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JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Monday, 9 August 2004

Members: Mr Charles *(Chair)*, Senators Hogg, Humphries, Moore, Murray, Scullion and Watson and Mr Ciobo, Mr Cobb, Mr Georgiou, Ms Grierson, Mr Griffin, Ms Catherine King, Mr Peter King, Ms Plibersek and Mr Somlyay

Senators and members in attendance: Senator Watson, Mr Charles and Ms Plibersek

Terms of reference for the inquiry:

Review of Auditor-General's reports, third quarter 2003-04.

WITNESSES

Committee met at 11.10 a.m.

MACKEY, Ms Gabrielle Mary, Principal Legal Officer, Copyright Law Branch, Attorney-General's Department

HAGEN, Mr Phillip Arthur, Executive Director, Research and Development, Australian National Audit Office

NICOLL, Dr Paul James, Executive Director, Performance Audit Services Group, Australian National Audit Office

NYSKOHUS, Mr David Andrew, Director and Audit Manager, Performance Audit Services Group, Australian National Audit Office

HEALY, Mr Terence John, General Counsel, Commonwealth Scientific and Industrial Research Organisation

HOPE, Mr Graeme Lindsay, First Assistant Statistician, Australian Bureau of Statistics

KAUFMANN, Mr Brett Andrew, Acting First Assistant Secretary, Financial Reporting Division, Department of Finance and Administration

OSTERGAARD, Mr Peter, Manager, Rights Management, Intellectual Property Branch, Department of Communications, Information Technology and the Arts

WATSON, Ms Cheryl Anne, Manager, Corporate Governance and Divisional Coordination, Department of Communications, Information Technology and the Arts

TUCKER, Dr Peter Geoffrey, General Manager, Business Development and Strategy Group, IP Australia

CHAIRMAN—I open today's public hearing of the Joint Standing Committee on Public Accounts and Audit. Today's hearing is the seventh in a series of hearings to examine reports tabled by the Auditor-General in the financial year 2003-04. This morning we will take evidence on Audit Report No. 25, *Intellectual property policies and practices in Commonwealth agencies.* I will run today's session using a roundtable format, and I ask participants to observe strictly a number of procedural rules. Firstly, only members of the committee may put questions to witnesses if this hearing is to constitute formal proceedings of the parliament and to attract parliamentary privilege. If other participants wish to raise issues for discussion, I would ask them to direct their comments to me, and the committee will decide whether it wishes to pursue the matter. It will not be possible for participants to directly respond to each other. Secondly, given the length of the program, statements and comments by witnesses should be relevant and succinct. I emphasise the word 'succinct'. Thirdly, I remind witnesses that the hearing today constitutes legal proceedings of the parliament and warrants the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded and will attract parliamentary privilege. Finally, I refer any members of the press who are present to a committee statement about the broadcasting of proceedings. In particular, I draw the media's attention to the

need to report fairly and accurately the proceedings of the committee. Copies of this committee statement are available from the secretariat staff.

I welcome witnesses to today's hearing. I apologise for the late start, but we cannot do much about fire drills. Does anyone wish to make an extremely brief opening statement? If not, do you mind if we proceed to questions? I have to declare an interest. I am an engineer, and this is a pet topic of mine. I found this audit report interesting, and one of the things that interested me is that we really have, at the Commonwealth level, no whole-of-government policy that informs or directs in this area. It would be interesting for us if each of you, in turn, could tell us if you have, or if your department or agency has, a view on how we might go about getting a whole-of-government policy on IP.

Mr Hope—As a starting point, I think it is fair to say that we have not given it a great deal of thought in terms of a whole-of-government approach. We have a substantial amount of internally-generated software which we manage quite explicitly in terms of copyrighting and IP arrangements. That is essentially our major source of intellectual property in the organisation, so we tend to be quite internalised. What we are generating is essentially for our own purposes and we are not really looking for opportunities to commercialise or to push it much wider. To the extent that we do have external issues, they tend to be in terms of the on-selling of data and statistical collections, and we use an approach to IP, but also trademarks, to help manage that more in a passive sense than in a commercial sense. In terms of a whole-of-government approach, we have not given it a great deal of thought as an organisation, but if there were a process we would certainly be quite amenable to participating in and contributing to that.

CHAIRMAN—Thank you. Dr Tucker?

Dr Tucker—In terms of how we might go about achieving a whole-of-government approach, I think probably the first important aspect is to have appropriate leadership for that task. I would note that the Department of Communications, Information Technology and the Arts, the Attorney-General's Department and IP Australia are working together to develop some principles that would govern a whole-of-government approach to IP policy and management. The audit report provides some excellent guidance in terms of the sorts of principles that could apply and the way in which organisations could go about developing their IP policies. Those are the two important issues: leadership and appropriate guidance, and I think those come through in the audit report about how to structure—

CHAIRMAN—Thank you. Could I ask you, Dr Tucker: you mentioned the three. Could I ask why you specifically left out CSIRO? I would have thought that they were the most significant commercialiser of industrial property in the Commonwealth or government owned enterprises.

Dr Tucker—Indeed they are. I cannot give a good reason as to why I left out my colleague from the CSIRO, but I think your point is well taken. Perhaps they need to be included in our consultations in future.

CHAIRMAN—Thank you. Mr Healy?

Mr Healy—CSIRO has got quite a background in the creation, management and exploitation of intellectual property. For that reason, the organisation would be prepared to be part of an

initiative relating to whole of government. There are a few points that I will make briefly. The first one is that at a whole-of-government level it is probably only possible to set the framework—in other words, to set the enabling conditions as well as some constraints that might exist. For that reason the sort of things that have been set out in a general framework by the Western Australian state government seem to be reasonably appropriate. The second point is that simultaneously we need to ensure that each agency which has a specific role in this area, as indeed we do, can optimise its role within the framework so it should not be too constraining. The third point is—and we might get into this in more detail later—that the practice of intellectual property creation management and exploitation is actually quite complex, difficult, time-consuming and expensive.

CHAIRMAN—But important.

Mr Healy—But important, of course. On that latter point, I might add that CSIRO sees intellectual property as a very important tool in achieving our objectives, which are creating benefits for Australia. First of all, we can attract people to work with us and co-invest because they are attracted by the intellectual property position that we have. Secondly, when we have intellectual property, which is available for licensing, then we can encourage people to invest in that technology. Often it requires many millions of dollars more than it cost to do the original research to implement the technology and having the protection of intellectual property will encourage that investment. Thirdly, to the extent that we can make money from our intellectual property we can reinvest that in further research again to try to benefit Australia.

CHAIRMAN—Thank you. Mr Kaufmann?

Mr Kaufmann—Certainly the Department of Finance and Administration believe we have a role within our broader role of financial management, financial reporting and budgeting, in particular to ensure that we explain the accounting rules around IP. That said, we would agree with the thrust of the recommendations contained in the report that from a whole-of-government perspective the best agency suited to having an across-the-board policy approach would be those in the report together with CSIRO.

CHAIRMAN—Thank you. Mr Nyskohus?

Mr Nyskohus—I have two personal points of view which are also reflected in the thrust of the report. Firstly, in my view, a whole-of-government approach is critical in that it provides guidance to agencies on what they should be doing and where they should be starting the task of better managing their intellectual property. But also a government approach will give the necessary leadership signals so that all Commonwealth CEOs are focusing appropriate attention on the issue of IP management. The only other point I would make is that, as has been already raised, it is pretty clear that we need to ensure that there is not any one size fits all approach to IP management so that any whole-of-government policy would need to pay due regard to the exigencies of management of IP in different operational environments.

CHAIRMAN—Thank you. Dr Nicoll?

Dr Nicoll—In terms of how a whole-of-government policy could be established, I would think that the initiatives that have already commenced with the relevant central agencies that are

represented here, if brought to fruition, would certainly be essential. Once they are brought to fruition I would suggest that there is a need to maintain ongoing guidance to agencies. Commonwealth agencies largely fall into two groups: those that are commercially oriented and those that are not. Those two dimensions of intellectual property—one devised where there is a market and one devised in the absence of a market—comprise the whole. So that whole-of-government policy needs to take account of both, and there should be sustained advice to the agency afterwards as well.

CHAIRMAN—Thank you. Mr Hagen?

Mr Hagen—My perspective is probably more from an accounting point of view and it is more that I am interested that the assets are actually recognised and captured, their consumption is measured and that the entity can sustain its operating capacity. That becomes visible through the accounting for them.

CHAIRMAN—Thank you. Ms Mackey?

Ms Mackey—I want to inform you of what the Attorney-General's Department is doing in relation to copyright law as the department responsible for the administration of the Copyright Act 1968. Together with the Department of Communications, Information Technology and the Arts, we have joint policy responsibility for copyright. The department supports the recommendations that were made in the ANAO report but in many respects the recommendations complement the work that the department is already doing in relation to Commonwealth ownership of copyright and its use of copyright material owned by third parties.

The Copyright Act contains provisions in relation to the government ownership of copyright material. The provisions in the act regarding the ownership are currently the subject of review by the Copyright Law Review Committee, which is a specialist body that advises the Attorney-General on matters referred to it. The issues that the committee is currently considering are: whether the current provisions in the Copyright Act are appropriate—for example, whether all legislative, judicial and executive materials should be protected by copyright law; whether there is a rationale for the Commonwealth having special copyright provisions; whether there should be uniformity throughout different Australian jurisdictions; and what entities should be included as 'the Commonwealth' for the purposes of the Copyright Act and how this should be determined—this is often difficult to determine and is relevant for both government use and ownership of copyright material.

That committee is currently conducting its inquiry. It has issued an issues paper and has already held public forums and will hold two more public forums in August. The committee is due to report to the Attorney-General by the end of the year. The findings of that committee will be relevant to developing a whole-of-government IP policy in relation to copyright.

The department also oversees the provisions in the act for government use of copyright material. Those provisions effectively set out a whole-of-government approach to government policy on that issue. Under that scheme there is also a statutory licensing scheme in relation to copying by governments and through various collecting societies. The department represents the Commonwealth in negotiations with those collecting societies and provides advice to

Commonwealth departments and agencies in relation to their use of copyright material and copyright in general, which also promotes a consistent approach across government.

CHAIRMAN—You only deal with copyright. You do not deal with patents?

Ms Mackey—No. Our focus is on copyright, which is a significant aspect of intellectual property.

CHAIRMAN—Who does? Who deals with patents?

Ms Mackey—Patents are dealt with by IP Australia. But copyright is also part of intellectual property.

CHAIRMAN—Ms Watson?

Ms Watson—I might just pass to Peter Ostergaard, who is responsible for the policy of IP.

Mr Ostergaard—As you heard from Dr Tucker, we have met with IP Australia and the Attorney-General's Department to develop a whole-of-government response, or start to work towards that. We have met twice. The general approach we have agreed to at the moment is that we are working towards developing a statement of principles that will express what we believe to be good management practice. It is a model that has been used, for example, in Queensland, where they have a statement of principles and a more detailed supplementary document.

What we are hoping to do with the supplementary document is to create an IP better practice manual, which will draw on the statement of principles and provide a source of guidance and advice on how to implement them. The intention is to consult fairly widely. Because of their expertise, the CSIRO would also be consulted. Also, noting that we have responsibility for the IT-IP guidelines—which were referred to in the Audit Office report—we are going to draw on the current review of the IT-IP guidelines to inform the better practice manual. The IT-IP guidelines were developed in consultation with industry, so we appreciate that for commercialisation and all those sorts of issues we need to look not just at government stakeholders but also outside.

CHAIRMAN—Thank you very much for that. I am confident that that will help guide us in writing a report. The ANAO report was entitled *Intellectual property policies and practices in Commonwealth agencies*. As I understand it—I have read the report and discussed it with ANAO—the recommendations do not include a perspective of how in the first place one even starts to value IP. Mr Healy, does CSIRO have a uniform policy with respect to the distribution of any benefits gained from the commercialisation of intellectual property in any manner, whether it be sale of the property rights, sale of copyright or commercialisation of a product or an idea?

Mr Healy—CSIRO see the management of intellectual property and its exploitation as being entirely within the context of what we are here to do. As I mentioned before, it is a tool to achieve a certain result in terms of creating benefits for Australia. We do create benefits for third parties outside the organisation. If we, acting on our own resources, create some new intellectual

property which we then take further in collaboration with somebody else, there is a distribution of benefits there. Those benefits are in effect negotiated on a case by case basis.

CHAIRMAN—So that is not a uniform policy?

Mr Healy—Only to the extent that we have, for instance, a policy in management of intellectual property that major technology platforms which are vital to the performance of CSIRO's future strategies for research and technology transfer, or core technologies, should be clearly identified and that CSIRO should, as far as practicable, secure and retain intellectual property rights to those core technologies.

CHAIRMAN—How about the poor people that do the work?

Mr Healy—The benefits to the inventors?

CHAIRMAN—Yes.

Mr Healy—The situation in CSIRO over the years has been that various attempts have been made to try to have an inventors' awards scheme. There have been some complexities which have arisen in relation to ensuring that people are treated equitably across the entire organisation. However, the board has now mandated another exercise and at present we are in the process of piloting that with a couple of divisions. The idea is that a certain proportion of the future income would be made available to the staff who invent, over and above the rewards that they get by way of promotion et cetera for being successful in their mission.

CHAIRMAN—Is that part of, or will it become part of, what ANAO are talking about when they talk about a whole-of-government approach to IP? Is that part of your overall management structure or is that just a detail somewhere down the bottom of the catchment?

Mr Healy—It would certainly be part of the way that the organisation is managed. It would become integrated into the management of the place. There are decisions that need to be made. For instance, do you simply reward people who technically, in the case of patents, are inventors, or do you reward people who were part of the team? Part of that is what we are exploring in conjunction with the exercise that we are piloting at the moment.

CHAIRMAN—If a commercial company comes to you and asks you to do a research project, and/or if the Commonwealth government gives you a research grant to do a particular project, I understand that you have no standard distribution policy?

Mr Healy—Yes, that is correct at the moment.

CHAIRMAN—And I understand from some that I have talked to around the world that policies like one-third for the investor, one-third for the organisation and one-third for the researcher have produced the most uniform and outstanding results because they reward individuals for their effort, they reward the organisation for going forward with it and they reward the commercial entity who is going to make use out of it.

Mr Healy—There is one correction that I could perhaps make. The policies that are in place around the world are typically one-third to the inventing team, one-third to the faculty or division that they belong to and one-third to the organisation corporately. They come from the net benefits that come back to the entity. That is certainly the driving force behind what we are doing at the moment.

CHAIRMAN—Does ANAO have a view about whether these kinds of mechanisms might well be included in the overall policy statement?

Dr Nicoll—Certainly, in the light of this discussion, we will be giving more attention in any overall whole-of-government policy to these factors. I think it would certainly be worth while those central agencies considering them for inclusion.

CHAIRMAN—How about DCITA? Do you have a view?

Mr Ostergaard—Not specifically on appropriate mechanisms for rewarding innovators in organisations. I do not think we would have a view on that.

CHAIRMAN—Do you think you should have a view?

Mr Ostergaard—I do not think we should have a view necessarily, because the diversity of agencies that come under the Commonwealth umbrella is so broad that a whole of government policy that is overly prescriptive could be counterproductive. I think the statement of principles and the better practice manual are vehicles for highlighting the issue, but the actual implementation would be the responsibility of individual agencies.

CHAIRMAN—When you talk about principles, do you envisage that rewards for the individuals that perhaps have the copyrightable idea would be useful?

Mr Ostergaard—It may for some agencies. A Commonwealth department like my own is quite different from an organisation like the CSIRO, which is specifically set up to be innovative—not to say that we are not innovative as public servants. We serve the government and have a different business objective.

CHAIRMAN—Let me put the question another way. We do not have Defence here today; but, as an example, suppose an individual in Defence comes up with an absolutely brilliant program initiative to solve the final trajectory of a missile fired from one of our ANZAC frigates. That adds immense value to the machine. We do not regard that individual as being important in the chain of events?

Mr Ostergaard—Absolutely; I think an agency needs to recognise the contributions of individuals. But from a copyright perspective, the bulk of what public servants create is copyright material, and obviously IT is the same. We also have responsibility for management of copyright in published Commonwealth publications. As a general principle, we believe that with anything we publish we should be helping facilitate public access rather than looking for commercial reward for it. So there are two quite different approaches that have to be accommodated.

Ms Mackey—In terms of copyright, we have got moral rights amendments to the Copyright Act which do enable individuals to be acknowledged in copyright material that they produce for the Commonwealth as part of their employment. For example, if you are involved in a process that publishes a report, then you could be acknowledged as contributing to that report. In terms of broader IP patent issues, or ideas that get reflected in other ways, then I suspect that if you are an employee anything you produce and any ideas that you have would be effectively owned by the Commonwealth.

CHAIRMAN—Is it appropriate that any of that, or decisions about that, be included in the overall policy for IT?

Ms Mackey—I think it is worth considering. I do not know that the department has a view one way or the other at this point.

CHAIRMAN—Could I ask ANAO—and I will put it another way—why recommendation No. 2 did not include CSIRO?

Dr Nicoll—Our recommendations were aimed at all Commonwealth agencies. We did not, with regard to recommendation No. 2, single out any particular line agency. In this case, we would consider CSIRO, despite its unique role as a line agency with a somewhat different function from those other agencies that we have included there—which are Attorney-General's, DCITA and IP Australia. There is nothing to stop those agencies continuing to consult with CSIRO, as I know that they do anyway, with regard to these things.

CHAIRMAN—Defence, for instance, is a huge contributor—or could be—towards intellectual property development. You are shaking your head, Mr Kaufmann. Do you have a view on that?

Mr Kaufmann—I am agreeing with you, Chair, that places like Defence, the Australian Institute of Marine Science and the primary industry research and development organisations are all contributors one way or another to IP.

Mr Nyskohus—Again, as Dr Nicoll mentioned, in our recommendation we specifically pointed out those key agencies with policy responsibility that we intended. Hence we did include some words there to the effect that, as part of that development of a whole-of-government policy, there would be consultation—just to gain access to the expertise that organisations like the CSIRO and Defence have in relation to IP management. Certainly we think it would be prudent for the policy agencies to consult as widely as possible and gain the benefit of that expertise.

CHAIRMAN—Dr Tucker?

Dr Tucker—I am not sure what the issue is that you want me to address.

CHAIRMAN—Let us go back to the specific question: do you think that the overall policy objective, once it is set, should include some degree of prescription about what happens to benefits—that is, net benefits if there is a commercial gain from the development of the intellectual property, whether it happens to be a patent or a copyright?

Dr Tucker—A patent, copyright design or trademark? I do not believe so. The reason is that the organisations represented around this table and that were considered in this report are quite diverse in the nature of their business. We have research intensive organisations like the CSIRO and DSTO and we have other government policy agencies that have responsibility for parts of the IP policy environment, so there are significant or substantial differences between the nature of their operations, as I am sure you would be aware.

I think it would be best to say to those agencies that they do need a policy to promote innovation within their organisations. We want them to promote innovation. We want people to be innovative and creative, and we need a system and a structure in which that can be nurtured. So I think we need to say to agencies that they need to create that sort of environment—they need to have an innovative environment—but, as far as the incentives that they use to achieve that are concerned, it would be better to leave it to the agencies concerned rather than prescribe particular structures of reward for innovation.

Ms PLIBERSEK—That is a good point. In an organisation like the CSIRO it makes a lot of sense to have an incentive for inventors and their teams, but if you are involved in the project to design the new Centrelink computer it is quite hard to see how an incentive system would work in a circumstance like that. We have covered—a little bit—the tension between the whole-of-government approach and what happens in different agencies that have such different environments. It seems to me that people are saying that it is okay to have basic principles for a whole-of-government approach but then leave the detail to the agencies. Would most agencies agree with that? Everyone is agreeing with that. You are currently working on the principles. When do you expect to have them completed?

Dr Tucker—With your permission, I will refer this to our colleague from DCITA, who I understand has that information.

Mr Ostergaard—We are aiming to have a statement of principles by some time in October. We are near the drafting stages of that at this point.

Ms PLIBERSEK—Can you tell us which areas are covered?

Mr Ostergaard—It is so early that I cannot say specifically what is involved, but you might look through the state policies. For example, Queensland have just released an IP manual which draws on their statement of principles, and I think it is useful to look at that by way of example. Obviously, what the state government has done is quite different from what the Commonwealth would be doing.

Ms PLIBERSEK—But each state and territory except the ACT currently has a policy in this area, and you are talking about the Queensland policy. Is that because it is better than other policies?

Mr Ostergaard—It is the most recent example. The Queensland government acknowledges work that was done in Western Australia. I only mention that because it is recent. I am not giving it particular preference. The aim is to have something fairly broad and to leave some detail in a manual that is going to take somewhat longer to develop.

Ms PLIBERSEK—Who will have responsibility for the manual?

Mr Ostergaard—The core IP agencies, IP Australia, the Attorney-General's Department and my department, are working together at the moment. Again, it is early stages for the scoping and consultations strategy involved in developing that.

Ms PLIBERSEK—Why is your agency involved?

Mr Ostergaard—DCITA has responsibility for the Commonwealth IT-IP guidelines, which are referred to a number of times in the Audit Office report. We also have responsibility for management of copyright in published Commonwealth publications on behalf of the entire Commonwealth—all the FMA agencies in the Commonwealth. We also have shared policy responsibility for copyright with the Attorney-General's Department. IT-IP and copyright generally represent the bulk of what traditional departments have in terms of intellectual property. We have seen this is a vehicle for building on and extending or creating a policy framework.

Ms PLIBERSEK—Mr Healy, the chair has raised this issue of his one-third, one-third, one-third model. He has spoken about it before when we have had discussions with CSIRO because of this notion that you give incentives to inventors and their teams when they come up with these good ideas. You say that it has been tried in a number of areas of the CSIRO but you are going back to the drawing board. Can you tell us why that is?

Mr Healy—There are a number of factors. One of them which is a constant throughout is that CSIRO staff are paid in effect to create. There has been a philosophy that they can get rewarded through the promotion system and that that in fact is a much more immediate way of providing an incentive than something which might happen 10 years down the track. The CSIRO has something like 4,500 items of registered intellectual property. Most of those—4,000—are patents. It typically takes more than five but more like 10 years before income starts coming back through the system which might then be shared. It is possible to reward people more immediately through the promotion scheme and also through bonuses, which are given for inventions but typically not in the order of, say, millions of dollars which might come if you had an income sharing scheme.

Ms PLIBERSEK—Are they atypically given in the order of millions of dollars?

Mr Healy—No-one has been given that kind of reward by way of bonus in the past.

Ms PLIBERSEK—Would you say that your staff are generally happy with that set up?

Mr Healy—Some of them these days are increasingly saying, 'My colleagues in universities stand to benefit,' so to that extent there is a groundswell of opinion that there should be some sort of scheme. They are not desperately unhappy in my experience because there are these other incentives. Many of them are people who are absolutely dedicated to their science—

Ms PLIBERSEK—Do you mean that scientists are not in it for the money?

Mr Healy—That has been the tradition. It is changing with the new generation of scientists.

Ms PLIBERSEK—I would be amazed that you would choose science as a career if your main motivation was to get rich.

Mr Healy—That is true.

Ms PLIBERSEK—In universities, is it the case that inventors might get one-third of the royalties?

Mr Healy—In some universities that is the policy. In the case of the University of Melbourne, for instance, they gave all intellectual property rights to the research staff who created them. My understanding is that they are now actually trying to claw back from that because it turned out to be not a very suitable policy.

Ms PLIBERSEK—I know that this is not your area of responsibility, but you might have insight into this: how do they divide up the money within a research team? Presumably nobody comes up with these inventions on their own.

Mr Healy—There are the people who are the inventors, who are entitled to be named in the invention statement as the inventors. But even there, somebody who has only contributed, say, one per cent to the idea is named equally as an inventor. So even that has its problems. Then there are also the other people, for instance, who are involved after the conception of the idea in what is called the reduction to practice—experimental staff who may have contributed to it a lot of time and energy, well in excess of what they are paid for. We would be looking to see some sort of recognition of that, but exactly how that is going to work is unclear. It is probably not going to be something where you can have precise formulae; it is going to be something where you are going to have to leave it, at the end of the day, to the management of that group. There is another idea around at the moment, which is that you could identify the group and then let them sort it out between themselves as to who gets what. That is obviously fraught with difficulty as well.

CHAIRMAN—Do people get guns out?

Mr Healy—It has not happened yet!

Ms PLIBERSEK—I also wanted to ask a more general question. The ANAO report says:

Not all types of intellectual property generated or held by an agency will warrant active management.

It goes on:

The agency intellectual property policy and plan should outline the principles and criteria by which such assessments may be made, the types of intellectual property that should be identified and further managed ...

Have you been doing work in your own departments about where that balance gets drawn? Who can tell me about that? What is worth capturing? What is worth measuring? How do we know?

Ms Watson—In the Department of Communications, Information Technology and the Arts, I am responsible for organisational governance. We have started to look at the process since the

ANAO report. Initially what we have done, as suggested in the report, is to undertake a project to try and identify the breadth and amount of IP that the department produces. In that way, we have completed a stocktake of IP which line areas have contributed to. What we did in that sense was to look at a significance value rather than a monetary value as an initial stage. So we had line areas identify their IP based on low, medium or high against operational significance, strategic significance, commercialisation and public significance. That has seemed to work fairly well in our organisation. The majority of IP that we create is copyright and is basically of a short-term type in the producing of papers, letters and those sorts of things. To try and put a monetary value on that would be very difficult. We have found that that, at this early stage of the project, has at least helped people to start to think about where they would categorise the importance of the IP. Beyond that, we are now looking at the next stage.

Ms PLIBERSEK—You said that you are comparing their significance and that one of the criteria is operational significance. Most modern organisations rely on email just to get through the day now. That would obviously have higher operational significance but generally low intellectual property value—who cares tomorrow what the email said today? How do you value that?

Ms Watson—We have basically tried to get it into a category of works: lumping emails together. Depending on the work you are doing, some of those emails may be slightly more valuable if they are contributing to an important decision-making process, so we have asked the line areas to manage it around that idea. An email that is contributing to work on a key decision may be operationally important, and that would be rated as 'high', but if it were just general work product thinking, prior to leading into further development of an idea, then they might rate that as 'low'. We have basically decided in our policy that we will look at the 'high' category. We will now look at that and see what parts of 'high' we will take further. We are only very early in that stage.

Ms PLIBERSEK—Isn't there a danger that organisations will spend their lives trying to work out the value of the documentation? You really do not want to spend too much time in an organisation thinking about it, do you? What is the point?

Ms Watson—Yes, I think you need to look at your organisation and ask: 'Is intellectual property and the commercialisation or high benefit of it relevant to the organisation? Are you an organisation that can commercialise?' I do not think DCITA is one of those; we are a policy-program organisation, and that is why we are trying to weed out what is important. The stocktake is the first step in that process.

Ms PLIBERSEK—Does the Department of Finance and Administration want to make any comments?

Mr Kaufmann—Certainly. It might be helpful. The broad accounting rules here are outlined in the report. I think to some extent this is going to the heart of what you are getting at. The accounting rules set a pretty high hurdle for when you can recognise what I will call research and development activity on the balance sheet as an asset. Apart from the general rules of it being probable that there is some benefit coming from it and that you can get and do have a reliable measure—

Ms PLIBERSEK—For future economic benefits.

Mr Kaufmann—for future economic benefits or service potential, the existing rules we have in Australia around research and development set that bar very high, to the extent that the benefits must be able to be obtained beyond reasonable doubt. So it is putting some definition around the concept of probability: it is 'beyond reasonable doubt'. That is a fairly high hurdle. Likewise, coming through in the international standards and, in particular, for intangibles, the hurdles are very high. If you have some research or development activity or IP that cannot be separated from the actual business itself, then you cannot recognise it. Even then, if you have something that can be separately identified from the business as a whole, again, you have to have a reliable measure and the benefits have to be obtainable. The point I am trying to make here is that from an accounting perspective the hurdle is pretty high.

Ms PLIBERSEK—Did the ABS want to make any comments?

Mr Hope—Just going on from Mr Kaufmann's point, around that issue of the height of the hurdle and those sorts of issues about the valuation of our internally generated software, we have been in a dialogue with the Audit Office essentially since about 1997 or 1998 about creating it as an asset class and bringing it onto the books. We first brought it onto the books at about that time in the nineties, and there has been a continual dialogue about being sure that it is something that we can actually identify and draw a boundary around and for which we can have a robust valuation process to underpin it. For our programming activity, that is fairly straightforward. It is stuff which gives us anywhere up to another 10 to 15 years worth of value in some of the programs we have.

Ms PLIBERSEK—Can you explain that?

Mr Hope—A piece of software is written to help us draw together information out of a whole lot of data sets to create out of that data a number of statistical series, whether they be time series or a point in time. It is the programming which goes to the manipulation of the data that produces the product we want. Rather than write all that off in a year, it is material that we can get benefit from for anywhere up to 10 years or more. So we are looking to put that in a context where we can be sustainable over time rather than be hostage to huge fluctuations with a lot of work being done in these couple of years and low levels of work in later years, where you end up not being in a very good position to sensibly plan your activities over time. We are looking to use the capture of intellectual property activity as a way of helping us manage the organisation. In terms of the material, we then rely on copyright to protect the use of it after the event.

Ms PLIBERSEK—Do you believe that there are people who would steal your intellectual property if you did not have adequate copyright protection?

Mr Hope—I would not characterise it as stealing. It is more a case that, if the material gets used in circumstances that we think are a bit inappropriate or it is not used for the purposes intended, it gives us an opportunity to say: 'We think you're pushing this beyond the bounds of sensibility. This is what it was produced for. You can't now claim that these apples can now be used as lemons.'

Ms PLIBERSEK—Can you give us a practical example of a situation in which that might occur?

Mr Hope—In terms of the copyright stuff, it is just that various statistical series are produced for particular purposes. So what we are looking for is being able to have a dialogue with users as to sensible ways in which that can be used so that people cannot ignore the view we have as to what the purpose of the material was in the first place.

Ms PLIBERSEK—Do you mean that people intentionally misrepresent data?

Mr Hope—Possibly. We are simply being prudent managers of that information.

Ms PLIBERSEK—I understand that the main value for you is the ability to depreciate intellectual property over time and so on. Do you think that having been forced in the nineties to start thinking about how intellectual property is valued has made you think about possibilities for commercialisation as well—or is it much more on the organisational management side of things.

Mr Hope—It is sensible management. It has made us a bit more aware of commercialisation possibilities but, as an organisation, by choice that is not a path we go down because that is not what our business is about.

CHAIRMAN—I will address this question to everyone. Whoever would like to answer, please try. The ANAO has the following definition for intellectual property:

> Intellectual property refers to the rights granted by law in relation to the fruits of human intellectual activity. It includes all copyright, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks ... registered designs, circuit layouts, confidential information and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. Each intellectual property type is recognised and protected under Australian law.

When you talk about having a whole-of-government policy relating to this very broad field of endeavour as defined, if you accept ANAO's definition—which they probably stole from somewhere, so this may all be plagiarised—

Dr Nicoll—I must say that we gave due credit to the source in the footnote.

CHAIRMAN—There was no credit given where I read it on page 17.

Dr Nicoll—At the bottom of page 17—

CHAIRMAN—Okay. It says, 'See Chapter 1.' Anyway, does it make sense that we are sitting here talking about having a whole-of-government policy or an overall, overarching government policy for not just key agencies but also GBEs like CSIRO or government agencies like DSDO, or should we be busting this thing down into individual components?

Mr Ostergaard—I would say, yes, it does make sense. I think one of the difficulties people have with intellectual property is that it is not a physical asset but, when it comes down to basic management principles for IP, it is not all that different from general principles that relate to

asset management more generally. I think the ANAO's recommendations that say that that should be a source of guidance and advice on it are to overcome that lack of understanding that a lot of people in government agencies have of what IP is and to come to grips with some of the particular issues that that form of assets actually present.

Dr Tucker—I did not see the whole-of-government approach as being an approach whereby organisations are told how they should develop their policies and manage their IP. I saw it as an acknowledgement that there is some deficiency in the way in which IP is identified and managed within organisations, either through its creation within those organisations or the way in which they interact with the private sector, for instance. So I saw the whole-of-government approach more as an overarching acknowledgment that there is an issue to be addressed and providing some broad guidance for agencies about how they might go about addressing the issue and then providing some principles and best practice guidance about how to go about creating their policies and then managing their IP. So the approaches that might be taken in agencies would reflect the different mandates that those agencies have.

Senator WATSON—The issue is how far you take this one-size-fits-all policy down to the operational level I think, because various agencies have very different exposure to IT in terms of the developmental work, so I think each agency can therefore approach it a bit differently—particularly CSIRO. You are essentially competing with universities and other bodies.

Dr Tucker—I agree.

Mr Healy—In relation to that, the CSIRO does treat the different kinds of intellectual property fairly differently. For instance, if a CSIRO scientist writes a book, the only intellectual property right there would normally be is copyright. Typically, we allow the scientist to have intellectual property rights themselves in that and to take the royalty but, if it is patents, which are core to what we do and our technology transfer mission, we adopt a different attitude.

CHAIRMAN—I note that the audit report says:

Just over a third of agencies surveyed reported that they have an intellectual property register.

… … …

Only 34 per cent of agencies surveyed indicated that they had systems in place to manage the licensing, transfer, sale or disposal of agency intellectual property.

Does that make sense, or are there a lot of agencies where there will never be any IP development and we do not need to worry about it? Does A-G's have a view?

Ms Mackey—I think that the ANAO report and their whole process of inquiry has highlighted the deficiencies across the different agencies that could possibly be doing a lot better in IP management within their agencies. Our department has certainly taken that on board and has taken initiatives to survey what we have within our own agency and given responsibility to a particular branch of the department for monitoring that, and I suspect a similar thing has happened in a lot of other agencies as a result of the ANAO's inquiry.

CHAIRMAN—Could we then conclude that each of the agencies as represented here today would agree that this is a desirable step forward and that the discussion is about how? Does anyone disagree with that?

Ms Mackey—No.

Senator WATSON—I do not think we need to have a more prescriptive approach in terms of those hands-on agencies that are developing new intellectual property as opposed to those agencies that are just managing intellectual property. I know CSIRO does both so, in a sense, you can say yes to the chairman's question.

I think we need a more detailed evaluation of those agencies which are involved in the hands-on development of IP for which there is going to be some reward. We have not followed that one through fully. I was quite interested in Mr Healy's presentation in relation to two particular cases, but I think we should take that a little bit further to look at the sorts of people whom you are going to be competing with and what sorts of rewards and processes they have in place.

We do not really want to put you people at a disadvantage simply on account of a one size fits all approach in terms of the development of human intellect and its application to the wider world. Where are we going with that issue, Mr Chairman? In terms of the management of IP, I can see there is the approach of having certain standards. For those agencies that are responsible for developing intellectual property and creating rewards et cetera for that development, I think we probably have to be a little bit more encouraging rather than have a blanket approach. I would like a comment from CSIRO.

Ms PLIBERSEK—Did I hear you say that you are in the process of again examining the reward system?

Mr Healy—We certainly are. Also, in response to Senator Watson, we are in a war for talent, as some people have put it, to the extent that if we cannot offer incentives to the top people that we might get elsewhere then we could be at a disadvantage in being able to do the things that we are supposed to do. It has probably not yet been a huge problem but, as I foreshadowed, it could become more of a problem as time goes on. That is one of the reasons for the pilot that we are doing at the moment. It has been decided that there will be a scheme. All we are doing now is figuring out exactly how that scheme should operate and how we can encourage what we would see as positive behaviours and discourage negative behaviours. For instance, if there were too much reward associated with a particular line of action where the real benefit to Australia might be to get it out there and not charge anything for it then you would not want to create a situation where you had a negative result for the country. That is the detail that we have to work through.

Senator WATSON—We almost need a paper on that; it is a big issue.

CHAIRMAN—It is.

Senator WATSON—Would it be possible to—

CHAIRMAN—The problem is that we have to go.

Ms PLIBERSEK—I think Senator Watson means a follow-up.

CHAIRMAN—It is up to us to put that in this inquiry.

Resolved (on motion by **Ms Plibersek**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

CHAIRMAN—I want to thank all the respondents to this inquiry. Thank you for coming along today and sharing your views with us and thank you to those who sat and listened to us and put up with us. I thank my colleagues, I thank the secretariat and, as always, God bless Hansard.

Committee adjourned at 12.13 p.m.