



OFFICE OF THE SECRETARY

**EXECUTIVE MINUTE**

on

**JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT  
REPORT 374**

*Review of the Financial Management and Accountability Act 1997 and the  
Commonwealth Authorities and Companies Act 1997*

**General comments**

The Department of Finance and Administration (Finance) agrees with the Committee's findings that the *Financial Management and Accountability Act 1997* (the FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (the CAC Act) have accommodated the new financial management framework and the changed needs of the public sector.

In developing responses to the four recommendations of the report, Finance has consulted with the Department of the Treasury (Treasury) on Recommendation 1 and the Department of the Prime Minister and Cabinet on Recommendation 2.

**Response to the recommendations**

**Recommendation No. 1 paragraph 2.99**

*The Department of Finance and Administration and the Department of the Treasury, should consult with their equivalent State agencies with a view to addressing possible inconsistencies regarding defamation and indemnity legislation in this inquiry.*

**Do not agree**

Treasury and Finance do not consider it necessary to consult with their equivalent State agencies with a view to addressing possible inconsistencies regarding defamation and indemnity legislation identified in the inquiry.

The relevant provisions in the CAC Act are aligned with the equivalent provisions in the *Corporations Act 2001* and relate to the ability of a Commonwealth authority or

Corporations Act company to indemnify or exempt officers (ie, directors and senior management) from liability for their conduct. These provisions have already been the subject of intense and lengthy public consultation as part of the process leading to the enactment of the *Corporate Law Economic Reform Program Act 1999* (the CLERP Act).

The CLERP Act amended the officers' provisions in both the *Corporations Law* (now titled the *Corporations Act 2001*) and the CAC Act. While the "indemnification and exemption of officers" provisions were rewritten to clarify their operation, the fundamental policy rationale for their application was reaffirmed. That policy rationale prevents indemnification of an officer for a liability to a third party that did not arise out of conduct in good faith. In other words, conduct accompanied by a dishonest intent cannot be indemnified, but where there is no dishonest intent, the conduct can be indemnified.

In the context of defamation, the effect of the "indemnification and exemption of officers" provisions is that an officer may be indemnified against defamation of a third party provided it did not involve a lack of good faith ie, a dishonest or guilty intent. (This is not affected by the interpretation that may be given to the concept of "good faith" by State defamation law).

Treasury and Finance consider it important not to undermine these standards required of officers. Accordingly, the fact that certain State jurisdictions may impose a lower standard in the case of employees generally, such that indemnification is only excluded for 'serious, wilful or gross misconduct', is not a sufficient reason for countenancing the lowering of the standards required of officers by the *Corporations Act 2001* and the CAC Act. This is particularly so in the light of the prominent corporate collapses since the Committee tabled its Report and the current concern with corporate governance generally.

Finance will draw the Commonwealth standards to the attention of the relevant State agencies.

**Recommendation No. 2 paragraph 2.100**

*The Department of Finance and Administration and the Department of Prime Minister and Cabinet should review the terminology of the Commonwealth's financial management legislation and the public and parliamentary service legislation with a view to removing inconsistency and increasing consistency with the terminology used by the private sector.*

**Agree**

Consistent terminology is desirable except where there is a specific reason for use of distinctive terms. When the need arises to amend the relevant legislation in the future, Finance and the Department of the Prime Minister and Cabinet will ensure consideration is given to the scope for adding any appropriate amendments to increase consistency in terminology.



**Recommendation No. 3 paragraph 3.20**

*The Department of Finance and Administration review the accrual budget format to ensure that the change to full accrual accounting does not diminish the ability of Parliament to scrutinise appropriations.*

**Agree in principle**

The Joint Committee of Public Accounts and Audit recently released the report of its review of the accrual budget documentation (Report 388). That report made a number of recommendations in relation to budget documentation, to which the Government will respond separately.

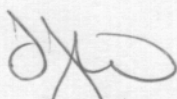
**Recommendation No. 4 paragraph 3.44**

*The Department of Finance and Administration should collect and table in Parliament on an annual basis a consolidated series of charts and tables comparing the performance of all Commonwealth agencies against a range of key performance ratios.*

**Do not agree**

Finance notes that some agencies already present key financial ratios in their annual reports as part of their analysis of past year performance. The selection of ratios should be done at the agency level, as many of the financial ratios that are routinely used to evaluate and compare the financial performance of entities in the private sector are not appropriate in the public sector context. Their automatic application to public sector entities has the potential to convey misleading signals and result in inappropriate policy decisions in relation to the entities concerned. Chief Executives are best placed to determine whether to present financial ratios and, if used, which ratios are most appropriate to their particular operations.

Accordingly, Finance does not support the provision of a series of financial ratios comparing individual Commonwealth agencies on a consolidated basis.

  
I J Watt

24 October 2002