

Review of the Whole of Government IT Outsourcing Initiative

Independent Review conducted by Mr Richard Humphry AO

16 February 2001

Senator George Campbell
Chair
Senate Finance and Public Administration (References) Committee
Parliament House
CANBERRA ACT 2600



Dear Senator Campbell

Thank you for your letter of 9 February 2001. I apologise for the delay in responding to you as I have been both interstate and overseas.

With respect to your question, I note that there appears to be two conflicting opinions that the Committee has received. Accordingly, I have sought further advice from the Australian Government Solicitor (AGS) and it is attached with this letter. This advice is supportive of earlier advice tendered to me by the AGS and which has previously been forwarded to you.

As I indicated to the Committee at its hearing of 7 February, I placed great store on receiving candid advice in the course of conducting my review. I believed that the individuals who had prepared the submissions should have their opinions respected and, accordingly, I sent the documents back to those that submitted them. Before deciding to do so, I asked that legal advice be sought to ensure that I would not breach any relevant legal requirements and the AGS advised that I would not be prohibited from returning the submissions.

You correctly point out in your letter that the AGS's advice did not cover other records generated by the inquiry. With respect to other records, I would refer the Committee to the testimony I gave on 7 February.

Yours sincerely

A handwritten signature in black ink, appearing to be 'R G Humphry', written in a cursive style.

R G Humphry

Review of the Whole of Government IT Outsourcing Initiative
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Our ref: 2000062539

14 February 2001

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

Dear Mr Humphry

Response to the Committee

1. We refer to the letter dated 9 February 2001 from Senator George Campbell to you requesting clarification of the reference to 'in the light of present information'. Our response is as follows.
2. The Review was advised by the AGS that in the light of the present information third party submissions would not be covered by the *Archives Act 1983*. The advice was not concerned with records generated by the Review.
3. In order to be covered by the Archives Act the advice considered that the submissions needed to be able to be treated as 'Commonwealth records'. However, in the light of the present information, it was considered that the submissions would not be the property of the Commonwealth and therefore would not be 'Commonwealth records'. Rather, the submissions would be regarded as the property of the persons making the submissions. First, the submissions would be regarded as being owned by the persons making those submissions unless there was something to the contrary in the arrangements made between them and the Review. Secondly, there was not information available that indicated the existence of such contrary arrangements.
4. There was nothing in the Archives Act which the AGS considered to be contrary to the advice referred to above. In this context also, the following factors are not considered by the AGS to affect the advice referred to above, namely, that the Review was commissioned by and reported to the Minister for Finance and Administration in accordance with the terms of reference, that the inquiry was able to

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consult with a steering committee consisting of relevant APS officials, that the inquiry had secretariat support provided by the Department of Finance and Administration or that the inquiry's report was eventually published by the Commonwealth. In the view of the AGS, these factors would not operate in such a way as to deprive the persons making the submissions of their ownership of those submissions.

Yours sincerely



Linda Richardson
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