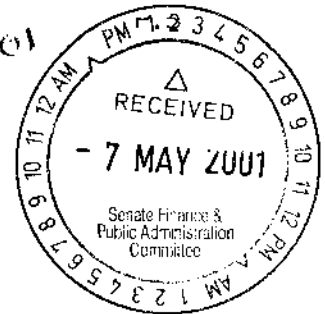


F.66
App. 2000-2001



MINISTER FOR FINANCE AND ADMINISTRATION

Mr Richard Humphry AO
Managing Director
Australian Stock Exchange
20 Bridge Street
SYDNEY NSW 2000

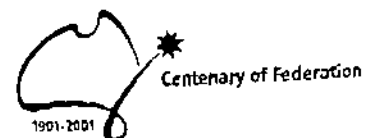
Dear Mr Humphry *Richard*,

I write to confirm the terms and conditions of your appointment to conduct Review of the Whole of Government Outsourcing Initiative in accordance with the enclosed Terms of Reference. You will report to me in accordance with the terms of reference by the end of December 2000.

Please note that you are not engaged as an officer, employee, partner or agent of the Commonwealth and you have no power or authority to bind the Commonwealth. The manner and content of your review is entirely within your own discretion, only its scope being determined by the Terms of Reference.

The Department of Finance and Administration will pay you at the rate of \$600 per day. The Department will reimburse you the reasonable costs of travel at Business Class, the reasonable costs and expense of accommodation and meals incurred by you while necessarily required to be absent from your usual place of business and other reasonable expenses which are necessarily incurred to perform the independent review. You are responsible for any GST payable on fees, costs and outlays.

As you are not an employee, indemnity for claims arising from your performance of the independent review will be provided by the Department in accordance with the Commonwealth policy on indemnification contained in Finance Circular 1997/19 (copy



enclosed). In essence, provided that you agree that your defence will be controlled by the Commonwealth and that you will provide all assistance required by the Commonwealth in the conduct of the defence and provided that the Department is satisfied that you acted reasonably and responsibly, the Commonwealth will indemnify and keep you indemnified against the costs of legal representation, and any damages and legal costs payable by you to another party (including as a result of a reasonable settlement).

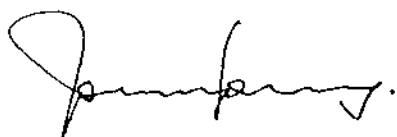
All material created, derived or provided to you for the purpose of your Review shall be and remain the property of the Commonwealth. Copyright in your report and any drafts shall be the property in the Commonwealth. All information acquired by you in the performance of the Review is confidential and you must comply with the provisions of the *Crimes Act 1914* and the *Privacy Act 1988*.

These terms and conditions are offered on the basis that you warrant that to the best of your knowledge, you have no conflict with the interests of the Commonwealth. To this end could you please sign and return the attached Deed of Undertaking with your acceptance. If, during the conduct of the Review, a conflict of interest does arise, you should immediately notify me, making full disclosure of relevant information relating to the conflict and take immediate steps to resolve or otherwise deal with the conflict.

The Commonwealth necessarily reserves the right to reduce the scope of the Review or to terminate your services at will, in which case you will be entitled to be paid for work performed and expenses reasonably incurred to the date of reduction or termination and any costs and expenses directly related to the reduction or termination.

I look forward to your acceptance of these terms.

Yours sincerely



JOHN FAHEY



FINANCE
CIRCULAR
No: 1997/19
Ref: 94/63

DEPARTMENT
FINANCE
AND
ADMINISTRATION
CANBERRA AC
2600

(THIS CIRCULAR ALSO HAS APPLICATION FOR ALL COMMONWEALTH ENTITIES)

INDEMNIFICATION OF PERSONS ACTING IN AN OFFICIAL CAPACITY ON BEHALF OF THE COMMONWEALTH OR COMMONWEALTH BODIES

Introduction

The purpose of this circular is to provide advice of a new policy that is to apply to requests for assistance in relation to legal proceedings and potential legal proceedings for non-Commonwealth officials who undertake activities for the Commonwealth or for Commonwealth bodies. The circular replaces Finance Circular 1992/7 covering this issue.

2. The assistance with legal costs provided by the Commonwealth may involve expenditure for a person's legal representation or related costs of their involvement in the proceedings (for example, to travel to attend the proceedings), as well as legal costs and damages payable to another party by the person.
3. The policy applies to a person who is considering the approval of a proposal to spend public money in providing this assistance for the purpose of Regulation 9 of the *Financial Management and Accountability Regulations 1997*. (This regulation requires that the person must only approve the expenditure if satisfied, after making such inquiries as are reasonable, that the proposed expenditure is in accordance with the policies of the Commonwealth.)

New Financial Legislative Framework

4. The timing and the nature of the changed arrangements reflect the establishment of a new financial legislative framework for the Commonwealth with the introduction on 1 January 1998 of the 3 Acts to replace the *Audit Act 1901*, namely:
 - the *Auditor-General (A-G) Act 1997*;
 - the *Financial Management and Accountability (FMA) Act 1997*; and
 - the *Commonwealth Authorities and Companies (CAC) Act 1997*.

5. The *FMA Act* applies to "agencies" and covers: all departments, including Parliamentary Departments, together with those statutory authorities which do not own money or assets separately from the Executive Government of the Commonwealth.
6. The *CAC Act* applies to Commonwealth controlled companies and their subsidiaries and those statutory authorities whose enabling legislation gives them legal ownership of money and assets in their own right (irrespective of whether they are wholly or partly Budget funded), together with subsidiary companies of those authorities.

New Policy

7. The new policy for providing assistance for legal costs is designed to be consistent with the accountability framework reflected in the *FMA Act* and *CAC Act*. This framework:
 - distinguishes the responsibilities of persons serving the interests of FMA agencies (whose finances are part of the Commonwealth) and those serving the interests of CAC authorities and companies which are financially separate from the Commonwealth;
 - mirrors for CAC authorities the rules of the Corporations Law concerning insurance and indemnification, so that these authorities are able to indemnify and insure their officers (ie directors or any other persons concerned with the management of an authority) within certain limitations, consistent with those applicable to companies (including Commonwealth companies) under the Corporations Law; and
 - takes into account the fact that, in view of their separate financial operations, CAC authorities and companies (rather than the Commonwealth) should carry the risks for activities undertaken in the interests of those authorities and companies.
8. The new policy for assisting with the legal costs of persons who undertake activities for CAC authorities and companies and for persons who undertake activities for the Commonwealth takes account of the new accountability framework. Under this new regime, the Commonwealth will:
 - continue to expect all consultants to the Commonwealth (including FMA agencies) and CAC bodies to carry their own insurance except in exceptional circumstances;
 - from 1 October 1998, expect CAC authorities and companies to carry insurance and provide indemnities for their officers (which include board members and other officers as defined in the *CAC Act* in respect of Commonwealth authorities and the Corporations Law in respect of companies). *The Minister for Finance and Administration has agreed that, until 30 September 1998¹, the Commonwealth will indemnify CAC officers in respect of legal costs in the same manner as applies generally to Commonwealth officials, but only where the legal costs are not covered by commercial insurance/indemnities already provided by the CAC authority or company;*
 - continue to provide assistance in respect of legal costs, in the same manner as applies generally to Commonwealth officials, to persons who are neither CAC officers nor Commonwealth officials and who are undertaking some activity for an FMA agency or to give assistance to the programs of the Commonwealth (unless the terms of engagement provide for remuneration at the commercial rates applying to external consultants who can be said to be working on their own behalf). *This circular, in effect, renews the Minister for Finance and Administration's policy commitment to such individuals – there is no need for separate indemnities from other Ministers to cover these circumstances; and*
 - continue to indemnify officials for legal costs arising out of their activities for a CAC authority or company only if the officials are not insured/indemnified by the authority or company. This will ensure that no official is disadvantaged by acting as an officer of a CAC

body. (The existing rules for indemnifying officials are contained in the Finance Directions which will cease to operate from 1 January 1998, when the *Audit Act 1901* is replaced with the new financial legislation. However, a new policy is being developed to replace the existing rules on assistance to officials under Finance Direction 21. This policy will be announced following approval by the Attorney-General.)

9. A new circular will be issued, following the approval of the policy for officials.

Graham Millar
Branch Manager
Government Accounts Branch
19 December 1997

Reference:

Contact: Maree Alfreds
Telephone: (02) 6263 2448

¹ This will allow a 'period of grace' between the expected establishment, on 1 July 1998, or as soon as possible in 1998-99, of a Commonwealth managed insurance fund. It is envisaged that, for CAC bodies in the General Government Sector, Directors and Officers (D&O) indemnity insurance will be available from the managed fund.

TERMS OF REFERENCE - REVIEW OF THE WHOLE OF GOVERNMENT INFORMATION TECHNOLOGY OUTSOURCING INITIATIVE

The independent reviewer shall conduct a review (Review) of the Whole of Government Information Technology Outsourcing Initiative (Initiative).

The independent reviewer shall inquire into matters relating to the initiative, with particular emphasis on the implementation risk associated with transitioning the provision of IT Infrastructure from the in-house IT operations of Commonwealth agencies to an external service provider (Implementation Risk) in contracts let under the Initiative to date.

In conducting the Review, the independent reviewer should:

- report on the implementation of the Initiative to date;
- identify the sources of Implementation Risk;
- identify how Implementation Risks are addressed and managed in the context of Initiative tender processes; and
- raise any other issues related to the scope of this inquiry.

In conducting the Review, the independent reviewer shall assess the experiences to date of contracts let under the Initiative having regard to the following materials:

- the Auditor-General's Report in relation to the implementation of the Initiative (ANAO Report Number 9 of 2000-2001);
- the collective response to the recommendations of the ANAO Report agreed by all Commonwealth agencies affected by the contracts audited in the ANAO Report;
- the views of Commonwealth agencies and the relevant contractors that have participated in contracts let under the Initiative to date as appropriate; and
- any additional materials the independent reviewer considers necessary to conduct the Review.

As a priority, the independent reviewer shall conduct a review of the Group 1 and Group 11 tender processes currently at market. Specifically, the independent reviewer shall:

- identify Implementation Risks associated with each of these tender processes; and
- provide an opinion that these Implementation Risks have been adequately addressed in each of the tender processes.

The independent reviewer is to report to the Minister for Finance and Administration by the end of December 2000. He will also have access to a steering committee comprised of the Secretary of the Department of Prime Minister and Cabinet; the Secretary of the Department of Finance and Administration; and the Chief Executive Officer of the Office of Asset Sales and IT Outsourcing.

**DEED OF UNDERTAKING:
CONFIDENTIALITY and CONFLICT OF INTEREST**

DEED OF UNDERTAKING: CONFIDENTIALITY and CONFLICT OF INTEREST
dated the ___ day of _____ 2000

BETWEEN

Mr Richard Humphry AO (in this agreement called "the Consultant") of the one part

AND

COMMONWEALTH OF AUSTRALIA acting through and represented by the
Department of Finance and Administration (hereinafter called "the Commonwealth") of
the other part

WHEREAS:

- A. The Minister for Finance and Administration has requested the Consultant to conduct an independent inquiry into, and provide a written report on, the implementation risks of the Whole of Government Information Technology Outsourcing Initiative (the Review);
- B. In the course of responding to the Review, the Consultant will require access to Commonwealth information which is confidential to the Commonwealth and which the Commonwealth has a duty to protect;
- C. Improper use or disclosure of information relating to the Commonwealth would damage the Commonwealth's relationships with suppliers and its ability to perform its governmental and statutory functions;
- D. In the course of the Review, there may be the potential for a Conflict of Interest to arise;
- E. A Conflict of Interest on the part of the Consultant could prejudice the outcomes of the services provided and undermine the integrity of the Commonwealth's processes;
- F. The Parties have agreed that the Consultant will enter into a Deed of Confidentiality and Conflict of Interest on the terms set out below.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION

1.1 In this Deed, unless the contrary intention appears:

“Confidential Information” means all information identified by the Commonwealth as confidential;

“Conflict of Interest” means the Consultant has interests which conflict with those of the Commonwealth in its requirements for the Review;

“Consultant” means Mr Richard Humphry AO, his partners, employees, subcontractors, servants or agents;

“Commonwealth’s Representative” means the Minister for Finance and Administration or any person appointed in writing by the Commonwealth to administer the Review agreement on its behalf;

“Document” includes:

- a) any paper or other material on which there is writing;
- b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

“Parties” means the Commonwealth and the Consultant.

2. CONFIDENTIAL INFORMATION

2.1 The Consultant acknowledges that the Confidential Information is confidential and will be treated as confidential by the Consultant.

2.2 The Consultant hereby undertakes not to disclose the Confidential Information to any person in any circumstances without the prior written consent of the Commonwealth.

2.3 The Commonwealth may grant or withhold its consent in its absolute and unfettered discretion.

2.4 The Commonwealth may grant its consent subject to conditions and in particular, but without limiting the generality of the Commonwealth's power to grant consent subject to conditions, the Commonwealth may require the Consultant to procure the execution of a Deed of Confidentiality in terms approved by the Commonwealth by the person to whom the Consultant proposes to disclose the Confidential Information.

2.5 If the Commonwealth grants its consent pursuant to subclause 2.3 subject to conditions, the Consultant shall comply with those conditions, and shall remain ultimately responsible for any Confidential Information disclosed.

3. RESTRICTION ON USE

3.1 The Consultant agrees to use the Confidential Information only for the purpose of the Review.

3.2 The Consultant agrees that he will treat information gained from sources other than the Commonwealth about the Commonwealth as Confidential Information and agrees that the provisions of this Deed shall apply to that information as if it had been obtained from the Commonwealth.

3.3 If the Consultant gains information pursuant to subclause 3.2, it will notify the Commonwealth's Representative.

4. DISCLOSURE OF CONFLICT OF INTEREST

4.1 The Consultant will disclose to the Commonwealth immediately he becomes cognisant that a Conflict of Interest may exist.

4.2 Upon such disclosure, the Commonwealth's Representative will determine the appropriate course of action to be taken.

5. SURVIVAL

5.1 This Deed shall survive the termination or expiration the Review.

6. COMMONWEALTH'S POWERS

6.1 The Commonwealth may demand and the Consultant agrees to provide:

6.1.1 delivery to the Commonwealth of all Documents in the possession or control of the Consultant containing the Confidential Information

6.1.2 information in respect of the whereabouts of all documents of which the Consultant has knowledge containing the confidential information.

6.2 The Commonwealth may demand, and the Consultant agrees to provide, full details of the Consultant's interests which conflict with that of the Commonwealth.

6.3 The Consultant shall immediately comply with any demand made pursuant to subclause 6.1 or 6.2

6.4 The Commonwealth has the right to take legal action if there is an actual or suspected breach of Confidentiality or Conflict of Interest.

7. APPLICABLE LAW

7.1 This Deed shall be governed by and construed in accordance with the laws of the Australian Capital Territory.

8. NOTICES

8.1 Any notice, request or other communication to be given or served pursuant to this Deed shall be in writing.

IN WITNESS WHEREOF the Parties have executed this Deed on the date first mentioned.

SIGNED SEALED AND DELIVERED
by Mr Richard Humphry AO

.....

in the presence of:

.....

Witness - Name & Title