entered, positioning of products, pricing levels and market share relative to other competitors. EN commented that 'there have been times when we have had to indicate that the information is not available because it is commercially sensitive and that, as you would expect, at times, is not regarded by the Senators as being an appropriate response'.<sup>42</sup> EN indicated that while its objective is to compete in a full and frank manner, it notes that its competitors are not subject to the potential problems of Senate Estimates.<sup>43</sup>

- 5.37 The Department of Transport and Regional Services (DTRS) also questioned 'whether the current process of Parliamentary scrutiny, through the Senate Estimates process, provides the most effective means of analysing the performance of GBEs.'<sup>44</sup> DTRS stated that 'to the extent that the Estimates Committee process scrutinises performance in ways that GBE management may feel place at risk the exposure of commercial strategies, the Estimates Committees may not be the preferred forum'.<sup>45</sup>
- 5.38 DTRS stressed that it was not suggesting a reduction in Parliamentary scrutiny. Rather, the Department was taking note of GBE concerns 'that they feel there is a possibility for their competitors to extract commercial information through the Senate Estimates process.'<sup>46</sup> DTRS suggested that as an alternative to Senate Estimates, GBEs could be examined 'in-camera by a committee that is interested in the commercial strategies and has a good handle on the public interest aspects'.<sup>47</sup>
- 5.39 Medibank Private was less concerned about the Senate Estimates process indicating that the burden to date has been minor. Medibank Private suggested that the obligations of appearing at Senate Estimates may be no greater than appearing at an annual general meeting of a publicly listed company. Medibank Private stated:

In reality, I expect that senior executives have to spend six, 14 to 20 hours from time to time, but in a sense those requirements are no different to senior executives having to appear before annual general meetings of shareholders and other public accountabilities that listed companies are faced with. To that extent, I do not believe there is any burden on Medibank Private.<sup>48</sup>

---

42 Mr Rod Halstead, Employment National, *Transcript*, p. 15.

43 Mr Rod Halstead, Employment National, *Transcript*, p. 15.

44 Department of Transport and Regional Services, *Submission*, p. S130.

45 Department of Transport and Regional Services, *Submission*, p. S130.

46 Mr Peter Harris, Department of Transport and Regional Services, *Transcript*, p. 165.

47 Mr Peter Harris, Department of Transport and Regional Services, *Transcript*, p. 166.

48 Mr Michael Whelan, Medibank Private, *Transcript* p. 57.

- 5.40 In 1995 the Senate Procedure Committee examined some of the powers of Legislation Committees when considering estimates. This included comment on confidential information and the scrutiny of non-Budget agencies. The Procedure Committee stated:

In relation to the examination of 'off-budget agencies', the principle which has always been followed is that, as the committees have the estimates referred to them, they may examine the activities of any body for which funds are provided in appropriation arising from the estimates. If a body receives no funding through the appropriations, it is generally regarded as not subject to examination in estimates hearings.<sup>49</sup>

- 5.41 The Senate Procedure Committee concluded that a 'determination should be made, by each committee in relation to each body proposed for examination, whether it has a bearing on the appropriations and therefore may legitimately be examined in estimates hearings.'<sup>50</sup> One member of the Procedure Committee considered that even though a GBE may be off-Budget and not receiving funding it could, if it was sold off, have indirect bearing on the total of the appropriations.<sup>51</sup>

## Conclusions

- 5.42 A number of GBEs and portfolio departments made comments regarding the appropriateness of the Senate Estimates process as an additional accountability mechanism. Telstra, in particular, indicated that appearing at Senate Estimates hearings created an additional cost burden in terms of time and human resources devoted to this task. In addition, Telstra was concerned that questioning at Senate Estimates could lead to the release of commercially sensitive information which could disadvantage it against its competitors. In view of these concerns, Telstra proposed that it should be exempt from the Senate Estimates process.
- 5.43 Other GBEs were less concerned about the Senate Estimates process. Employment National (EN) pointed out that while it was not Budget funded it has been required to attend Senate Estimates. EN indicated that where matters relating to commercially sensitive information have been raised, it has refused to make available that information. Medibank Private indicated that the burden of appearing at Senate Estimates has been minor. It suggested that the onus of appearing at Senate Estimates

---

49 Senate Procedure Committee, *First Report of 1995*, Senate Printing Unit, Canberra, 1995, p. 5.

50 Senate Procedure Committee, *First Report of 1995*, Senate Printing Unit, Canberra, 1995, p. 5.

51 Senate Procedure Committee, *First Report of 1995*, Senate Printing Unit, Canberra, 1995, p. 5.

was probably no greater than appearing at an annual general meeting of a publicly listed company.

- 5.44 The Department of Transport and Regional Services proposed that, in view of GBE concerns about commercially sensitive information being released through Senate Estimates, scrutiny should be conducted in-camera by other Parliamentary Committees.
- 5.45 The Committee acknowledges some of the concerns that GBEs have about Senate Estimates. There is a cost involved in appearing and there is always the risk that commercially sensitive information could be released. While Telstra admitted that no commercially sensitive information has yet been released through Senate Estimates, the risk remains that Telstra and other GBEs could be seriously disadvantaged in the market place if this were to occur.
- 5.46 The Committee notes that the Senate Procedure Committee dealt with some of these issues in its first report of 1995. The Procedure Committee concluded that a 'body which receives no funding through appropriations and which does not affect the appropriations should be regarded as beyond the scope of the estimates hearings.'<sup>52</sup> This statement suggests that large GBEs, such as Australia Post and Telstra, are obviously off-Budget and should be exempt.
- 5.47 Senate Committees have autonomy, subject to Senate Standing Orders, to determine how they choose to scrutinise executive government. However, all Parliamentary Committees, including Senate Legislation Committees performing their estimates function, must take a responsible position when dealing with matters that are commercial-in-confidence. This is of particular concern during estimates hearings as these must be conducted in public and all material received must be published.
- 5.48 The Committee suggests that there is the need for greater clarity and coherence in the way Parliamentary Committees examine commercial matters of GBEs. Therefore, the Committee recommends that the Minister for Finance and Administration develop draft guidelines for the scrutiny by Parliamentary Committees of commercially confidential issues relating to GBEs. The draft guidelines should be submitted to the Joint Committee of Public Accounts and Audit for approval.

---

52 Senate Procedure Committee, *First Report of 1995*, Senate Printing Unit, Canberra, 1995, p. 5.

**Recommendation 6**

- 5.49 **That the Minister for Finance and Administration develop draft guidelines for the scrutiny by Parliamentary Committees of commercially confidential issues relating to GBEs. The draft guidelines should be submitted to the Joint Committee of Public Accounts and Audit for approval.**

**Competitive Neutrality**

- 5.50 The Commonwealth and State Governments agreed to a Competition Principles Agreement (CPA) at a Council of Australian Governments' meeting in April 1995. In June 1996 the Commonwealth issued a policy document, the Commonwealth Competitive Neutrality Policy Statement, regarding the implementation of competitive neutrality in the Commonwealth domain. The Policy Statement states:

...that government business activities should not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership.<sup>53</sup>

- 5.51 The Policy Statement elaborates that 'competitive neutrality requires that governments should not use their legislative or fiscal powers to advantage their own businesses over the private sector'.<sup>54</sup> The principal elements of competitive neutrality, as detailed in the Policy Statement, include:

- the adoption of appropriate organisational structures for business activities;
- taxation neutrality through the removal of any taxation exemptions;
- debt neutrality by subjecting organisations to similar borrowing costs to those faced by private sector business;
- rate of return requirements with Commonwealth organisations engaging in significant business activities being required to earn commercial returns at least sufficient to justify the long-term retention of assets in the business, and to pay commercial dividends to the Budget; and
- regulatory neutrality by subjecting organisations to the same regulatory environment as private sector businesses.<sup>55</sup>

---

53 Commonwealth Competitive Neutrality Policy Statement, p. 4.

54 Commonwealth Competitive Neutrality Policy Statement, p. 5.

55 Commonwealth Competitive Neutrality Policy Statement, pp. 15–19.

- 5.52 The June 1996 Policy Statement noted that 'for the most part, GBEs already comply with competitive neutrality requirements'.<sup>56</sup>
- 5.53 A number of GBEs raised the issue of competitive neutrality in relation to GBE accountability requirements and parliamentary scrutiny. They compared their level of accountability with the accountability requirements faced by their private sector competitors under the Corporations Law. These GBEs suggest that they are complying with competitive neutrality requirements implemented to ensure that they do not obtain any advantage from Government ownership compared to their competitors. However, they argue that some accountability requirements, place GBEs in a position of disadvantage compared to their private sector competitors.
- 5.54 Telstra commented that they 'are now operating in a very competitive marketplace, and our major competitors are well-resourced and experienced international companies who are well placed to take commercial advantage of any differences in cost structures and reporting requirements which might exist between us and them'.<sup>57</sup>
- 5.55 Some company GBEs indicated that a greater level of competitive neutrality could be achieved if they were subject solely to the Corporations Law. The appropriateness of the CAC Act, in addition to the Corporations Law is addressed in Chapter Two. SMHEA commented that additional requirements placed on GBEs 'in many ways defeat competitive neutrality and create additional costs to the company'.<sup>58</sup>
- 5.56 EN refer to having additional reporting requirements to those under the Corporations Law, which its competitors are not required to satisfy. EN commented that 'there are some cost issues associated with that in terms of internal mechanisms to monitor, report, collate information, analyse, et cetera'.<sup>59</sup> However, EN acknowledged that they have additional reporting obligations because they are 100 per cent owned by the Commonwealth, and therefore do not object to satisfying requests about the performance of the company. EN recognised that such requests are made 'to ensure shareholder interests are met and there is a return on shareholder funds'.<sup>60</sup>

---

56 Commonwealth Competitive Neutrality Policy Statement, p. 11.

57 Mr John Stanhope, Telstra, *Transcript*, p. 94.

58 Mr Vincent Good, Snowy Mountains Hydro Electric Authority, *Transcript*, p. 69.

59 Mr Rodney Halstead, Employment National, *Transcript*, p. 12.

60 Mr Rodney Halstead, Employment National, *Transcript*, p. 12.



## Conclusions

- 5.57 The issue of competitive neutrality is one which is referred to by a number of GBEs across the range of reporting and accountability requirements addressed in this inquiry. Broadly, these GBEs argue that while they satisfy requirements to ensure they do not enjoy competitive advantages over their private sector competitors, they themselves are disadvantaged by additional governance and accountability measures imposed by the Commonwealth.
- 5.58 The Committee understands the line of argument of these GBEs. However, the Committee also recognises, as do some GBEs, that the Commonwealth as majority shareholder is entitled to require GBEs to satisfy additional measures in the interests of public accountability. The Committee was not provided with definitive evidence demonstrating that some of the additional reporting requirements placed on GBEs was creating significant disadvantage. The Committee, however, is aware that any disadvantage placed on GBEs can impact on returns to the Commonwealth.