



Australian Government
Department of Defence

Minute

ASMA
CP3-2-133
Northcott Drive
CANBERRA ACT 2600

ASMA/OUT/2008/9
Reference: 2006/1172220/1

CEO DMO R2-5-C074

**AUDIT INVESTIGATION PURSUANT TO RECOMMENDATION 11 OF THE
CLOTHING REVIEW (07-157) - FINAL REPORT**

1. On 3 March 2006, the Minister for Defence announced the appointment of an Independent Review Team (IRT) to conduct an inquiry into DMO's procurement practices for clothing and personal equipment. Pursuant to the Minister's acceptance of the IRT's recommendations, allegations and complaints, which had been handed to the Review Team by a supplier, were reviewed by Mr John Wiseman of Management Audit Branch (MAB).

2. A draft report and a detailed assessment of the allegations were provided to you in December 2006. The draft report included five recommendations with one in particular related to the need to provide feedback to the supplier. GMC DMO, HLS, Director Clothing SPO, and Mr Wiseman, met with the supplier on 4 December 2007 to discuss the outcome of the investigation. This meeting was followed up by a letter from HLS to the supplier on 18 December 2007. A final report on the investigation has now been prepared and is attached as Annex A. Copies of the draft report and detailed findings and the supporting documents are held in the MAB office in Melbourne.

3. The contact officer for this investigation is Mr Leigh Treleaven who can be reached at leigh.treleaven@defence.gov.au or on 03 9282 5462.

D. Clarke

Dianne Clarke
Assistant Secretary
Management Audit

Ph: 02 6266 4204

31 January 2008

Annexes:

A. Final Report

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FINAL REPORT ON THE FINDINGS OF AN AUDIT INVESTIGATION PURSUANT TO RECOMMENDATION 11 OF THE CLOTHING REVIEW - REPORT 07-157

Background

1. On 3 Mar 06, the Minister for Defence announced the appointment of an Independent Review Team (IRT). The IRT was tasked with conducting an inquiry into the DMO's procurement practices for clothing and personal equipment for members of the ADF¹.
2. In conducting the inquiry, the IRT was to investigate and report to the Minister on problems associated with procurement of ADF clothing and personal equipment, and to suggest solutions.² Its report contained 29 recommendations and this audit investigation report is the result of an investigation in response to recommendation 11, which required that:
 - 'Inspector General formally investigates the statements made by a company that accused the Clothing Group of acting either illegally or deliberately not in accord with Departmental Policy.'
3. Recommendation 11 reflects the IRT's summation of allegations made by Mr Peter Marshall, a Director of Crossfire Pty Ltd (Crossfire). Mr Marshall submitted his allegations and complaints under cover of a letter dated 5 May 06. The letter noted that the IRT would 'be able to construct the story from the documents and attached notes' which consisted of over 300 pages of material. Mr Marshall had arranged his material into folders. There was some duplication in the allegations, as particular product groups or procurements featured in different folders.
4. Following the guidance in Mr Marshall's submission to the IRT, Mr Wiseman (MAB) distilled allegations from the documents and attached notes. Mr Wiseman met with Mr Marshall on 17 Oct 06 and confirmed that the allegations, as paraphrased, represented the issues of concern to Mr Marshall.
5. The folder headings, in the order presented by Mr Marshall, are:
 - Making contact
 - Boots
 - Raincoats
 - Helmets & Combat Body Armour
 - Afghanistan
 - Combat Jacket
 - Land 132 "Slander"
 - Pack
 - Non Lethal Force/ Defence Assistance Training, and
 - Goggles.

¹ 30.204 Media Release 021/2006 'Government Announces Combat Clothing Inquiry'

² 30.205 'Report of the ADF Clothing Review May 06'

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ANDERSON
ALG ASSISTANT SECRETARY

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6. There was one issue which appeared only in Mr Marshall's covering letter and was dealt with in isolation. Mr Marshall took exception to comments attributed to the then Minister for Defence (Dr Nelson) on the ABC's Background Briefing program on 26 Mar 06. Although the Minister did not mention Crossfire, Mr Marshall felt that he was the subject of comments which described suppliers making negative comments about procured items. In a discussion with MAB on 13 Sep 06, Mr Marshall said that he had met with the Minister twice since the ABC interview and considered the issue to be resolved.

7. Mr Marshall's complaints and allegations relate to activities which occurred from the mid-1990s to 2006. During the relevant period, the clothing procurement, inventory management, and technical areas have undergone substantial establishment, management, and organisational changes. Despite that, MAB consider that it is vital to recognise that for a complainant there is only one Department of Defence and it would be unhelpful for organisational change issues to be relied on in mitigation. It is apparent that difficulties in the relationship between Defence and Mr Marshall were evident prior to the formation of the DMO. The transfer of the Clothing Group between organisation entities, and most recently into DMO, has simply shifted the legacy issues around the Defence community. References to Defence in this report should be read as including DMO unless the context indicates otherwise.

The audit investigation

8. Management Audit Branch (MAB), was tasked with conducting the audit investigation on behalf of the Inspector General. The subject complaints were forwarded to MAB and investigated as far as the availability of individuals and documents would allow, noting that some of the documentation provided by the complainant refers to events back to 1994. The Minister for Defence was advised of an anticipated completion date of Dec 06.

9. MAB noted that on numerous occasions over many years, Mr Marshall contacted Defence with suggested improvements or to identify potential safety issues associated with items being procured. It was common for Mr Marshall to request that his letter be kept 'on file.' MAB observed, and had it confirmed in discussions with Land Combat Systems Branch (LCSB) staff, that this generally meant that Mr Marshall's letters would remain on the procurement file. Since his complaints related more commonly to his unsuccessful tenders, his letters frequently joined the other unsuccessful tenders, and the issues raised may not have been considered further.

10. Defence failed to engage Mr Marshall effectively. Correspondence that was late, incorrect, incomplete, or which failed to address the issues he had raised led to a belief on Mr Marshall's part that a conspiracy was afoot. The volume of his correspondence must have become a problem in itself, particularly where it coincided with periods of high operational tempo. On some days he wrote several letters seeking information about Request For Tender (RFT), contracts and samples. Some letters expressed Mr Marshall's opinion of the superiority of his product over a particular item sought or procured by Defence. In those instances, judgements must be made to separate valid information on safety issues or new, or superior, technology, from marketing comment. The development of adequate systems to handle valid input on safety or product development should provide greater confidence regarding assessments about correspondence which is deemed to fall into the marketing category.

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11. A common feature of Mr Marshall's letters was a request to be advised of the unit price of a successful tender. Although he was advised in Jul 03 (and perhaps on other occasions) that unit price could not be disclosed to his company, he persisted in asking. This issue could and should have been laid to rest years earlier. MAB noted that there were examples of unsuccessful tenderers, including Mr Marshall, being advised of the unit price of items.

12. Many of the complaints and allegations were found to be correct or are at least supported by the available evidence. In some cases he has been raising the same or similar issues for many years and this, in addition to adding to his sense of frustration, presents a particular challenge in managing explanations as to how things occurred, why they were not detected, and why were they denied. MAB has made a recommendation concerning the need to provide Mr Marshall with a response to his allegations. It is unclear what Mr Marshall will do following provision of the response. He has acknowledged using the media previously, but his position is that he had only done so after repeated efforts to get issues dealt with inside Defence had proven fruitless.

13. Staff in LCSB provided a great amount of information and assistance, which has facilitated much of the audit investigation, while under pressure to prevent stock outages and also to provide information for briefs and reports required by DMO management. MAB recognises and greatly appreciates the assistance received from LCSB staff.

Caveats

14. MAB's audit investigation was based on a skewed sample, since it pursued allegations in material provided by Mr Marshall, and therefore was biased toward instances where he felt that Crossfire was disadvantaged by acts of commission or omission on the part of Defence or DMO staff.

15. Some relevant individuals have retired, are deceased, or have left Defence and therefore not all have been given the opportunity to comment. It is critical that any individual against whom an adverse finding may appear possible should be given full opportunity to respond. Many files had been archived or were otherwise unavailable, and files which were available tended to be incomplete. It is possible that additional information could be located which may impact on the findings of this audit investigation.

16. The mere fact that an allegation or complaint is correct, or supported by the available evidence, does not necessarily constitute an adverse finding in respect of the Department or the individuals involved.

17. Noting that the allegations refer to events which may have happened up to 12 years ago, MAB did not identify the position held by every person involved in the activities subject to the investigation. Generally speaking, even if it were possible to identify a person's role on a given date, it would add little to the points being made.

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Conclusion

18. This report makes four major findings and appropriate recommendations in each case.

Finding 1

19. There were sufficient instances of failure to follow proper procurement practices, failure to either document or retain documentation pertaining to procurement decisions, and failure to engage with a supplier in a professional manner, to establish that Crossfire had not been treated fairly over a number of years. Notwithstanding that, Mr Marshall's allegations were not found to be correct in every case.

Recommendation 1

20. It is recommended that a letter be provided to Mr Marshall outlining the broad conclusions of the investigation into his allegations. Mr Marshall might reasonably expect a response from a senior level, but it may be best for the Minister to remain separate from this administrative issue, leaving the CEO DMO as the most appropriate person to write. The letter would need careful drafting and legal oversight to ensure that it met Mr Marshall's reasonable expectations but avoided wording that might inappropriately compromise the Department's legal position in the event of any future litigation.

Management response

21. On 4 Dec 07 GMC DMO, HLS, and Director Clothing SPO, supported by John Wiseman of MAB, briefed Mr Marshall on the investigation. HLS followed up the meeting with a letter to Mr Marshall on 18 Dec 07.

Finding 2

22. The current staff of the Clothing SPO and Soldier Modernization SPO were open and frank in dealing with MAB and provided valuable assistance to this review. No evidence arose in this investigation to suggest that the actions of any current members of either SPO should be referred for Code of Conduct review or other disciplinary action.

Recommendation 2

23. It is recommended that, in relation to the matters covered in this investigation, CEO DMO note that no further action is required in relation to current staff of the Clothing SPO and Soldier Modernization SPO.

Management response

24. The recommendation is noted and no further action is required.

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Finding 3

25. In the past, there appears to have been a small group of personnel in the former clothing section who operated within a poor cultural framework and with poor practices. None remain within the clothing section,

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SS 41(1)
FOI Act.

The investigation did not identify any evidence of criminality within this group, but their actions appear to be at the heart of Mr Marshall's valid complaints.

26. Mr Marshall has acknowledged, in discussions with MAB, that the staff members he considered were acting consciously against Crossfire's interests are no longer involved in Soldier Support (now Clothing) SPO. Irrespective of the merits of his belief this gives some hope for resolution.

Recommendation 3

27. It is recommended that the CEO DMO consider whether any action can and should be taken against former members of the clothing section who were involved in poor practices, and what legal advice or investigation would be necessary to establish whether a case could be established for any criminal action, code of conduct or other measure.

Management response

28. MAB is requested to identify applicable current serving APS and military personnel and inform Director General Materiel People and Policy DMO to allow further action to be taken.

IG comment

29. A detailed assessment of the allegations has already been provided to CEO DMO. Any further action is a matter for the DMO.

Recommendation 4

30. It is recommended that the Director Risk Audit and Compliance ensure that his rolling program of administrative audits addresses procedural deficiencies such as those relating to documentation of decisions and archiving of records.

Management response

31. Director Risk Audit and Compliance, LSD, is to submit to LSD a rolling program of administrative audits addressing procedural deficiencies.

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IG comment

32. The proposed management action meets the intent of MAB's recommendation. In accordance with existing practice, MAB will review implementation of the proposed action at a future date.

Finding 4

33. MAB noted that DMO officials were contemplating the merits of legal action in respect of Mr Marshall's failure to deliver as contracted on provision of night vision goggles against a recent tender request.

Recommendation 5

34. It is recommended that no action be taken to recover departmental administrative costs from Mr Marshall as a result of his failure to deliver against the goggles contract, noting the indeterminate and small cost, and precedent with other contractors. Instead, it is recommended that this (and an earlier case where Mr Marshall was offered a contract for sleeping bags after initially failing to deliver against agreed specifications) be cited, together with the continuing contracts that have been awarded to Crossfire, as examples of where Defence had displayed a reasonable approach in its dealings with Mr Marshall.

Management response

35. This is dependent on the outcome of recommendation 1 and will require review by CEO DMO before further action is considered necessary.

IG comment

36. The decision on whether or not to take legal action rests with DMO.