

Chapter 9

Governance arrangements—probity

Terms of reference

9.1 Under its terms of reference, the committee is required to consider the following matters relating to the governance arrangements for the 2010 tender process:

- whether the decision to award the contract to Adagold was influenced by any vested interests, outside influences or any other perceived or actual conflicts of interest;¹
- the role of departmental personnel in the tender process and their adherence to Commonwealth procurement policy, as well as any conflict of interest issues arising from the tender process and if any perceived or actual conflicts were declared;²
- the integrity of governance around the development of the RFT and the subsequent evaluation process, and whether the governance arrangements achieved their intended purposes, including the processes to manage perceived and actual conflicts of interest;³ and
- whether the governance arrangements were adequate and did in fact ensure that there were no perceived or actual conflicts of interest, for any people involved in the lead-up to the decision to tender, and during the tender review, assessment and supplier selection processes.⁴

Matters of concern

9.2 Governance issues lie at the heart of the committee's concerns about the procurement. The committee is particularly concerned about probity risk management arising from perceived conflicts of interest, the maintenance of confidentiality and proponent grievances about these matters. These concerns arise principally from two shortcomings identified in Defence procurement policy and practice, namely:

- the inadequate identification and management of probity risks, particularly at the procurement planning stage; and
- the inadequate management of potential or perceived conflicts of interest arising from the outside employment or commercial interests of ADF personnel—particularly the early identification of potential conflicts arising from the civilian

1 Terms of Reference, paragraph (a)(iii).

2 Terms of Reference, paragraph (a)(iv).

3 Terms of Reference, paragraph (a)(vi).

4 Terms of Reference, paragraph (a)(vii).

employment of ADF Reservists who are not engaged in continuous full-time service.

9.3 In this chapter, the committee considers probity risk management and then, in the following chapter, turns to consider conflicts of interest.

Probity risk management

9.4 The committee's key concern is that Defence did not manage probity risks proactively or in a coordinated way, primarily because it did not take sufficient steps to identify foreseeable risks at the beginning of the procurement. In particular, the committee considers that:

- (a) Several probity risks were inherent in the circumstances of the procurement. These probity risks took the form of:
 - (i) perceived conflicts of interest arising from the current and previous civilian employment of Major Charlton while he was engaged in 1JMOVGP;
 - (ii) potential breaches of confidentiality arising from such a conflict of interest; and
 - (iii) the potential for proponent grievances about these matters.
- (b) Defence was aware of, or ought reasonably to have been aware of, these probity risks throughout the procurement process. Consequently, it should have been alert to the need for strengthened probity risk management measures.
- (c) Despite its actual or constructive awareness of these probity risks, Defence did not manage them appropriately. In particular, it failed to:
 - (i) document a probity risk management framework at the procurement planning stage; and
 - (ii) revise its approach to probity risk management as probity risks materialised during the procurement process, particularly in the form of sustained proponent grievances.

9.5 The committee details its findings on these points below. It then provides its views on Defence's submissions which sought to explain the absence of robust probity risk management measures, including the documentation of a probity plan and the appointment of a probity advisor.

Probity risks inherent in the circumstances of the procurement

9.6 The 2010 tender was conducted in circumstances that signalled significant probity risks, particularly in respect of conflicts of interest, breaches of confidentiality and proponent grievances about these matters. These circumstances included:

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- the high value of the contract and the limited timeframe for the procurement;⁵
 - the small and extremely competitive nature of the commercial air charter market;⁶
 - the transfer of personnel between suppliers and between Defence and suppliers;⁷
 - the history of controversy associated with the MEAO contracts, particularly proponent grievances about the probity of the 2005 tender process;⁸
 - the questionable behaviour of some in the industry such as the public denigration of a competitor in the 7.30 report mentioned in chapter 2;
 - the complaints made by Strategic about probity matters in the 2010 tender process, both prior to and following the release of the request, relating to the re-engagement of Major Charlton in 1JMOVGP and the alleged disclosure of confidential tender information to Adagold prior to the release of the request;⁹
 - the preliminary concerns expressed by Strategic shortly after the release of the request about the changed tender specifications, particularly the increased cargo volumetric capacity and the preference for a single aircraft solution. These complaints suggested that the new tender specifications may be a point of contention with some suppliers;¹⁰ and
 - the complexity of the proposed procurement arrangements, particularly the use of the standing offer panel to purchase longer term, scheduled air sustainment services. The deed of standing offer which established the panel was framed around the provision of ad hoc services.¹¹

Defence's awareness of probity risks

9.7 Defence had at least constructive knowledge of these circumstances and the associated probity risks because:

- It met with and received unsolicited proposals from members of the standing offer panel, and considered the technical solutions in their proposals. These interactions suggest that Defence was aware of the highly competitive nature of the market, and in particular that some suppliers were:
 - closely monitoring the delivery of services to the MEAO under the 2008 contract;

5 See chapters 2 and 3.

6 See chapter 2.

7 See chapters 2 and 3.

8 See chapter 2.

9 See chapters 3 and 4.

10 See chapters 3 and 4.

11 See chapter 3.

- anticipating that the 2008 contract may be re-tendered, and in some cases actively lobbying Defence to re-tender; and
- positioning themselves for a possible re-tender, for example by holding strategic partnership discussions with potential subcontractors.¹²
- It received and responded to preliminary complaints from Strategic prior to the release of the request about the re-engagement of Major Charlton in 1JMOVGP.¹³
- It received and responded to further complaints from Strategic following the release of the request about:
 - perceived conflicts of interest and alleged breaches of confidentiality arising from the re-engagement of Major Charlton in 1JMOVGP; and
 - value for money considerations arising from the changed tender specifications.¹⁴
- It was further aware of Major Charlton's current and previous involvement in the commercial air charter industry from:
 - Major Charlton's disclosures including his discussions with the Officer Commanding JMCO Brisbane upon his re-engagement in 1JMOVGP in 2009, and his declaration of a potential conflict of interest after the release of the request in 2010; and
 - 'hearsay that Major Charlton had worked for Strategic and left there 'under unfavourable circumstances'.¹⁵
- It received complaints about the probity of the 2005 tender at the debriefing session for that tender.¹⁶
- It contemplated the possibility of proponent grievances during the tender evaluation stage in June 2010, and their potential adverse impact on the timely commencement of the contract. Consequently, the Secretary of the TEB sought legal advice about the appointment of a probity auditor and a probity advisor at this time.¹⁷
- It received legal advice about the request documentation, which identified the tension between the framing of the deed (which was designed for ad hoc services) and the terms of the request (which required longer-term, scheduled services). Defence was advised that while the services were to be sourced from

12 See chapters 2 and 3.

13 See chapter 3.

14 See chapters 3 and 4.

15 See chapters 2 and 3.

16 See chapter 2.

17 See chapter 3.

an established panel, the request, needed to be more robust than usual.¹⁸ This suggested that the selection of panel members may have been conducted on the basis of their suitability to provide ad hoc services. Therefore, additional probity measures may be required where longer-term services were to be sourced from the panel.

9.8 In the committee's view, these circumstances ought reasonably to have alerted Defence to:

- the heightened potential for probity risks, especially proponent grievances;
- the adverse impact that such risks may have on procurement outcomes—particularly:
 - delaying the commencement of the contract—for example, the risk that the procurement may be suspended during the investigation of proponent grievances;
 - increasing the financial costs of the procurement—for example, the risk that additional costs may be incurred to investigate proponent grievances and enter into interim contracts pending investigation of those grievances; and
 - reputational damage—for example, allegations of serious impropriety may damage Defence's image and reputation in the market and in the eyes of the public more broadly; and
- the consequent need to develop, document and implement rigorous governance measures to enable the systematic and proactive identification and management of probity risks—in particular:
 - the documentation of a probity plan or, at the least, the integration of probity risks into the procurement risk management plan; and
 - the early consideration of appointing a probity advisor.

9.9 Indeed, the probity risks noted above—and appropriate risk management responses—are identified expressly in Commonwealth procurement policy. For example, the relevant Australian Government Financial Management Guidance document, *Ethics and Probity in Government Procurement* (FMG 14) identifies probity plans as particularly useful in procurements that are:

- of high value;
- in need of careful management;
- likely to encounter ethical problems; or
- likely to be subject to a high degree of public scrutiny.¹⁹

18 See chapter 3.

19 Department of Finance and Deregulation, *Ethics and Probity in Procurement*, Financial Management Guidance 14, January 2005 ('FMG 14'), p. 28.

9.10 FMG 14 further recommends that agencies consider appointing external probity advisors in large or complex transactions—for example, where:

- the transaction is of high value;
- the matter is complex;
- the integrity of the project may be questioned;
- there has been a history of controversy or litigation in relation to the matter;
- the matter is politically sensitive;
- the nature of the market place makes supplier grievances more likely (such as where competition is strong and confidentiality is particularly important); and
- there is a high probability of conflict of interest.²⁰

9.11 In its Better Practice Guide, *Fairness and Transparency in Purchasing Decisions: Probity in Australian Government Procurement*, the ANAO recommends the appointment of a probity advisor where:

- the nature of the market place makes proponent grievances more likely (for example, where trade secrets are commonplace, or where competition is particularly strong);
- an in-house or public sector bid is expected and independent scrutiny is needed to avoid actual or perceived bias;
- there is an incumbent supplier with a history of contracts with the entity, and competitors may require an increased level of confidence in the integrity of the process;
- proponents are likely to have had previous dealings with selection panel members, such that conflicts of interest could become an issue; or
- in the past there has been controversy or litigation relevant to the project, the entity, or one or more of the potential suppliers.²¹

9.12 The Defence Procurement Policy Manual (DPPM) also contains a dedicated chapter on ethics in procurement, which includes guidance on the appointment of probity advisors and auditors and managing conflicts of interest.²² The DPPM mandates consideration of documenting a legal process or probity plan for any complex or strategic procurements.²³ It also requires all officers involved in the tender evaluation of complex and strategic procurements to be briefed on their probity

20 FMG 14, p. 30.

21 Australian National Audit Office, *Better Practice Guide—Fairness and Transparency in Purchasing Decisions: Probity in Australian Government Procurement*, ('ANAO Better Practice Guide') August 2007, p. 33.

22 DPPM, Chapter 3.13.

23 DPPM, p. 3.13-3, [12].

obligations in accordance with the probity plan.²⁴ The DPPM identifies circumstances in which consideration may be given to the appointment of a probity advisor, which include those contained in FMG 14.²⁵ It notes that probity advisors are 'normally engaged at the beginning of the procurement process'.²⁶ The DPPM further refers to the ANAO better practice guide as a key reference.²⁷

Defence's approach to probity risk management

9.13 Defence's awareness of the probity risks outlined above was not reflected in the procurement governance arrangements, at either the planning stage or subsequently during the procurement process.

9.14 The evidence before the committee is that probity issues were given very limited consideration during procurement planning. As noted in the Deloitte and AGS reviews, the procurement strategy did not document a dedicated probity plan, nor did the risk management plan identify probity risks.²⁸ The evidence before the committee suggests that Defence may have relied on the fact that the tender was conducted through a standing offer panel as a substitute for implementing a specific probity risk management framework.²⁹

9.15 Incidental consideration was given to the appointment of a probity advisor very late in the tender process in June 2010. Legal advice was sought by the Secretary of the TEB during the evaluation stage about engaging a probity auditor on completion of the process.³⁰ The advice was provided orally, however the legal advisor's written summary of his advice indicates that the issue of a probity advisor was considered at this time because he happened to raise the distinction between a probity auditor and an advisor.³¹ It appears that Defence did not specifically seek advice on this point. In any event, the legal advice was to the effect that there would have been limited benefit in appointing a probity advisor so late in the process.³²

9.16 The absence of a probity risk management framework was evident as the tender process continued. For example:

24 DPPM, p. 3.13-3, [13].

25 DPPM, p. 3.13-4.

26 DPPM, p. 3.13-3, [16].

27 DPPM, p. 3.13-6.

28 See chapter 6.

29 Department of Defence, *Submission 5*, Attachment A, p. 22.

30 See chapter 3.

31 Department of Defence, *Summary of advice provided by Clayton Utz to Defence in relation to the appointment of a probity auditor* (14 April 2011), response to Question on Notice 3(j). See further chapter 3.

32 See chapter 3.

- Defence personnel who assisted in developing the Request documentation were not asked to sign a conflict of interest declaration unless they also participated in the evaluation;
- there were no probity protocols developed for the industry briefing;³³
- tender evaluation team members did not receive a probity briefing;³⁴
- tender evaluation team members did not sign the conflict of interest declarations until after the evaluation commenced and the declarations were deficient in several respects;³⁵ and
- there were inadequate access controls applied to electronic files containing confidential tender information. These circumstances meant that significant *ex post facto* checks were necessary to ascertain whether Major Charlton had accessed relevant tender files and information systems, or had contact with persons involved in the procurement.³⁶

9.17 Defence did not revise its approach to probity risk management or seek to develop a risk management framework as the tender process continued. This was so even as probity risks began to materialise, primarily in the form of repeated complaints by Strategic.³⁷ The evidence before the committee is that Defence did not appear to recognise or appreciate the magnitude of these risks. For example:

- Defence emphasised the non-mandatory nature of probity measures that could have avoided or minimised the adverse consequences of proponent grievances.³⁸
- Defence submitted that during pre-tender deliberations it recognised the risk that Major Charlton's re-engagement in 1JMOVGP may create a perceived conflict of interest. However, it believed that the risk had been wholly removed because Major Charlton had been separated from any MEAO-related contracting or procurement activities, and was ultimately directed to cease parading with JMCO Brisbane.³⁹
- The Secretary of the TEB, Squadron Leader Cole, stated categorically in June 2010 that there were no probity issues associated with the procurement.⁴⁰

33 See chapter 3. See further the observations of the Deloitte and AGS Reviews in chapter 6.

34 See chapter 3. See further the observations of the Deloitte and AGS Reviews in chapter 6.

35 See chapter 3. See further the observations of the Deloitte Review in chapter 6.

36 See chapters 5 and 6.

37 See chapters 3 and 4.

38 See for example, Department of Defence, *Submission 5*, Attachment A, pp. 16, 22.

39 See chapter 3. See further Department of Defence, *Submission 5*, Attachment A, p. 23.

40 Department of Defence, *Summary of advice provided by Clayton Utz to Defence in relation to the appointment of a probity auditor* (14 April 2011), response to Question on Notice 3(j).

Committee views

9.18 In statements before the committee, Defence made two key points:

- (a) the probity risks and risk management responses were identifiable with the benefit of hindsight, but not necessarily at the time;⁴¹ and
- (b) risk management measures such as probity plans and the appointment of probity advisors are non-mandatory.⁴²

9.19 Turning to the first matter, the committee rejects, in the strongest possible terms, the emphasis that Defence placed upon the benefits of hindsight. In the committee's view, the probity risks outlined above should have been anticipated and given close consideration from the commencement of the procurement process. The committee emphasises its findings above that these risks were foreseeable due to:

- the circumstances of the procurement, of which relevant Defence personnel were aware or ought reasonably to have been aware; and
- their express recognition in Commonwealth procurement policy.

9.20 Similarly, the committee does not accept Defence's submissions on the non-mandatory nature of dedicated probity plans or advisors.⁴³ It is unsatisfactory to make bare assertions that the Department was not subject to any binding legal or policy obligations to adopt these measures. The Commonwealth procurement policies outlined above identify clearly the circumstances in which the documentation of probity plans and the appointment of probity advisors are encouraged. The 2010 tender process fell squarely within these circumstances, yet Defence failed to adduce any evidence explaining how, if at all, it considered these policies in making key procurement decisions, including:

- the decision not to document a probity plan in the procurement strategy;
- the decision not to include probity issues in the risk management plan; and
- the decision not to appoint a probity advisor at the commencement of the procurement, and when the issue arose belatedly in June 2010.

9.21 The committee is concerned that the decisions not to implement these measures may have been motivated by an over-reliance on the use of the standing offer panel. It seems that the panel arrangement may have been used as a substitute for

41 See for example, AFCD Review, p. 12: 'while the advice not to appoint an independent probity advisor may have been reasonable at the time, with the benefit of hindsight, the review concluded that a complete risk assessment ... should have identified the desirability for an independent probity advisor'. See further, Mr Geoffrey Brown, *Proof Committee Hansard*, 29 March 2011, p. 88; Dr Ian Watt, *Proof Committee Hansard*, 29 March 2011, p. 88 (evidence on the benefits of hindsight with respect to the decision not to interview Mr Aisen).

42 See for example, Department of Defence, *Submission 5*, Appendix A, pp. 16, 22.

43 Department of Defence, *Submission 5*, Attachment A, p. 16. See further, p. 22.

considering probity risk management strategies. For example, Defence noted the findings of the Deloitte Review that probity risks were not documented in the risk management plan, and a probity plan was not documented. It submitted that these findings:

[align] with the Proposal Approver's decision that an external probity advisor was not mandatory and therefore not required as the existing Air Services Standing Offer Panel was being accessed. Therefore it was assessed that there was no requirement to include this in the risk management plan.⁴⁴

9.22 In the committee's view, such reliance was unreasonable, having regard to the foreseeable probity risks inherent in the circumstances of the procurement and the clear statements in Commonwealth procurement policy noted above. In addition, Defence received legal advice about the development of the request, which identified significant differences between the services contemplated by the deed, and those required in the request.⁴⁵ This should have alerted Defence to the need to consider whether further probity measures, developed specifically for the request, were necessary.

9.23 Moreover, the committee is concerned that Defence does not appear to have sought legal advice about the appointment of a probity advisor during the planning stage. Ultimately, legal advice was provided—incidentally to a request for advice about a probity auditor—very late in the process in June 2010.⁴⁶ Accordingly, the committee takes no comfort from the evidence of Group Captain Barnes that:

...the Defence Procurement Policy Manual does not actually mandate the requirement for a probity advisor. It is to be considered, and that is indeed what we feel we did.⁴⁷

9.24 The committee is disappointed that uncritical reliance on the panel arrangement—followed by belated and incidental consideration during the tender evaluation stage—was thought to be sufficient in a complex, high-value procurement with a history of controversy. It indicates that Defence adopted a minimal approach to interpreting and applying its procurement policy.

9.25 Having regard to the circumstances of the procurement and the factors identified in FMG 14, the DPPM and the ANAO better practice guide, the committee considers that:

- a probity plan should have been documented in the procurement strategy;

44 Department of Defence, *Submission 5*, Attachment A, p. 22.

45 See Chapter 3. See further AFCD Review, p. 12.

46 Department of Defence, *Summary of advice provided by Clayton Utz to Defence in relation to the appointment of a probity auditor* (14 April 2011), response to Question on Notice 3(j).

47 Group Captain Robert Barnes, *Proof Committee Hansard*, 29 March 2011, p. 64.

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- the probity plan should have identified risks arising from the circumstances of the procurement—in particular, the following risks should have been identified:
 - the potential for actual, potential or perceived conflicts of interest to arise from the previous and concurrent, secondary employment or other financial interests of 1JMOVGP personnel in the commercial air charter industry;
 - the potential disclosure of confidential tender information as a result of such conflicts of interest; and
 - potential proponent grievances about these matters; and
 - a probity advisor should have been appointed from the commencement of the procurement process to provide advice about the development and implementation of strategies to manage the abovementioned probity risks.

9.26 The committee acknowledges that these measures may not have prevented proponent grievances from arising. However, it takes the firm view that a rigorous and thoroughly documented probity risk management framework could have minimised their impact significantly. In particular, such an approach could have provided sufficient reassurance about the probity of the process to avert the need for five reviews of the procurement, at significant public cost. In the committee's view, Defence must ensure that robust probity risk management measures are implemented in all future procurements of air sustainment services to the MEAO. In this regard, the committee welcomes Defence's advice that probity advisors will be appointed to all future complex and strategic procurements.⁴⁸

9.27 The committee is of the view that the deficiencies in risk identification evident in the 2010 tender process may further illustrate a gap in Defence procurement policy. Currently, the DPPM chapter on risk management⁴⁹ does not cross-reference the chapter on ethics and probity⁵⁰ or otherwise provide significant guidance on identifying and responding to probity risks as part of risk management, particularly at the procurement planning stage. The single reference to probity in the DPPM chapter on risk management is to identify the potential for a 'breach of ethics and probity in the tender evaluation process' as a factor to be considered in risk identification.⁵¹ Accordingly, the committee considers that the DPPM should provide clearer guidance on the relationship between probity and risk management. That is, it should provide expressly that probity risks must be taken into consideration in risk management. One way of achieving this may be for the DPPM chapter on risk management to cross-reference the chapter on ethics and probity.

48 Department of Defence, *Submission 5*, Attachment A, p. 16. See further, chapter 7.

49 DPPM, Chapter 3.2.

50 DPPM, Chapter 3.13.

51 DPPM, p. 3.2-2.

Recommendation 1

9.28 The committee recommends that Defence:

- **requires the documentation of a dedicated probity plan for all future procurements of air sustainment services to the MEAO;**
- **ensures probity plans for all future procurements of air sustainment services to the MEAO identify expressly and address the risks associated with:**
 - (i) proponent grievances and**
 - (ii) the small and highly competitive nature of the commercial air charter market;**
- **implements its proposed policy of appointing probity advisors to all complex and strategic procurements and monitors closely the implementation progress and impact of this policy—in particular, ensures that a probity advisor is appointed to all future procurements of air sustainment services to the MEAO; and**
- **amends chapter 3.2 of the Defence Procurement Policy Manual on risk management in procurement to include references to probity risks. In particular, Defence should consider cross-referencing chapter 3.13 on ethics and probity in procurement.**

The appointment of an independent probity advisor to all Commonwealth aviation contracts

Terms of reference

9.29 In directing the committee to examine 'any other matters relevant to the probity of the procurement processes', the terms of reference specifically require the committee to consider the potential appointment of a permanent and independent probity advisor to oversee the awarding of all Commonwealth aviation contracts.⁵²

9.30 This measure was supported by some members of the Air Transport Standing Offer Panel.⁵³ One submitter, Pel-Air Aviation Pty Ltd, supported this option on the basis of possible irregularities in other Commonwealth aviation procurements using the standing offer panel. It expressed the following concerns about the awarding of air charters by the Department of Immigration and Citizenship (DIAC):

Over the period 7 October to 22 January 2011 last, DIAC issued 48 requests for which Pel-Air submitted quotations for the majority, but did not succeed in winning any of these charters. These tenders are always given very tight timeframes (overnight or within two days) and there is the perception that certain parties may be given advanced notice and unfairly advantaged. We

52 Terms of Reference, paragraph (b)(v).

53 This included Pel-Air Aviation Pty Ltd, *Submission 2*, p. 2.

suggest that there is an investigation as to whether the tight deadlines were indeed unavoidable or were indeed intentional. Additionally, Pel-Air is concerned that there may be some bias associated with the awarding of these contracts.⁵⁴

9.31 In his oral evidence to the committee, the Chief Operating Officer of Pel-Air, Mr Danny Foster, stated further:

We believe that this is an industry where some people seize on the appearance of any improper behaviour. It is quite a small industry, and it is an industry where people have a high knowledge of what their competitors are doing...We believe that business should not only be conducted in a proper fashion, but it is important that it be seen to be conducted in a proper fashion. So if nothing else, the appointment of a probity auditor would create an environment where there is a high degree of confidence in the process.⁵⁵

Committee view

9.32 Although the committee has recommended that a probity advisor be appointed to complex and strategic procurements such as the air sustainment services to the MEAO, it does not necessarily suggest that an advisor is appointed to all Commonwealth aviation tenders. While recognising that there may be potential benefits in the appointment of a permanent and independent probity advisor for Commonwealth aviation contracts, the committee considers that it would be premature to recommend this course for several reasons.

9.33 The committee considers that such an approach—which would involve singling out aviation services for differential treatment to other procurements—must be informed by a strong evidence base. The current Commonwealth policy approach to probity management favours agency level responsibility, and the implementation of measures specific to individual procurements.⁵⁶ The detail in Commonwealth procurement policy and guidance documents on potential conflicts of interest, outside employment and potential proponent grievances suggests that many goods and services are procured from markets with similar characteristics to the commercial air charter industry.⁵⁷ That is, it seems that Commonwealth policy has contemplated that procurements are conducted in small and highly competitive markets, in which there may be significant personnel movement between suppliers, and between purchasers and suppliers.

54 Pel-Air Aviation Pty Ltd, *Submission 2*, p. 2. See further, Mr Danny Foster, *Proof Committee Hansard*, 28 March 2011, pp. 19–26.

55 Mr Danny Foster, *Proof Committee Hansard*, 28 March 2011, p. 20.

56 See especially, FMG 14.

57 See FMG 14. See further, Australian National Audit Office, *Better Practice Guide—Fairness and Transparency in Purchasing Decisions: Probity in Australian Government Procurement*, August 2007.

9.34 Although these matters should not preclude consideration of the appointment of a permanent, independent and Commonwealth-wide probity advisor, they indicate the need for a thorough cost-benefit analysis of this option. This would require a broader analysis than is possible in the investigation of an individual procurement. Before introducing a further layer of regulation, it is also necessary to allow time for agency level reforms to take effect—including those proposed by Defence in the context of this inquiry—and to enable consideration of the committee's recommendations.

9.35 While acknowledging the concerns raised about possible irregularities in DIAC air charters, the committee considers that an investigation of this matter is beyond its mandate. Accordingly, the committee draws these matters to the attention of the Senate, so that it may determine whether to pursue them.

9.36 With regard to managing proponent grievances, the committee considers that it may be timely for Defence to review its procurement complaint resolution procedures to ensure that they align with best practice. It also notes a suggestion from a member of Defence industry to appoint an independent Ombudsman to handle complaints about Defence procurement.⁵⁸

58 Confidential correspondence to the committee, March 2011.