

Issues

Introduction

- 4.1 This chapter highlights significant issues considered by the Committee in 2002. They are:
- exemption of works on the grounds of urgency;
 - *Public Works Committee Act 1969*;
 - value for money;
 - medium works;
 - the definition of a ‘work’; and
 - support.

Exemption of Works on the Grounds of Urgency

- 4.2 The *Public Works Committee Act 1969* provides that a public work, the estimated cost of which exceeds \$6 million shall not be commenced unless:

(b) the House of Representatives has resolved that, by reason of the urgent nature of the work, it is expedient that it be carried out without having been referred to the Committee¹;

- 4.3 On 21 March 2002, the Hon Peter Slipper MP, Parliamentary Secretary to the Minister for Finance and Administration, moved a motion in the House of Representatives to the effect that, given the urgent nature of the work, it was expedient to carry out the construction of a purpose-built immigration reception and processing centre on Christmas Island without the project being referred to the Committee.
- 4.4 At its private meeting of 21 March 2002, the Committee considered the motion of expediency moved by Mr Slipper. A subsequent investigation into the exemption of public works on the grounds of urgency since 1990 yielded the following examples:
- construction of the Australian Pavilion at Expo '92, Seville, Spain (15.5.1990);
 - Sydney Airport – enhanced quarantine intervention (27.9.2001); and
 - construction of a purpose built immigration reception and processing centre on Christmas Island (21.3.2002).
- 4.5 Committee Members expressed concern that the frequent exemption of works on the grounds of urgency may set a precedent by which projects are allowed to bypass appropriate Committee scrutiny. The Committee noted that it always deals with referrals in an expeditious fashion and has never delayed a project.
- 4.6 The Committee noted further that, at the time of the writing of this report in February 2003, there had been very little progress on the construction of the IRPC on Christmas Island².

Public Works Committee Act 1969

- 4.7 At the 2001 National Conference of Public Works Committees, the Hon Peter Slipper MP, Parliamentary Secretary for Finance and Administration stated that significant change had occurred in the way the Commonwealth delivers its property and public works functions. In particular, Mr Slipper noted that:

1 *Public Works Committee Act 1969*, Section 18(8)(b)

² see Senate Hansard, Legal and Constitutional Legislation Committee, Consideration of Additional Estimates, Canberra, 11 February 2003, pp. 190-191

- the Commonwealth no longer operates a large, centralised property and public works system;
- public works and property functions are now generally devolved to individual agencies or to contractors;
- the participation of the private sector in public works projects has increased;
- public-private partnership arrangements and privately funded infrastructure will become more common as the Commonwealth moves towards a purchaser-provider model for major works; and
- there is a trend away from the public ownership of property.

Mr Slipper added that, as delivery processes changed, the Public Works Committee risked marginalisation and decreasing relevance.

- 4.8 As stated in the Committee's Sixty-Fifth Annual Report³, the Committee had for some time been considering how best to adapt its role and functions to the changing environment. The Committee determined that the optimum solution was amendment of the Act, which has not been subject to review since 1989.
- 4.9 In August 2002, the Committee wrote to Senator the Hon Nick Minchin, Minister for Finance and Administration, suggesting that the Act be amended to allow for:
- scrutiny of Commonwealth leasing arrangements;
 - consideration of requirements relating to greenhouse gas emissions and environmental protection;
 - consideration of the impact of works upon the local community;
 - the extension of concurrent documentation into contractual arrangements; and
 - the scrutiny of service delivery contracts, including Information Technology.
- 4.10 In December 2002, the Minister responded stating that he considered that such improvements as are necessary could be achieved without altering the legislation.
- 4.11 The Committee proposed further changes to the Act in relation to clarification of the definition of a 'work' and with respect to continuing

3 Parliamentary Standing Committee on Public Works, Sixty-Fifth Annual Report, March 2002, p. 37

problems in the reporting of medium works. These issues are addressed in greater detail in later sections of this report.

Value for Money

4.12 Following an inquiry into the proposed RAAF Base Williamstown Redevelopment Stage 1 and Facilities for the Airborne Early Warning and Control Aircraft conducted at Newcastle, NSW in August 2002, the Committee recommended that, in view of the high level of youth unemployment in the region:

...Defence investigate options and costs for increasing opportunities for trainees and apprentices...⁴

on the works in question.

4.13 Whilst appreciative of the reasoning behind this recommendation, Defence stated in a submission to the Committee that they had

...a core principle of achieving value for money in the expenditure of Commonwealth funds⁵.

4.14 Further, Defence stated their intention to follow Commonwealth procurement guidelines, which did not provide any specific guidance on incorporating training conditions into tender documents.

4.15 In view of this statement, the Committee wrote to the Hon Peter Slipper MP, Parliamentary Secretary to the Minister for Finance and Administration, suggesting that the *Commonwealth Procurement and Best Practice Guidance* be amended to broaden the definition of 'value for money' to include social, environmental and educational values as well as financial considerations.

4.16 The Parliamentary Secretary responded that the Guidelines identified a diversity of government policies, including social considerations, as important criteria for 'value for money'. He added that the *Australian Procurement Construction Council National Code of Practice for the Construction Industry 1997*, adopted by the Commonwealth in relation to public works, highlights the significance of continuous improvement and best practice in areas such as people management strategies and training. Mr Slipper undertook further to have officers of his department raise the Committee's suggestions with chief executives of the Australian Procurement Construction Council.

4 Report relating to the proposed RAAF Base Williamstown Redevelopment Stage 1 and Facilities for the Airborne Early Warning and Control Aircraft, p. 9

5 RAAF Base Williamstown Redevelopment Stage 1 and Facilities for the Airborne Early Warning and Control Aircraft, Volume of Submissions, p. 83

- 4.17 A copy of the Parliamentary Secretary's response was forwarded to the Department of Defence for consideration in relation to the proposed works at RAAF Base Williamtown and future projects.

Medium Works

- 4.18 Section 18 (8) of the *Public Works Committee Act 1969* provides that all public works estimated to cost more than \$6 million must be referred to the Committee.
- 4.19 Works described as medium works, that is, works with an estimated cost between \$2 million and \$6 million, may also be referred to the Committee if the Committee believes an inquiry is necessary. This power has rarely been invoked. To determine if further investigation is warranted, the Committee may examine plans and undertake a site inspection.
- 4.20 As in previous years⁶, the Committee was seriously concerned to note an increasing tendency among some Commonwealth agencies to divide a single project, costing more than \$6 million, into smaller components, thereby bringing the project under the \$6 million threshold for referral to the Public Works Committee.
- 4.21 Where it appears to the Committee that a work has been disaggregated in this fashion, the Committee may invoke its powers to investigate the work.
- 4.22 A related trend observed during 2002 was the omission from project costs of specific budget items that the referring agency believed did not constitute a work under Section 5 of the *Public Works Committee Act 1969*. Two agencies were asked to appear before the Committee to explain their reasons for disaggregating project costs in this manner. As a consequence, one of these projects will be the subject of a referral to the Committee in 2003.
- 4.23 Further, the Committee expressed concern that some agencies presented projects to the Committee as medium works, but that the costs for these projects contained inadequate contingency and escalation allowances, bringing the project under the \$6 million statutory limit for Public Works Committee scrutiny.
- 4.24 Such treatment of works as allows them to bypass referral to the Committee is a serious impediment to the fulfilment of the Committee's statutory obligation to oversee and ensure value for money in expenditure of public monies.

6 see for example *Parliamentary Standing Committee Sixty-Fourth General Report 2000*, p. 31-32

- 4.25 In order to address the continuing problems relating to medium works, the Committee advised the Department of Finance and Administration that all medium works undertaken by Commonwealth agencies are to be referred to the Department, with a schedule of these to be provided to the Committee on a six-monthly basis. As an additional measure, a letter was sent to all departments and agencies regarding the reporting of proposed medium works, and the possible investigation of same by the Committee.

Definition of a 'Work'

- 4.26 Section 5 of the *Public Works Committee Act 1969* defines a work as an architectural or engineering work, which includes:
- (a) the construction, alteration, repair, refurbishment or fitting out of buildings and other structures;
 - (b) the installation, alteration or repair of plant and equipment designed to be used in, or in relation to, the provision of services for buildings and other structures;
 - (c) the undertaking, construction, alteration or repair of landscaping and earthworks (whether or not in relation to buildings and other structures);
 - (d) the demolition, destruction, dismantling or removal of:
 - (i) buildings and other structures;
 - (ii) plant and equipment falling within paragraph (b); and
 - (iii) earthworks;
 - (e) the clearing of land and the development of land for use as urban land or otherwise; and
 - (f) any other matter declared by the regulations to be a work; but does not include:
 - (g) the production of, or anything done in relation to, intangible things;
 - (h) the production of, or anything done in relation to, movable property unless the work is, under the regulations, a movable work to which this Act applies;
 - (j) the installation, alteration or repair of plant or equipment where the plant or equipment:
 - (i) is not designed to be used in, or in relation to, the provision of services for a building or other structure; and

- (ii) is not necessary or desirable to make a building or structure a complete building or structure; and
- (k) any other matter declared by the regulations not to be a work

4.27 The Committee has the unanimous view that the Act leaves a wide margin for interpretation as to what constitutes a 'work'. Interviews with certain Commonwealth agencies in relation to the erroneous disaggregation of project costs⁷ revealed that the imprecise wording of the Act presented a major source of confusion. The Committee is seeking to clarify the definition of a 'work' by proposing that Section 5 of the Act be amended to exclude all words from: "but does not include...", thereby excluding the exemptions.

Support

- 4.28 The Committee's ability to fulfil its statutory obligations is in large measure attributable to the support provided by its secretariat. The Committee therefore wishes to record its appreciation for the work of its Secretary, Ms Margaret Swieringa, and her staff.
- 4.29 As noted in Chapter 1, the secretariat supports two other parliamentary committees. The Committee observes that this presents certain challenges and commends the secretariat for continuing to provide a high level of support.
- 4.30 During the year, long-serving staff member Ms Marie Kawaja left the secretariat. The Committee remains very appreciative of the support provided by Ms Kawaja.
- 4.31 The Committee also wishes to record its appreciation for other staff in the Parliament, who provide services to the Committee and its secretariat, and those officers in the Department of Finance and Administration, who play an integral role in facilitating references and expediency motions. In this regard the Committee thanks Mr Jeff Kite for his continued support throughout 2002.

Hon Judi Moylan, MP

Chair

18 March 2003

7 see paragraph 4.19 above

