

## **A submission to the Senate Employment, Workplace relations and Education Legislation Committee**

**To:** The Secretary,  
Senate Employment, Workplace Relations and Education  
Legislation Committee  
Suite S1.61, Parliament House  
CANBERRA, ACT 2600

**From:** Professor Stephen Hall, Director, Australian Institute of Marine Science (AIMS)

**Subject:** **Inquiry into *Research Agencies Legislation Amendment Bill 2002***

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### **Background:**

The provisions contained in the *Research Agencies Legislation Amendment Bill 2002* were referred to the Senate Employment, Workplace Relations and Education Legislation Committee on 26 June 2002. The report is due to be tabled on 29 August 2002.

The Committee will examine:

- financial reporting requirements;
- issues connected with the financial management implications for commercialisation;
- the adequacy or otherwise of financial safeguards; and
- the appropriateness of certain commercial ventures undertaken by these agencies.

### **Summary**

The effect of the amendments proposed would be to update certain Sections of the Act and streamline procedures in line with enhanced accountability arrangements introduced by the *Commonwealth Authorities and Companies Act 1997* and would clarify the Institute's ability to commercialise its research, making a positive contribution to current Government initiatives in "Backing Australia's Ability".

The changes sought would bring AIMS into line with other government agencies.

In relation to the proposal to remove the monetary limit on contracts for expenditure, AIMS is currently required to seek Ministerial approval for any contract expenditure above \$100,000. [Correspondence between previous Ministers in relation to a similar proposal by CSIRO supported the removal of a monetary limit based on the "broad Ministerial and Authority accountability arrangements introduced by the *Commonwealth Authorities and Companies Act 1997*".] This limit was set in 1972 and does not reflect current monetary value or the accountability arrangements introduced by the CAC Act.

In relation to commercialisation, the AIMS Act sets out the functions of the Institute "in relation to marine science and marine technology". During recent efforts to commercialise technologies developed as part of its R&D program AIMS was given legal advice that this wording and several other aspects of the current Act limited the ability of the Institute to use technology transfer pathways that delivered fair value to the Institute in return. The proposed amendments clarify those limits, and apply and acknowledge appropriate accountability mechanisms.

The Institute, through its Council and Director, and by way of being a CAC body, has a governance arrangement that mirrors the Corporations Law (Board/CEO). The Council and Director report to, and are accountable, to the Minister and Parliament through direction and its Annual Report. The AIMS Act and the CAC Act ensure that the Institute must act in accordance with government policies.

## Specific Issues:

### 1. Financial reporting requirements

AIMS has strict formal internal and external financial reporting requirements, deriving from its responsibilities under the AIMS Act and the CAC Act. These include the internal financial reporting system (monthly to Executive, quarterly to Audit Committee, quarterly to AIMS Council), and a comprehensive program of internal audit, including an independent external auditor. The Institute is also audited annually by the ANAO and reports to the Parliament in the AIMS Annual Report.

The amendments proposed in the *Research Agencies Legislation Amendment Bill 2002* do not lessen these requirements.

### 2. Issues connected with the financial management implications for commercialisation

With regard to the commercialisation of its inventions, AIMS' functions (s. 9 (1) (a) to (h) include:

- (b) *to encourage and facilitate the application and use of the results of research and development of that kind; and*
- (g) *to provide and sell goods (whether produced by the Institute or purchased or otherwise acquired by the Institute) and services in connection with matters related to its research and development activities in marine science and marine technology; and*
- (h) *to make available to other persons, on a commercial basis, the knowledge, expertise, equipment and facilities of the Institute; and*
- (i) *to do anything incidental or conducive to the performance of any of the functions in paragraphs (a) to (h).*

The amendments proposed under the *Research Agencies Legislation Amendment Bill 2002* more comprehensively describe how the monies of the Institute may be applied in the Institute's performance of its functions or the exercise of its powers. Under the AIMS Act, some of these powers and functions are unclear within the context of commercialisation of AIMS' technologies.

[In a particular example, AIMS has obtained conflicting legal advice as to whether it clearly has the power under its Act to enter into transactions providing seed capital for its own spin-off companies. The amendments proposed by the *Research Agencies Legislation Amendment Bill 2002* clarify AIMS' power to contribute capital to its spin-offs, by lending money to, and provide guarantees for the benefit of, associated companies of the Institute, ***with the written approval of the Finance Minister.*** ]

### 3. Adequacy or otherwise of financial safeguards

Under the AIMS Act, the AIMS Council exercises its authority to approve annual budgets and monitor the financial affairs of the Institute. In addition, Ministerial approval is required before the Institute enters into contracts involving expenditure of an amount exceeding \$100,000. The limit of \$100,000 for contracts for expenditure has not been amended since the original Act of 1972. In the past two years, AIMS has been required to seek such Ministerial approval six times.

With the provisions and protection of the CAC Act applying to AIMS and its Council members since January 1998, AIMS is seeking an option which would speed up the process and place responsibility more on the organisation than on the Minister. The changes proposed by the *Research Agencies Legislation Amendment Bill 2002* change the limit on contracts to \$1M, which is about 3% of the current annual budget of the Institute.

Under the CAC Act, the AIMS Council is obliged to comply with the reporting requirements of Division 2 (s.10 to s.16 inclusive). These include prescriptive and detailed reporting of financial matters.

Under the proposed amendments, the Commonwealth will provide guarantees for money that AIMS borrows and that AIMS will provide securities for any obligations incurred when borrowing (Sections 42A-42E).

### 4. Appropriateness of certain commercial ventures undertaken by these agencies

#### *Field of research and development*

At present, AIMS may be limited to the commercialisation of discoveries that are marine in character, viz:

S. 9 (1) (a) *to carry out research and development in relation to marine science and marine technology;*

Many technologies that arise from marine research have applications in non-marine developments, and many technologies that have marine application have their genesis in research in non-marine areas. The proposed amendments clarify that AIMS may be involved in the application and use of marine as well as non-marine discoveries.

AIMS is currently obliged in realistic terms to transfer its technologies using licensing models, rather than by creating spin-offs with retained equity. The proposed amendments will allow for the normal commercial operation of spin-offs in which AIMS holds a significant interest, without limiting those operations to those powers which AIMS currently holds. (An example of this is the currently unclear limitation on the power to lend monies to associated companies).

No change is proposed to obviate the current CAC Act requirement that AIMS notify its Minister of significant events, including s.15 and s.16....

#### **15 Responsible Minister to be notified of significant events**

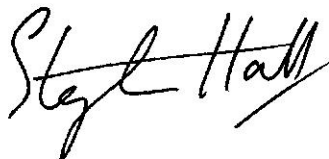
(1) *If a Commonwealth authority, or any of its subsidiaries, proposes to do any of the following things, the directors of the Commonwealth authority must immediately give the responsible Minister written particulars of the proposal:*

(a) *form a company or participate in the formation of a company;*

- (b) participate in a significant partnership, trust, unincorporated joint venture or similar arrangement;*
  - (c) acquire or dispose of a significant shareholding in a company;*
  - (d) acquire or dispose of a significant business;*
  - (e) commence or cease a significant business activity;*
  - (f) make a significant change in the nature or extent of its interest in a significant partnership, trust, unincorporated joint venture or similar arrangement.*
- (2) The responsible Minister may in writing exempt the directors of a Commonwealth authority from the requirement to notify matters covered by paragraph (1)(a). The exemption may be granted subject to conditions.*
- (3) The responsible Minister may give written guidelines to the directors that are to be used by the directors in deciding whether a proposal is covered by paragraph (1)(b), (c), (d), (e) or (f).*

**16 Keeping responsible Minister and Finance Minister informed**

- (1) The directors of a Commonwealth authority must:*
- (a) keep the responsible Minister informed of the operations of the authority and its subsidiaries; and*
  - (b) give the responsible Minister such reports, documents and information in relation to those operations as the responsible Minister requires; and*
  - (c) give the Finance Minister such reports, documents and information in relation to those operations as the Finance Minister requires.*
- (2) The directors must comply with requirements under paragraphs (1)(b) and (c) within the time limits set by the Minister concerned.*



**Signature:**

**Date:** 24 July 2002

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