

Issues

Introduction

- 5.1 This chapter highlights the following significant issues considered by the Committee in 2005:
- Public Private Partnerships (PPPs);
 - workload;
 - changes to the Act;
 - timeliness of referrals;
 - quality of evidence; and
 - support.

Public Private Partnerships

- 5.2 The Committee remains concerned at the absence of a valid legislative framework for the referral and scrutiny of Commonwealth works delivered through Public Private Partnership (PPP) arrangements. In the light of Government policy encouraging agencies to explore non-

traditional funding options,¹ the Committee expects that the referral of such projects will become increasingly common.

5.3 The first work of this type to be examined by the Committee was the Headquarters Joint Operations Command (HJOC) project, which was referred to the committee by Defence in March 2004 despite the lack of a clear-cut statutory requirement for referral.² The subsequent inquiry presented the Committee with a number of challenges.

5.4 Defence needed Committee approval of the HJOC project before proceeding to the tender stage. The Committee was required to examine the project and costs at a conceptual level only, as the design, construction and financing details were to be developed by the successful private tenderer. According to the Act however, a work should be referred to the Committee

...when all matters substantially affecting its cost have been determined.³

5.5 Effectively, the Committee was asked to approve the HJOC project well before all matters relevant to cost had been decided. In order to redress this problem, the Committee requested that Defence reappear to provide a further briefing on the project following the selection of the joint venture partner and recommended that the agency provide progress reports and budget updates at each stage of project completion.⁴

5.6 In view of these difficulties, the Committee was pleased to receive notification from the Parliamentary Secretary to the Minister for Finance and Administration that he had obtained legal advice to the effect that:

...where the Commonwealth, or an authority of the Commonwealth, arranges for the provision, and subsequent leasing of infrastructure to which it has set specific requirements that could not be met by the normal leasing of facilities on the open market, it could be expected that the provision of the Act

1 Department of Finance and Administration *Commonwealth Policy Principles for the Use of Private Financing* Commonwealth of Australia 2002

2 It is proposed, however, that the facility will revert to Commonwealth ownership at the conclusion of the 30-year agreement, which may justify referral under the definition of a work given by *Public Works Committee Act 1969*, Section 5 *public work* (c) (ii).

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

4 The Parliament of the Commonwealth of Australia Parliamentary Standing Committee on Public Works *Provision of Facilities for Headquarters Joint Operations Command*, NSW (Fourth Report of 2004) August 2004, paragraphs 3.66 – 3.68 and Recommendation 4

would apply, that is, the proposal would require referral to the Committee.⁵

- 5.7 However, the Committee believes that this advice would have much greater force and utility if it were to be incorporated into a revised Act, together with provisions for the optimum timing of PPP referrals and any additional progress reporting requirements.

Workload

- 5.8 Perhaps the most remarkable feature of 2005 from the Committee's viewpoint was the very heavy workload, which involved the conduct of twenty-six public hearings and the tabling of twenty-three reports. The Committee is of the opinion that the continuing increase in the number of referrals can be attributed largely to the \$6 million statutory limit for referral, which has not increased since 1985. The Committee notes that the current equivalent of the 1985 figure would be between \$12 and \$15 million.

Changes to the Act

- 5.9 The Committee remains the only body with a charter to scrutinise the details of public works proposals prior to the commitment and expenditure of public funds. The Joint Committee of Public Accounts and Audit (JCPAA) and the Senate Estimates Committees may examine public works costs as part of broader inquiries into audit reports or government expenditure; however they do so after the moneys have been committed and/or the project has been completed.⁶ The Committee is the only mechanism by which the Parliament can conduct focussed and detailed scrutiny of proposed government expenditure on real property and infrastructure and make recommendations about the value and probity of each proposal.
- 5.10 In December 2005 the Committee welcomed advice from the Hon Dr Sharman Stone, Parliamentary Secretary to the Minister for Finance and

5 The Parliament of the Commonwealth of Australia Parliamentary Standing Committee on Public Works *Sixty-eighth Annual Report*, paragraphs 5.7 – 5.8

6 For example, in 1991 the JCPAA tabled a report titled *Australian Government Procurement* which examined, among other matters, the devolution and decentralisation of government procurement of assets and real property (see especially Chapter 2); and in Chapter 3 of its *Review of the Auditor-General's Reports 2001-02: First, Second and Third Quarters* (tabled August 2002) the committee reviewed *Audit Report No. 4, 2001-02: Commonwealth Estate Property Sales*.

Administration to the effect that a review of the Act had been completed and had gone to Ministers for response. Members were pleased to learn that the review had covered issues of concern to the Committee, such as:

- the consideration of works delivered under PPP arrangements;
- consideration of accommodation leases;
- service delivery contracts; and
- the statutory limit.

5.11 The Committee looks forward to learning the detail of the proposed changes and their expeditious implementation in 2006.

Timeliness of Referrals

5.12 Whilst the Committee was pleased to note that requests from referring agencies for concurrent documentation had decreased significantly in 2005⁷, members remained concerned at the pressure placed upon the Committee and its staff by agencies seeking early consideration of works on the grounds of 'urgency'.

5.13 Throughout 2005, a number of Departments approached the Committee with requests for 'early' hearing dates or asked that the reporting process be shortened so that they might meet their desired project deadlines. In some cases, these requests were made through the relevant Minister.

5.14 In view of this, the Committee seeks to remind agencies that it is a legislative requirement that the Committee conduct an inquiry into any public work estimated to cost \$6 million or more. Moreover, the Committee cannot commit to a public hearing date until a work has been referred to it. It is, therefore, the responsibility of referring agencies to ensure that they have allowed sufficient time in project schedules for the full and proper execution of the inquiry process.

5.15 The Committee also wishes to stress that it has a charter under the Act to expedite consideration of public works proposals. It endeavours to do this whilst simultaneously fulfilling its requirement to ensure public involvement in the inquiry through advertising and the receipt of submissions; and subject to the constraints of the Parliamentary sitting pattern, as elements of the inquiry process – such as the initial referral motion – must be conducted in a sitting period.

7 See Chapter 2 of this Report, paragraphs 2.16 – 2.17

- 5.16 These factors notwithstanding, the Committee has, in recent years, significantly decreased the time required to complete an inquiry. In 1998/99, with the support of a Secretariat comprised of 4 dedicated staff, the Committee completed 10 inquiries, each of which was completed in an average timeframe of 7.75 months. Conversely, in 2005, with a Secretariat of 3 dedicated staff, the Committee completed 22 inquiries, each of which averaged only 3.6 months in length. Agencies should therefore allow at least three to five months for the inquiry process.
- 5.17 The Committee suggests that, when planning project schedules, agencies should give due consideration to the following:
- the time required to advertise the inquiry;
 - the time required to receive and analyse evidence;
 - the constraints imposed by the Parliamentary sitting pattern; and
 - the Committee's workload, which increases annually.

Quality of Evidence

- 5.18 The Committee noted a variance in the quality of evidence submitted by referring agencies throughout 2005. The importance of high quality evidence to the expeditious completion of an inquiry was expressed at one public hearing by the Chair, who observed that complete and comprehensive information:
- ...certainly helps us to conduct our inquiry speedily and efficiently.⁸
- 5.19 Members noted that the failure to supply adequate information was a particular problem in the area of project costs. In several cases, the financial information supplied by agencies was not sufficiently detailed to allow the Committee to judge the true value-for-money of the work to the Commonwealth. In such cases, the Committee was forced to request supplementary information in order to complete its deliberations, thereby delaying the scrutiny and reporting process.
- 5.20 In order to assist in the production of consistently high-quality evidence, the Committee recommends that agencies consult its *Manual of Procedures for Departments and Agencies*, which can be obtained on-line at <http://www.aph.gov.au/house/committee/pwc/index.htm>. In addition,

8 The Parliament of the Commonwealth of Australia Parliamentary Standing Committee on Public Works; *Reserve Bank of Australia Business Resumption Site at Baulkham Hills in Sydney*, NSW (Tenth Report of 2005) August 2004, paragraph 3.25

agencies are encouraged to contact the Secretariat staff, who can provide detailed advice on the Committee's requirements and the inquiry process.

Support

- 5.21 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, Mrs Margaret Swieringa, and her staff.
- 5.22 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 DoFA, 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 2005.

Hon Judi Moylan MP

Chair

29 March 2004