

SOUTH AUSTRALIA

Report
of the
Auditor-General
Annual Report
for the
year ended 30 June 2006

Tabled in the House of Assembly and ordered to be published, 26 October 2006

First Session, Fifty-First Parliament

Part A: Audit Overview

By Authority: K. O'Callaghan, Government Printer, South Australia

2006



29 September 2006

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Gentlemen

REPORT OF THE AUDITOR-GENERAL: ANNUAL REPORT FOR THE YEAR ENDED 30 JUNE 2006

Pursuant to the provisions of the *Public Finance and Audit Act 1987*, I herewith provide to each of you a copy of my 2006 Annual Report. This Report includes the Honourable the Treasurer's Statements for the financial year ended 30 June 2006.

Content of the Report

This Report is in two parts – Part A and Part B.

Part A –The Audit Overview contains some commentary of Audit findings and comment concerning specific issues of importance and interest in the public sector that are brought to the attention of the Government and the Parliament pursuant to the provisions of subsections 36(1)(a)(iii) and 36(1)(b) of the *Public Finance and Audit Act 1987*.

Part B – Volumes I, II, III, IV and V contain comment on the operations of individual public authorities, the financial statements of those public authorities, and the Treasurer's Statements. A number of matters that, in my opinion, are of administrative significance or importance to the Government and the Parliament that are contained in Part B of this Report are listed separately under the heading 'References to Matters of Significance'. This list can be found immediately after the Table of Contents in the front of Volumes I, II, III, IV and V of Part B.

Auditor-General's Annual Report

In accordance with subsection 36(1)(a) of the *Public Finance and Audit Act 1987*, and subject to comments made within this Report, I state, that in my opinion:

- (i) the Treasurer's Statements reflect the financial transactions of the Treasurer as shown in the accounts and records of the Treasurer for the financial year ended 30 June 2006;**
- (ii) the financial statements of each public authority reflect the financial transactions of the authority as shown in the accounts and records of the authority;**
- (iii) the controls exercised by the Treasurer and public authorities in relation to the receipt, expenditure and investment of money; the acquisition and disposal of property; and the incurring of liabilities, are sufficient to provide reasonable assurance that the financial transactions of the Treasurer and public authorities have been conducted properly and in accordance with law.**

Whilst I have not seen fit to express a qualified opinion with respect to matters referred to in subsection 36(1)(a)(iii) above, there have been cases where in some agencies, systems of internal controls have not, in my opinion, been of an acceptable standard. Where this has occurred, I have,

in accordance with the provisions of subsection 36(1) of the *Public Finance and Audit Act 1987*, drawn attention to this fact and included comment on my reason(s) in the report on the agency concerned in Part B of this Report.

Further, Statement F of the Treasurer's Statements shows four accounts, HomeStart Finance, Office of Public Employment, Education and Children's Services Administered Items and Government Workers Rehabilitation and Compensation Fund, to be overdrawn at 30 June 2006. This is a breach of Treasurer's Instruction 6.7. In my opinion, these were isolated incidences that arose from administrative processes at year end and it is not evident that there is a systematic failure of controls.

Report and Opinion on Controls

As required by subsection 36(1)(a)(iii) of the *Public Finance and Audit Act 1987*, the audit included an assessment of the controls exercised by the Treasurer and public authorities in relation to the receipt, expenditure and investment of money, the acquisition and disposal of property and the incurring of liabilities and also, where applicable, whether the controls in operation were consistent with the prescribed principles of the Financial Management Framework as required by Treasurer's Instruction 2 'Financial Management Framework'. The overall aim of that assessment was to establish whether those controls were sufficient to provide reasonable assurance that the financial transactions have been conducted properly and in accordance with the law.

It is not practical in any such assessment to review each and every control in respect of each and every transaction. Whilst every effort is made to test the sufficiency of controls across a representative range of transactions, it must be remembered that no system of control is 'fail-safe'.

The Parliament has recognised this in stating that the controls need only be sufficient to provide, at the time of audit, 'reasonable assurance' of the matters set out in subsection 36(1)(a)(iii).

The Audit assessment has been made by reviewing the adequacy of procedures and testing a number of control components against a range of financial transactions conducted at various levels of the organisation.

In assessing the sufficiency of these controls, particular regard has been had to the organisation's structure, risk and the inter-relation of policies, procedures, people, management's philosophy and operating style, demonstrated competence, and overall organisational ethics and culture. All of these matters serve as inter-related elements of control.

The standard by which Audit has judged the sufficiency of controls is whether and how well those controls provide reasonable assurance that financial transactions of the Treasurer and public authorities have been 'conducted properly and in accordance with law'. This concept requires the organisation to meet the standards of financial probity and propriety expected of a public authority and, at all times, discharge its responsibilities within the letter and spirit of the law, both in terms of its own charter and as an instrumentality of government discharging public functions.

Except for the matters detailed for each agency in Part B of my Report under the section 'Audit Findings and Comments', Audit formed the opinion that the controls exercised in relation to the receipt, expenditure and investment of money; the acquisition and disposal of property; and the incurring of liabilities were sufficient to provide reasonable assurance that the financial transactions were conducted properly and in accordance with the law. In respect of those matters where the controls exercised were not sufficient to provide that level of assurance, Audit has made recommendations as to where improvements are required.

Qualified Audit Opinions

It was found necessary to issue a qualified audit opinion in the Independent Audit Report in four instances. The agencies concerned are:

- South Australian Forestry Corporation
- South Australian Motor Sport Board
- Transport, Energy and Infrastructure, Department for
- University of South Australia

The reason for, and the extent of, the qualification in the Independent Audit Report is described in the commentary on each of those agencies to be found in Volumes I, II, III, IV and V of Part B of this Report.

Acknowledgments

I would like to place on record my gratitude for the dedicated efforts of my staff throughout the financial year. Their professionalism and dedication have been of the highest order. Their efforts are reflected in the contents of this Report.

I extend my thanks to the Under Treasurer, Government Publishing SA, and their staff, and the report printing coordinator, Mr D O'Keefe, for their efforts which have assisted materially in the production of this Report. The cooperation of all public authorities with my staff during the financial year is also acknowledged.

Yours sincerely,



K I MacPherson
AUDITOR-GENERAL

**Report of the Auditor-General
Annual Report for the year ended 30 June 2006**

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MEMORANDUM TO PARLIAMENT

INTRODUCTION

The 2006-07 State Budget was tabled on 21 September 2006. As would be understood by Members of the Parliament, the *Public Finance and Audit Act 1987* stipulates that the Audit Report must be delivered to the Presiding Officers by 30 September each year. The tabling of the Budget Papers on 21 September 2006 has not allowed sufficient time for the preparation of a detailed Audit Overview as has been the case with previous Audit Reports. Notwithstanding the limited time that has been available, some preliminary comment on the Budget can be found in this Memorandum under the heading 'The Public Finances'.

A combination of several factors, ie, new accounting standards impacting on agency financial statements, the delayed resolution of several major accounting issues in certain agencies, and the need for agency staff to be engaged on budget related matters at a time when those same staff would normally be involved in the preparation of the agency's annual financial statements, has resulted in the need to arrange for a Supplementary Audit Report. I have included further comment on the preparation of agency financial statements and the audit of those statements under the later heading 'Financial Reporting of Public Authorities'.

The Public Finances

2005-06 Estimated Result

The 2006-07 Budget Papers show that the Government financial operations for 2005-06 are on target for a fourth consecutive annual surplus on recurrent operations with the estimated result a surplus of \$147 million¹ (budget \$51 million). This outcome is as measured by the Net Operating Balance. Solid growth in revenues that exceed increases in expenses has again assisted in the achievement of established budgetary targets.

In the 2005-06 Budget, the Government stated that the marked improvement in the State's Finances over a number of years had allowed the Government to modify its budgetary strategy from that in operation for the 2004-05 Budget. A major change from the previous strategy was to give focus to achieving a net operating balance in every year compared to seeking balanced budgets in net lending terms. This change allowed the Government to undertake borrowings to fund increased proposed capital investment each year. The Government's revised fiscal targets and the reported progress in the achievement of these targets is as stated in the 2006-07 Budget Papers.²

¹ The net operating balance does not include Commonwealth grant revenue of \$100 million received in June 2006. The Department of Treasury and Finance is of the view that this treatment is in accordance with the Government Financial Statistics (GFS) method of reporting that applies to the Budget operating statement. This is at variance with Australian Accounting Standards as referred to in the section 'Qualification of Financial Statements' that is set out hereunder.

My responsibility as Auditor-General is to provide an opinion on financial reports prepared on the basis of applicable Australian Accounting Standards. The GFS framework is a separate reporting framework of the Australian Bureau of Statistics and is used as a budget reporting standard by a number of Australian jurisdictions including this State. The GFS framework varies from Australian Accounting Standards in a number of ways. Further information on the GFS is provided in the *Budget Statement 2006-07, Budget Paper 3, Appendix A*.

² See *Budget Statement 2006-07, Budget Paper 3, page 1.5*.

2006-07 Budget

Notably the 2006-07 Budget projects surpluses in the net operating balance across the forward estimates and the surpluses are at higher levels than was estimated in the 2005-06 Budget.

Estimates for net lending indicate that borrowing will be required across the forward estimates. From 2007-08 the borrowing requirement is higher than was estimated in the 2005-06 Budget. This is due to increases in projected purchases of non-financial assets. The effect of borrowings is that net debt is projected to increase over the forward estimates, reaching \$689 million in 2010 compared to a net asset position of \$67 million in 2006. Despite this increase, the Government fiscal target of net financial liabilities to revenue, which includes debt and unfunded superannuation liabilities, is estimated to be slightly reduced to around 72.6 percent across the forward estimates.

A feature of the 2006-07 Budget is the announcement that the Government proposes to undertake substantial public private partnership (PPP) projects for the provision of correctional and educational infrastructure for use by the public sector. Private sector capital expenditure for the projects is estimated to be over \$600 million, well beyond recent PPP projects.

The forward estimates forecast minimal real growth in revenues and expenses over the forward years. This stands in contrast to the actual experience over recent years where real growth was experienced in both revenue and expenses. The substantial growth in revenues experienced over the past four years in particular, has exceeded increases in expenses and allowed surpluses in the net operating balance.

2006-07 Savings Initiatives

A significant element of the 2006-07 Budget estimates is operating savings of \$695 million over the next four years. Savings initiatives are to a large degree only broadly stated and include the development of a shared services strategy, structural changes in agency arrangements, and a quarter percent per annum efficiency dividend.

I have made observations in previous Reports of some principles I believe to be important when pursuing savings initiatives. To restate that position, I remain of the view that:

- Many of the services or activities conducted by public sector agencies are by force of legislation. These are priorities established by Parliament and it is necessary for agencies to fully understand and fulfil their legislative responsibilities.
- Where seeking savings through shared services, such arrangements need careful planning and risk analysis to be successful in both efficiency of costs and effectiveness for controlling and managing operations. Clarity of roles and responsibilities is best served through well constructed service level agreements that set out the roles and responsibilities of all parties to the agreements. Audit experience has shown that lack of clarity in roles leads to failure in control systems.

This snap shot of the 2006-07 Budget shows a range of challenges remain for the management of the public finances that require the maintenance of strong monitoring and reporting systems.

Consistent with past practice, my Department will undertake a review of matters dealt with in the Budget. A Supplementary Report dealing with matters in the Budget will be presented to Parliament during this current session.

Financial Reporting of Public Authorities

Adoption of International Financial Reporting Standards

Pursuant to the Treasurer's Instructions promulgated under the *Public Finance and Audit Act 1987*, public authorities are required to produce an annual set of general purpose financial statements which comply with applicable Australian Accounting Standards.

Australian Accounting Standards have undergone substantial revision in recent years, as a result of the decision to adopt Australian equivalents to International Reporting Standards (AIFRS), for reporting organisations in both the public and private sectors.

The adoption of AIFRS by public authorities within this State for reporting periods after 1 July 2005, has required each public authority and Audit to assess the requirements of the new standards and their impact on the financial statements of the particular public authorities.

To assist public authorities in the financial statement preparation process, the Department of Treasury and Finance produced and issued model sets of financial statements. Notwithstanding this positive measure additional effort has been applied by staff of the public authorities in the preparation of financial statements that comply with AIFRS. Additional resource effort has also been applied by Audit to attest to the compliance of public authorities with adoption of AIFRS.

Preparation and Timely Submission of Financial Statements

The *Public Finance and Audit Act 1987* requires public authorities to submit their financial statements to the Auditor-General within 42 days of the end of the financial year. I am, in turn, required to deliver my Annual Report, including agencies' audited financial statements, to the President of the Legislative Council and the Speaker of the House of Assembly by 30 September annually. The timeframe for delivery of my Report imposes tight time constraints on the completion of the audit of agencies' financial statements and the compilation of the Report. This Report includes the financial reports and Audit commentary for 62 separate agencies.

This year certain matters, including the adoption of AIFRS and the revised budget timetable, created risks to the completion and audit of financial statements within the necessary timeframes. In recognition of these factors, I provided detailed suggestions in correspondence to all agencies to assist them in planning, preparing and having sufficient documentary support to ensure the quality of statements for 2005-06 and to assist the timely and efficient completion of audits.

The experience for the 2005-06 audits was that issues arose including the availability of supporting documentation and the degree of changes to statements from original versions. This resulted in significant demands on audit staff to complete audits and meet reporting deadlines. Nonetheless, this Annual Report contains the financial statements of the majority of agencies planned for inclusion.

The reporting frameworks applying to financial reporting are wide-ranging and many agencies engage in a range of activities which require specific disclosures within the financial statements. As a consequence the financial reports for many agencies are long and detailed.

Without improvements in the way many agencies prepare their financial statements there is, in my opinion, a significant risk that audits can not be completed, consistent with professional auditing standards and what I understand are the standards expected by Parliament, in time for inclusion in my Annual Report. These improvements include allocating sufficient experienced and qualified personnel, implementing soundly planned and managed processes for compiling the financial statements and associated supporting documentation and implementing quality assurance processes. This will assist to ensure that Parliament's requirement for the Auditor-General's Report to include the financial statements of public authorities that are, in the Auditor-General's opinion, of sufficient importance to warrant publication, may be met.

My Department will relate with agencies in 2006-07 to seek further improvements in processes to support the preparation and audit of public authorities' financial statements.

Qualification of Financial Statements

The audit of the accounts of a public authority may result in a qualifying opinion in the Independent Audit Report issued in respect of the financial statements of a public authority. The circumstances that generally give rise to the issue of a qualified Independent Audit Report relate to a difference of opinion between Audit and the particular Authority concerning a material financial reporting treatment or disclosure.

My letter of transmittal identifies agencies where it was found necessary to issue a qualified audit opinion in the Independent Audit Report. One qualification related to the Department for Transport, Energy and Infrastructure and concerns the financial reporting treatment of grant monies of \$100 million received from the Commonwealth. In my opinion, the financial reporting treatment of the grant monies did not accord with requirements of Australian Accounting Standards and the Accounting Policy Framework of the Department of Treasury and Finance. The nature of the qualification is contained in the agency section of Part B of this Report titled 'Department for Transport, Energy and Infrastructure'.

Governance and Control within a Changing Public Sector Environment

The Government has recently established the Government Reform Commission with the intention of modernising and improving the performance of the public sector. The 2006-07 State Budget presented in Parliament in September 2006 announced a number of strategies aligned with this reform intention. Certain of those strategies relate to public sector agency administrative restructuring and associated savings and an across government efficiency dividend. As previously mentioned, another significant budget strategy not directly associated with public sector reform relates to the undertaking of substantial public private partnership projects.

The abovementioned developments are significant and will require a revisit by government and a number of agencies of their respective policy and process arrangements covering governance, agency and project risk and control practices, and accountability processes to ensure adequate management of risks.

Information Technology

The integration and the management of IT systems within public authorities is a major matter for Audit focus. Whilst IT processes bring major benefits to public sector processing they also bring substantial costs and risks. Where necessary the audit processes related to IT systems involves the use of external expertise.

IT operations of government is the subject of separate comment in this Report and includes observations concerning the management of the implementation of major IT projects.

GOVERNANCE AND RISK MANAGEMENT: MATTERS OF CONTINUING IMPORTANCE FOR THE AUDIT MANDATE AND THE EFFECTIVE ADMINISTRATION OF GOVERNMENT

Introduction

The implementation and effective management of governance structures and processes, including risk management practices are essential for the achievement of government and agency operational objectives. As stated in last year's Audit Report, it is only with these arrangements and processes in place that there can be a basis for assurance that resources, operations, and risk exposures are effectively controlled and managed. Inadequacies regarding these matters can give rise to adverse financial consequences.

In recognition of the importance of these matters for government administration and the audit process, I have included further comment in this Report on issues or developments that can influence governance and risk management practices and processes.

The Audit Mandate, Financial Management Framework and Risk Management

Senior management of public authorities have the responsibility to establish and maintain appropriate internal controls over the financial operations and resultant financial transactions processed by the particular public authority.³ This responsibility extends to the effective identification and control of risks that can impact adversely on whole-of-government and individual agency finances.

The Financial Management Framework (FMF) sets out the guidance on essential controls and processes required for good financial management. Several of these controls, (including risk management) are mandatory for public sector agencies. The FMF is part of the mandated structure for government agencies within which this Department carries out its auditing activities.

As expressly required by the *Public Finance and Audit Act 1987*, the audit process conducted by the Auditor-General is directed to an assessment of controls exercised by the Treasurer and each public authority over various aspects of financial operations and related financial transactions. The overall aim of the assessment is to establish whether

³ Treasurer's Instructions and Financial Management Framework issued pursuant to the *Public Finance and Audit Act 1987*.

the controls are sufficient to provide reasonable assurance that the financial transactions have been conducted properly and in accordance with the law.⁴

Audit assessment of a public authority's internal control structure must consider the operation of the FMF with respect to its application for that public authority. The internal control opinion issued in respect of public sector agencies in Part B of this Report opines on the Audit assessment of controls and whether the controls in operation were consistent with the principles of the FMF.

In July 2006, the Under Treasurer advised public authorities (including this Department) that the Department of Treasury and Finance was to commence a comprehensive review of the FMF. It was envisaged that as a result of:

- changes in financial management principles and concepts;
- changes to standards, eg, Risk Management, Accounting and Auditing;
- the recently completed review of the Treasurer's Instructions;

that there would be significant amendment.

Audit Comment

Amendments that arise from the review of the FMF may have consequences for the standard of control being applied within agencies of government and the audit assessment process to be applied to the agencies.

Application of the Elements of Governance and Risk Management

Previous Audit Reports have stated that for governance and risk management practices and processes to be effective a number of elements need to be adequately addressed. These include:

- soundly based organisational structures;
- clearly stated responsibility and authority relationships;
- policy and planning;
- risk profiling and assessment including control mitigation strategies;
- monitoring and reporting systems.

Last year's Audit Report stated, that for the most part, agencies were still progressing the development of some of the essential elements mentioned above. In addition, it was indicated that those agencies that were more advanced in addressing the elements had recently established a dedicated resource, or have had that resource commitment in place for some time to deal with these matters. Nonetheless, there continue to be 'gaps' in the governance/risk management framework in particular agencies. Agency reports in Part B of both this Report and the Annual Audit Report for 2004-05 include, where relevant, specific audit observations and comments on governance and risk management matters.

A key responsibility of the South Australian Government Captive Insurance Corporation (SAICORP) has been to provide risk management advice and assistance to government agencies. As from 1 July 2006, SAICORP amalgamated with the South Australian

⁴ Section 36 of the *Public Finance and Audit Act 1987*.

Financing Authority (SAFA). The insurance function now operates through a separate division of SAFA using the SAICORP name. SAICORP has fulfilled a leadership responsibility by promoting, coordinating and assisting government agencies with their risk management activities. The nature and extent of this involvement varies due to factors such as agency size and the specific resources available for risk management within agencies.

During the year, SAICORP reviewed its risk management leadership role and considered a number of initiatives including:

- the provision of a benchmarking service to agencies to enable agency self assessment of their risk management progress;
- making available risk management software to agencies to facilitate risk profiling and reporting;
- development of a training program.

Implementation of the above risk management initiatives will now be the responsibility of the Insurance Division of SAFA.

Audit Comment

The existing elements of an agency's governance and risk management framework may require adjustment in response to government policy and administrative changes. This is necessary in order for them to be effective in enabling the agency to achieve government and agency operational and accountability objectives.

The Government has recently established the Government Reform Commission and Office of Government Reform. This initiative is directed to modernising and improving the performance of the public sector. Reform strategies and agency administrative restructures will no doubt have implications for the governance and risk management framework of particular agencies. These changes will, in certain instances, necessitate a comprehensive review of some or all of the elements of the framework within those agencies affected by the changes.

As significant reforms, can give rise to new and different types of risks and exposures, including liability exposure, aspects of governance and risk management will continue to be important matters for public sector managers in maintaining adequate control systems and protecting the public interest.

THE LEGISLATURE OF SOUTH AUSTRALIA: PUBLIC GOVERNANCE AND ACCOUNTABILITY

Last year, I commented on the standards of public governance processes, accountability and internal controls of the South Australian Legislature. I defined the 'Legislature' as comprising the House of Assembly, the Legislative Council and the Joint Parliamentary Service.

My comments at that time were concerned with what I characterised as a significant accountability deficit with respect to the South Australian Legislature as compared to all other Australian Legislatures and other South Australian State public sector agencies. In making these comments, I also made a number of suggestions that, in my opinion, would enhance the accountability of the South Australian Legislature.

One of the more significant issues identified was the need for the Legislature to produce general purpose financial statements. In August 2006, the Legislature prepared a plan and timetable for the production of financial statements. This plan indicates that general purpose financial statements for the year ending 30 June 2006 will be completed by early November 2006 and that at that time these financial statements would be available for audit.

STAFF OF MEMBERS OF PARLIAMENT STANDING FOR ELECTION: GUIDELINES FOR USE OF MINISTERIAL AND MEMBERS' STAFF: AUDIT COMMENT

Introduction

It is not uncommon in any Australian jurisdiction for government employees and contractual staff to stand as candidates in elections.

Notwithstanding the frequency with which the issue arises, clear guidance does not currently exist as to the obligations of those government employees and contractual staff wishing to stand for election to the South Australian Parliament.

Section 36(1)(b) of the *Public Finance and Audit Act 1987* requires my Annual Report to set out any matter that should, in my opinion as Auditor-General, be brought to the attention of the Parliament and the Government. Accordingly, I now comment on the issue of staff of members of the Parliament standing as candidates in elections.

General Prohibition on Public Sector Employees Standing as Candidates

Section 45(2) of the *Constitution Act 1934* provides as follows:

If a candidate for election as a member of Parliament holds an office of profit from the Crown the candidate shall, unless he or she resigns that office before the date of the declaration of poll, be incapable of being elected.

Legislation in other Australian jurisdictions contains equivalent provisions.⁵

These provisions were inherited from United Kingdom laws relating to the disqualification from Parliament of a person holding an 'office of profit under the Crown', or being party to a contract with the Crown.⁶ These laws reflect the principle that the Legislature

⁵ *Commonwealth of Australia Constitution Act 1901* (Imp), section 44(iv); *Constitution Act 1902* (NSW), section 13(1); *Constitution of Queensland 2001* (Qld), section 21 and *Parliament of Queensland Act 2001* (Qld), section 64; *Constitution Act 1934* (Tas), section 32(3); *Constitution Act 1975* (Vic), section 49; *Constitution Act 1899* (WA), section 38; *Northern Territory (Self Government) Act 1978* (Cth), section 21(3); and *Australian Capital Territory (Self Government) Act 1988* (Cth), section 15.

⁶ In particular, section 45(2) and its equivalents are modelled on a provision in the *Act of Settlement 1701* (12 & 13 Wm. III c. 2) which was repealed and replaced by provisions of the *Succession to the Crown Act 1707* (UK) (6 Anne c. 41, sections 24 and 25): *Sykes v Cleary* (No 2) (1992) 176 CLR 77 at 95 per Mason CJ, Toohey and McHugh JJ. See generally, Law Reform Commission of Western Australia, *30th Anniversary Reform Implementation Report* (2002), page 58; John Kalokerinos, 'Who May Sit? An Examination of the Parliamentary Disqualification Provisions of the Commonwealth Constitution', Department of the Senate, 2001, page 21; and New South Wales Legislative Council Standing Committee on Parliamentary Privileges, *Report on Sections 13 and 13B of the Constitution Act 1902*, Report 15, March 2002, paragraphs [2.9]-[2.35].

should be separate from the Crown and the Executive.⁷ The underlying rationale was to disqualify from office people who are or may be perceived to be subject to the influence of the Crown, thus preserving the independence of Parliament. Thus the issue to be addressed was one of conflicts of interest and loyalty.

The meaning of the expression 'office of profit under the Crown' is obscure⁸ and the English law in this area developed 'somewhat haphazardly and in an overly technical manner'.⁹ It is accepted, however, that 'permanent officers of the executive government' (ie, public sector employees) fall within this expression.¹⁰

In South Australia, a public sector employee wishing to stand as a candidate in a State election must have had their resignation 'accepted to be effective at the close of business on the day prior to the declaration of the poll for their electorate (or at an earlier date if they have so chosen)'.¹¹ Section 54 of the *Public Sector Management Act 1995* provides for the reappointment of a public sector employee who resigns to contest a State or Commonwealth election.¹²

The Issue – The Position of Staff of Members of Parliament Who Stand for Election

Section 69 of the *Public Sector Management Act 1995* provides:

- (1) *The Premier may appoint a person as a member of a Minister's personal staff on conditions determined by the Premier.*
- (2) *A person appointed under this section is not an employee in the Public Service.*

Although not members of the Public Service, staff of Members of Parliament may fall within the definition of 'public sector employees' if the form of their appointment is as an employee.¹³

Regardless of their status as employees of the Crown, the salaries of the staff of Members is, in all probability, funded by the Crown. In the case of Ministers the salaries of staff are, in my opinion, funded by the Crown. That funding forms part of the resources provided by the Crown to each Minister. Although each Minister is entitled to such resources, that entitlement is not completely unfettered. The resources are not to be used for campaign and party/political purposes.

⁷ Law Reform Commission of Western Australia, *30th Anniversary Reform Implementation Report* (2002), page 58.

⁸ *Sykes v Cleary (No 2)* (1992) 176 CLR 77 at 95 per Mason CJ, Toohey and McHugh JJ.

⁹ Law Reform Commission of Western Australia, *30th Anniversary Reform Implementation Report* (2002), page 58.

¹⁰ *Sykes v Cleary (No 2)* (1992) 176 CLR 77 at 96 per Mason CJ, Toohey and McHugh JJ.

¹¹ Office of the Commissioner for Public Employment, Minute to all Chief Executives, 'Public Sector Employees Contesting Elections', 10 March 2006.

¹² Similar provisions exist in other jurisdictions: see eg, *Public Sector Employment Management Act 2002* (NSW), section 102 (State elections) and section 103 (Commonwealth elections) and *Public Service Act 1999* (Cth), section 32.

¹³ The *Public Sector Management Act 1995* defines a public sector employee as a person appointed to the Public Service or employed by the Crown or a public sector agency.

Therefore, in my view, there are two issues to be considered if a staff member for a member of Parliament is standing for election. The first issue is whether that staff member holds an office of profit from the Crown and therefore is affected by section 45(2) of the *Constitution Act 1934*. The second issue arises where the staff member stands for election as a representative of the same political party as the member of Parliament to whose staff the staff member was appointed. In that case the additional issue arises as to whether, at least in the case of Ministerial resources, (ie, the salary of the staff member standing for election) those resources are being used for campaign and party/political purposes.¹⁴

Audit has confirmed that there has been no breach of section 45 (2) of the *Constitution Act 1934* regarding the election of staff of Ministers at the last election. There is, however, in my opinion, the need for clear guidelines to avoid unnecessary contention regarding the second issue mentioned above.

In this regard I note the extensive debate that occurred in 1996 in the Australian Senate¹⁵ concerning Senator Jeannie Ferris. Between the election and taking her seat in the Senate, Senator Ferris did some work for Senator Minchin as a member of his staff, at a time when the writ for her election had not been returned. It was argued that Senator Ferris had contravened section 44 (iv) of the Australian Constitution.¹⁶ The issue did not have to be formally decided because Senator Ferris resigned shortly after taking office and was then appointed to the resulting vacancy by the South Australian Parliament.

Possible Solution – Issue Guidance

In my view, the Parliament should give consideration to developing and issuing guidance to deal with staff of Members of Parliament who stand as candidates in elections. Such guidance could be included in the Members' Handbooks of the House of Assembly and Legislative Council and should be included in the conditions of appointment for the staff themselves.

I note that other jurisdictions have issued such guidance, which the Parliament might consider appropriate to use as a model. For example, the *New South Wales Legislative Council Members' Guide*¹⁷ provides information to members of the Legislative Council about their staff standing for election, including the following:

9.32 If a member of staff is nominated for election to the Legislative Assembly or Legislative Council, the person is to be granted leave of absence until the day on which the result of the election is declared. If the staff member concerned has accrued leave, such leave can be taken, otherwise the leave is to be without pay.

¹⁴ I have commented on this issue previously in the context of public expenditure on government advertising: *Report of the Auditor-General for the Year ended 30 June 1997*, Part A.4.

¹⁵ See Senate Hansards of 20, 21, 22, 23, 27, 28 and 29 May and 28 June 1996.

¹⁶ Section 44(iv) states:

Any person who ... (iv) holds any office of profit under the Crown or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth ... shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

¹⁷ July 2003 update.

9.33 *If the employee is elected they are required to resign from their position.*

9.34 *Notwithstanding these legislative provisions, employees who are intending to nominate as candidates, should consider appropriate leave arrangements to cover the election period in order to avoid potential conflicts between their political interests and public employment. [Footnotes omitted.]*

To remove any doubt, in my opinion, a legislative provision to address this issue would be desirable.

The development of guidance outlined above will help to increase public confidence that candidates are not subject to a conflict of interest and that public monies are not being used for party political purposes. It would be advisable to obtain the advice of the Crown Solicitor on the procedure that should be adopted to give effect to the issues raised herein.

LOCAL GOVERNMENT ADMINISTRATION: SOME OBSERVATIONS REGARDING ACCOUNTABILITY AND THE ADEQUACY OF EXISTING AUDIT AUTHORITY, ETC

Introduction

Local Government authorities¹⁸ discharge important public governance responsibilities and are responsible for the administration of public monies. In many cases the public monies administered by Local Authorities are far greater than those administered by a number of State Government departments. The authority of Local Government is derived under legislation passed by the State Parliament, eg, *Local Government Act 1999*, etc.

Some legislative provisions that confer powers on Local Authorities contain penal provisions and other processes that impose obligations on the members of the South Australian community who are required to relate with Local Government in the course of their personal and business affairs.

Sections 3 and 8 of the *Local Government Act 1999* provide, inter alia, as follows:

Section 3 – Objects

The objects of this Act are—

- (a) ...
- (b) ...
- (c) *to provide a legislative framework for an effective, efficient and accountable system of local government in South Australia; and*
- (d) *to ensure the accountability of councils to the community;*
- ...

¹⁸ The term 'Local Government Authorities/Local Authorities' in this commentary refers to 'Councils' under the *Local Government Act 1999*.

Section 8 – Objectives of a council

A council must, in the performance of its roles and functions—

(a) *provide open, responsive and accountable government;*

(b)

(c)

...

(h) *seek to ensure that council resources are used fairly, effectively and efficiently;*

...

There have been concerns expressed by Members of Parliament and issues raised in the media regarding the accountability and, indeed, the integrity of the administrative arrangements within certain Local Government Authorities in South Australia.

The conferral of governmental powers, including prosecutorial powers against citizens, should be accompanied with adequate audit assurance of the propriety and lawfulness of the exercise of those powers. In the absence of proper powers both by audit, and, in certain matters, by Councillors themselves, there can be no adequate assurance that the object of the *Local Government Act 1999* regarding accountability of Councils (particularly the accountability of Council administrative staff) is being achieved as intended by Parliament. Further, there can be no independent audit assurance that the mandatory objectives stated for Councils in the abovementioned Act regarding accountability is in fact being discharged.

The Audit Mandate

The State Government has the responsibility in establishing the operational and regulatory framework for Local Authorities to provide for arrangements that ensure that, in the exercise of their powers and functions, they (ie, Local Authorities) act properly and lawfully.

Under the *Public Finance and Audit Act 1987*, the Treasurer can request the Auditor-General to undertake an examination of certain matters associated with the administration of Local Government Authorities. It is also to be noted that in certain circumstances there is the power vested in the Minister responsible for the administration of the *Local Government Act 1999* to appoint the Auditor-General to undertake certain investigations.¹⁹

Where a public authority under the *Public Finance and Audit Act 1987* has legislative responsibilities vis-à-vis a Local Government Authority, the Auditor-General is mandated to examine the adequacy of the controls, etc associated with the discharge of those responsibilities by the public authority. This includes where appropriate, matters involving propriety and lawfulness.²⁰

Having regard to matters of concern that have been raised, in my opinion, it is important to draw the following matters to the attention of the Government and the Parliament.²¹

¹⁹ The *Ombudsman Act 1972* does give the Ombudsman jurisdiction to undertake an investigation of complaints regarding Local Authorities and to investigate particular inquiries of his own initiative. In my opinion, this jurisdiction cannot address the underlying systemic concerns that are raised herein. To address these matters requires that there be an annual comprehensive audit with the same audit scope and authority as for government itself.

²⁰ Section 36 (i)(a)(iii) of the *Public Finance and Audit Act 1987*.

²¹ Section 36(1)(b) of the *Public Finance and Audit Act 1987*.

Acknowledging Recent Changes

Significant changes to the financial management, auditing and reporting arrangements within Local Government have been made in amendments to the *Local Government Act 1999* and the Local Government (Financial Management) Regulations 1999. It is also acknowledged that important initiatives have been, and are being, developed within the Local Government sector itself. In my opinion, notwithstanding these changes, and particularly the amendments to sections 125 and 129 of the *Local Government Act 1999*, the financial attest opinion that is the primary focus of audit responsibility within Local Government Authorities does not provide for the level of assurance concerning the matters of concern regarding propriety and lawfulness that are referred to in this commentary.

It is relevant to note that there is a sound foundation for effective management and control in the *Local Government Act 1999* and the Regulations under that Act. The issue being raised herein is the fact that under current arrangements, a positive audit assurance concerning important governance related matters is not mandated as is the case with the Government sector.

Consistently with public interest requirements, in my opinion, the legislative audit scope and the audit authority should, as far as is practicable, be comparable to that of the Auditor-General vis-à-vis State Government departments.

Limitations on Current Supervisory Arrangements

Under current legislative supervisory arrangements, whilst there is no suggestion that the 'execution' of the 'financial attest' audit will not be adequately and professionally discharged, maladministration and/or mismanagement²² within Local Government administration may not, having regard to current mandated auditing requirements, be readily identified and effectively addressed.²³

Concluding Comment

In my opinion, there are a number of factors that indicate a need for the responsible Minister and/or the Parliament to have, on an annual basis, a positive comprehensive independent audit assurance concerning not only matters relating to the financial statements, but also, the adequacy of the controls and general governance issues associated with Local Government administrative arrangements, ie, propriety and lawfulness considerations. There are, in my opinion, sound reasons to suggest that this assurance should be comparable to that applicable to State Government departments. In short, the audit of Local Government should include, in my opinion, a provision similar to section 36(1)(a)(iii) of the *Public Finance and Audit Act 1987*. Further, in my opinion, the auditor of Local Government should be provided with adequate powers to require accurate and timely information to be provided.

This is a matter that could be discussed with the Economic and Finance Committee and/or any other relevant Committee of the Parliament.

²² This could include partial, arbitrary, and even malicious conduct.

²³ The jurisdiction of the Ombudsman is, in my opinion, not structured to be able to subject the conduct and operations of Local Government Authorities, as a whole, to regular, independent audit and review.

INFORMATION AND COMMUNICATIONS TECHNOLOGY GOVERNANCE AND CONTROL ARRANGEMENTS OF GOVERNMENT: IMPORTANT AUDIT OBSERVATIONS

Introduction

The South Australian Government spends approximately \$0.5 billion a year on Information and Communications Technology (ICT). The significance of this financial commitment to ICT, as well as the critical role ICT plays in the service delivery, operational and financial functions of government, necessitate that ICT governance and control frameworks at whole-of-government and agency levels are effective at all times.

The December 2003 Supplementary Report, *Information and Communications Technology – Future Directions: Management and Control* included reference to several matters that, in my opinion, would enhance ICT governance and accountability. These were:

- endorsement by Executive Government (Cabinet) of an ICT vision;
- a whole-of-government ICT Plan;
- a framework of ICT strategy, policies and standards;
- improved project/risk management;
- monitoring of the status of major project developments.

It was further indicated in that Report that government administrative arrangements relating to ICT could be assisted by the establishment of a position of a whole-of-government Chief Information Officer (CIO) who would have appropriate authority and who would have an across government perspective.

I have included in this Report further comment on certain matters concerning the management, security, and control of ICT operations of government.

Management of ICT

Last year's Report stated that in December 2004, Cabinet approved the role and appointment of a whole-of-government CIO and associated support staff. The CIO commenced duty in July 2005.

The key responsibilities of the Office of the Chief Information Officer include whole-of-government ICT strategic planning including prioritisation for ICT investment, alignment and oversight of programs with across Government ICT implications, and the provision of advice to government and agencies on the effective use of ICT.

The Office of the Chief Information Officer is developing a range of policy and procedural frameworks directed towards strengthening ICT planning, management and control across the Government sector. An important development to occur during 2006-07 is the preparation and implementation of the whole-of-government ICT Strategic Plan.

Audit Comment

The establishment of the Office of the Chief Information Officer and its immediate progression in developing important frameworks represent positive action directed at improving across government and agency aspects of planning, prioritising, investing, managing, and controlling ICT.

In my opinion, the finalisation of the whole-of-government ICT Strategic Plan in 2006-07 is a further significant contribution to achieving these outcomes. The achievement of the outcomes is also reliant on the effective application of developed frameworks.

Information Systems Security and Control

In 2003, the Information Security Management Framework (ISMF) was mandated for implementation by government agencies.

The ISMF provides minimum security requirements for the development and operation of government computer systems, computing facilities, and communication networks. The ISMF is based on international information security standards. All new agency systems must be implemented and operated to comply with these standards.

A component of the annual audit of an agency's operations include the review of ICT areas of security and the integrity of controls over systems and computing facilities. Those reviews have identified that agencies are recognising and addressing the importance of information security and the requirements of the ISMF. In this matter, Audit has found that a number of agencies have commenced the implementation of an Information Security Management System (ISMS). The ISMS assists in measuring whether the agency is conforming to the Government's mandated ISMF requirements.

Notwithstanding agencies attention to implementing improvements in security and control, there still remain areas of non-compliance with the mandated requirements of the ISMF. Some issues associated with existing systems reflect the fact that there are deficiencies in some legacy systems. Further, some agencies are not optimising security features available in new systems. The latter situation can be remedied whereas interim security and control measures may need to be implemented until the replacement of older systems. Interim measures generally include closer and ongoing supervisory review or monitoring of relevant user and system activities.

The November 2005 Supplementary Audit Report, *Government Management and the Security Associated with Personal and Sensitive Information* identified a number of issues that presented risks of unauthorised access to certain agency systems and information. Audit commentary in Part B of this Report provides further examples of security and control weaknesses found in relation to agency systems and facilities.

Audit Comment

Chief Executives are responsible for security within their agencies.

Audit reviews continue to identify areas where improvement is required for compliance by agencies with the Government mandated information security requirements.

As mentioned, in my November 2005 Report, an ongoing review program within agencies is essential to ensure systems and related security control measures meet the Government's required minimum standards. This process can be achieved through the implementation of an ISMS and/or by internal audit review activity.

The community has the right to expect security and control in government systems will be of a high order. Inadequacies in these matters have a tendency to undermine public confidence in the institutions of government.

Government Control Over its Communication Networks

Background

The State Government operates an interconnection of government agency networks. The main network, StateNet, is a key component in the provision of information and ICT services that support business and service operations across the public sector and to the community.

StateNet is 'business critical' for agencies and government as they are increasingly dependent upon secure and reliable communication networks given the growth in use of the Internet and electronic commerce.

Previous Audit Review

In late 2000, a comprehensive audit into security arrangements of StateNet was completed. Relevant matters arising from the audit and the Government response to those matters were identified in the commentary included in the 2001 Report to Parliament.²⁴

At that time the audit identified a number of significant areas for improvement in network configuration, operations, and control. This improvement was necessary to mitigate security risks and to ensure continuity of integrity of the network's operations in supporting government business and service provision to the community.

Following that Audit Report, the Department for Administrative and Information Services (DAIS),²⁵ as the lead IT agency of government, implemented remedial measures.

2005-06 Audit

An important security measure for StateNet is a policy requirement for agencies to demonstrate and to continue to annually audit verify that their respective networks and IT systems meet StateNet criteria (ie, architecture, configuration and security standards) for initial and continued connection of their networks and systems to StateNet.

Such a policy requirement recognises that StateNet is a 'network of networks' and that if one network is vulnerable and/or compromised that there is a risk of compromise to the other connected networks. This policy, if diligently applied, mitigates the risks to StateNet and connected networks and systems.

Audit enquiry of some agencies in the latter part of 2005-06 regarding their status of compliance with the policy requirement indicated that it was not being met by all relevant agencies.

This matter was formally referred to DAIS in July 2006 and a response received in August 2006.

²⁴ See *Report of the Auditor-General for the Year ended 30 June 2001*, Part A, pages 142 - 155.

²⁵ At the time of writing this Memorandum DAIS is still a Department of State. The Budget Papers have announced that the various 'business units' of DAIS will be transferred to other departments and that DAIS as a separate department will be abolished.

In response, DAIS indicated a compliance program for all relevant agencies was being implemented. The compliance program is to identify the level of agency compliance together with specific issues of non-compliance. This will enable appropriate management and resolution of problem areas. DAIS further indicated in their response to Audit that the compliance program is being progressed satisfactorily having regard to available resources.

In relation to ICT systems, networks, and facilities that operate across and within the many agencies of government, there exists an ongoing responsibility of management to ensure adequate security and controls are in place over their operations at all times.

Audit Comment

The communication networks of government are critical in supporting the efficiency and integrity of government businesses and service provision to the community.

Matters raised from a comprehensive review of the main network of government some years ago identified security deficiencies that could adversely affect the operation of the network and the provision of related government services. These deficiencies were addressed by government at that time.

A follow up review this year revealed that an important security and control policy and process requirement aimed at maintaining the integrity of the networks of government had not been in full operation. Agencies have a responsibility for ensuring their respective networks and IT systems meet connection requirements of StateNet. Certain agencies were not meeting their obligations in this regard.

Continued vigilance needs to be applied at an agency and whole-of-government level to ensure that the networks are secure and maintain their integrity of operation. This requires agencies to meet their compliance obligations and DAIS Government ICT Services to periodically confirm agencies' compliance responsibilities.

MAJOR ICT PROJECTS: PROJECT AND RISK MANAGEMENT AND MONITORING: AUDIT COMMENT

Background

The December 2003 Supplementary Report, *Information and Communications Technology – Future Directions: Management and Control*,²⁶ observed that there are a number of well documented cases, both within Australia and internationally, of large-scale Information and Communications Technology (ICT) projects experiencing major implementation problems and, in some cases, failing completely.

The Supplementary Report included a number of observations where, in my opinion, improvements were required in the planning, accountability arrangements, and project and risk management of significant ICT projects of government.

That Report also emphasised the requirement for regular monitoring of these major project developments. The importance for this is demonstrated by certain problems that can, and have emerged when such projects do not run to plan and are not subject to strict agency management control.

²⁶ See page 35.

The commentary that follows provides an overview of some current ICT projects that have encountered certain problems in meeting approved planned outcomes. The experience in these matters, in my opinion, reinforces the importance of regular monitoring of these projects by Cabinet.

Nature of Audit Review

As a follow on of the specific projects that were examined and subject to comment in the December 2003 Report, during 2006 Audit reviewed certain matters associated with other ICT projects of agencies that were currently being implemented.²⁷

The audit examination concentrated on particular aspects of each project to:

- compare the progress of development for each project to initial Cabinet approved outcomes envisaged for each project;
- identify any issues or problems of a specific or common nature.

The findings of the reviews were reported to the responsible agency.

Specific Audit Commentary on Certain Important ICT Project Developments

The individual agency projects selected for review were as follows:

- A computerised information system to support the Government's new facility management contract (e-FM).
- A computer system to integrate the delivery of vehicle registrations, driver licensing and road freight operation services on a modern computing environment (TRUMPS).
- A land administration system for the provision of survey infrastructure, land titling systems, property valuation service, and property information (ATLAS).
- An information technology system for the collection of State taxation revenue (RISTEC PROJECT).

The commentary below discusses each project development and indicates that problems have been encountered in meeting approved planned outcomes.

Department for Administrative and Information Services – Project to Develop a Computerised Information System to Support the Government's New Facility Management Contract

In May 2005, Cabinet approved the development by DAIS of a new Electronic Facilities Management (e-FM) system at an estimated cost of \$1.985 million. Development of the system was to commence in December 2005 with the system being ready for use in July 2006. The system would support the Government's new facility management contract with the responsible external service provider. The management contract will provide building maintenance services to government agencies estimated to be in the range of \$500 to \$900 million over a nine year period.

²⁷ This review did not include a comprehensive examination of each project development/implementation process to date. A comprehensive examination would cover such matters as governance of planning arrangements, project/risk management practices, financial analysis, quality assurance, project monitoring, and reporting processes.

The e-FM was being developed in-house by DAIS and was to replace the legacy Facilities Asset Management Information System (FAMIS).

In March 2006, Audit reviewed the progress with respect to the development and implementation of e-FM. At that stage it was apparent the project development was experiencing serious difficulties. There had also been important staff changes. These matters had been highlighted by an internal review initiated by the Department.

As at the time of preparation of this Report, the in-house development of e-FM has been discontinued. DAIS has advised Audit that it is assessing various options for the proposed information technology solution. DAIS also advised that the amount of project funds expended to June 2006 was approximately \$250 000. Further, DAIS advised that a review would be performed on the project to determine and assess reasons for the project setback.

The Department continues to use the FAMIS system.

Changes in the system development, including discontinuance of the project had not been formally communicated to Cabinet. DAIS has advised Audit that it intends to prepare an update for Cabinet on the various options for the proposed information technology solution.

Department for Transport, Energy and Infrastructure – Project for a System Being Developed to Replace the DRIVERS System

In November 2003 Cabinet approved the development of a new computer system that would replace the ageing legacy system DRIVERS. The new system will manage revenue in the vicinity of \$0.9 billion each year.

The new system 'Transport Regulation User Management Processing System' (TRUMPS) was to have been implemented by June 2006 at a cost of \$9.5 million. The TRUMPS system is an enhanced system development of the Western Australian TRELIS system. TRUMPS was to incorporate licensing and client transactions, registrations and finance transactions and the development of a heavy vehicle road control system.

In October 2004 Cabinet approved a submission in relation to the 'graduated driver licensing scheme', and an allocation of an additional \$1 million was made to change the scope of TRUMPS to implement system changes resulting from legislative amendments.

In June 2006, Audit reviewed the progress with respect to the implementation of TRUMPS.

The licensing and client transactions, and the graduated driver licensing scheme were implemented by November 2005. Registrations and finance transactions, originally envisaged for completion by June 2006, are anticipated to be implemented in early 2007. The heavy vehicle road control system, that was a \$3 million component of the original November 2003 Cabinet approval for completion by June 2006, has been deferred.

The project has undergone changes in scope, direction, and the revision of the priority of certain components. For example, the introduction of the graduated driver licensing scheme changed the TRUMPS project implementation plan.

Some \$12.2 million had been expended on TRUMPS to June 2006. At that time, the Minister approved an additional \$3.34 million, principally to complete the registrations and finance transactions component of TRUMPS and to allow decommissioning of DRIVERS from its mainframe computer.

In summary, the system had not been fully implemented by June 2006 as was envisaged in the original Cabinet approval and the initial Cabinet approved funding has now been expended. The requirement to implement system changes in respect of the graduated licensing scheme, influenced to some degree the overall TRUMPS implementation plan. A formal report on the significant changes in the development of this major system project had not been provided to Cabinet.

The Department is continuing to use the legacy DRIVERS system together with the operation of some developed components of the TRUMPS system.

Department for Administrative and Information Services – Project to Address Land Administration Business Process Review and Planning for Replacement of Ageing Legacy Systems

In 2000, Cabinet approved a review of key electronic service delivery and business processes associated with the development of the Automated Torrens Land Administration System program (ATLAS). This was an initial step in the replacement of the DAIS legacy land administration systems. Approved funding was \$3.3 million with estimated completion by June 2001.

In late 2002, Cabinet approved \$9.5 million for the planning for the replacement of the current Land Ownership and Tenure System (LOTS), certain business reforms, and the development of electronic services. This was a component of the ATLAS project and was estimated to be completed by June 2005.

Subsequent ATLAS stages would involve the replacement of the LOTS system, implementation of electronic services, and the planning for business process changes.

The land administration systems collect direct revenue in the vicinity of \$120 million per annum. In addition, statutory valuations are the basis for raising over a billion dollars in rates and taxes covering the State and local governments.

In August 2006, Audit reviewed the project with respect to developments regarding ATLAS.

The review revealed that the key electronic service delivery and business process review developments targeted for finalisation by late 2001, were completed in late 2002. The electronic procurement and lodgement project component of the 2002 Cabinet approved development, which was originally anticipated to be completed by mid 2005, had not been completed at the time of the review. Funds expended to June 2006 on ATLAS totalled \$12.56 million.

In summary, there have been delays in completion of the deliverables anticipated in both the 2000 and the 2002 developments approved by Cabinet.

Audit was advised that the expected cost of the next stage of ATLAS is in the vicinity of \$31 million. This will cover the five year period commencing in 2006-07. This will involve the replacement of key legacy land administration systems.

Since the 2002 approval, Cabinet has not been formally provided with a report outlining reasons for program delay, and the revised costs in regard to significant components of the ATLAS program. Audit has been advised that funding constraints have delayed completion of the electronic procurement and lodgement project. The next stage of ATLAS has also been delayed due to funding constraints.

At the time of preparation of this Report, the Department was in the process of preparing a Cabinet Submission with respect to the next stage of ATLAS.

Department of Treasury and Finance – Project to Develop a Taxation Collection System to Replace Existing Legacy Systems

Taxation revenue collection is in the vicinity of \$2.7 billion per annum.

In July 2002, Cabinet approved the development of a new system for the collection of State taxation revenue. This was based on the need for an integrated tax collection system. There was also the need to resolve system issues in existing legacy systems. The Cabinet approval included provision for an expression of interest/request for tender procurement strategy.

The new system, titled 'RevenueSA Information Systems to Enable Compliance' (RISTEC), now known as the 'Replacement of the State Taxation Revenue Management System' (RISTEC PROJECT) was to have been implemented by June 2006 at a cost of \$22.6 million.

In June 2004, Cabinet was advised of an alternative procurement strategy. This involved undertaking further analysis of interstate revenue collection systems. Cabinet was informed that the overall project cost was unchanged, but the timeframe for funding and project completion was extended one year to 2006-07.

In January 2006, Cabinet was advised of another change in procurement strategy. This change involved an open market 'request for proposal' approach. It was further indicated that there was a potential for increase in the scope of the project through the inclusion of Emergency Services Levy functionality. Cabinet was not, however, provided with information regarding reasons for project delay, or overall variation in project costs and extended timeframes.

In August 2006, Audit reviewed the project status with respect to the development or acquisition of a new taxation collection system that was envisaged for completion in mid 2006.

In summary, the replacement tax collection system had not been implemented by mid 2006 as indicated in the original Cabinet approval, and is not planned to be implemented by mid 2007 as envisaged in the 2004 advice to Cabinet.

Audit was advised that approval had been obtained to commence an open market tender approach for a commercial software package during the latter half of 2006. After evaluation of proposals and negotiation during early 2007, implementation is expected to commence in the 2007-08 financial year. As at June 2006, the project expenditure was in the vicinity of \$4.9 million.

Over the past four years Cabinet has been formally provided with some updates of changes in the project. However, the advice to Cabinet has not been comprehensive with respect to providing detailed particulars concerning scope, reasons for project delay, and the revised cost and timeframe expectations in regard to significant components of the replacement system.

The Department is continuing to use the legacy tax collection systems.

Audit Observations

The ICT projects the subject of comment herein involve anticipated expenditure in the vicinity of \$50 million. They were, in the main, intended to replace agency ageing legacy systems. They were also intended to provide for more efficient means of electronic processing with associated overall cost savings.

Cabinet has approved specific submissions regarding these ICT projects. These submissions identified defined deliverables, costs and timeframes.

Audit's review has indicated, that in varying degrees, the Cabinet advised expectations of developed functionality, cost savings, and timeframes, have not been met. Some of the originally anticipated benefits of the projects are not now likely to be realised.

In particular, there have been changes in project direction, extended project implementation timeframes, lower or non-achievement of objectives, and incurrence of increased costs.

The legacy systems that certain of these projects were to replace, in the main, continue to operate in the agencies concerned.

Lastly, Cabinet, as the entity that gave initial formal approval to these ICT projects, has not been provided with periodic formal informative performance updates concerning the progress of the projects in terms of financials and the achievement of planned system (component) deliverables.

Conclusion

The consequences of the projects commented on herein of not achieving Cabinet approved expectations, can have an impact on funding requirements. It can also result in the ongoing cost of legacy systems, and non-achievement of certain anticipated benefits.

There has also been long periods between formal Cabinet updates. During this time the direction of the projects can change. Any change in scope and direction of a project can have implications with respect to the need to revise project and risk management arrangements.

In February 2006, a Cabinet Note relating to ICT governance arrangements, envisaged that an ICT Board would monitor major government ICT development projects. The ICT Board has now been established.

In my opinion, it is imperative that a report on the position of all major ICT projects in progress be prepared for review by the Executive Government. In my view, the Office of the Chief Information Officer, in conjunction with the ICT Board, should be directly involved in the preparation of such a report.

FUTURE ICT SERVICE ARRANGEMENTS: AUDIT COMMENT

Background

Last year's Report included comment on the Government's Future ICT Service Arrangements Program. This program involves the review of tendering and contracting arrangements associated with the acquisition of future ICT goods and services, transition from existing legacy contracts to new contract arrangements, and the disengagement of legacy contracts.

The program consists of two separate tranches. Tranche 1 relates primarily to the procurement of ICT equipment, whole-of-government software, large scale computing, and support services. Tranche 2 relates to the supply of telecommunications commodities, services, and technology.

A number of Tranche 1 contracts were to be completed in 2005-06. Under some existing contractual arrangements, options for extension have been agreed, or other contract arrangements implemented. This will allow for finalisation of all Tranche 1 contracts by January 2007. Approval for commencement of the Tranche 2 procurements was given in late 2005.

The Government expects the value of ICT services to be contracted under this program to be in the order of \$1 billion over a five year period.

Current Status of the Program

A number of contracts relating to Tranche 1 of the Future ICT Service Arrangements Program were finalised in 2005-06. In addition, the transition phase for agencies' changeover to the new contracting arrangements have already commenced with respect to certain contracts.

The following presents a brief description of the major new contracting arrangements and their ICT areas of application.

Microsoft Software Licences and Services Contracts – Government and its agencies principally utilise Microsoft software on a range of desktop and client computing facilities. The software is provided through contractual arrangements with Microsoft and with a private sector ICT service provider. This provider acts as a large account reseller for the Government. Microsoft Software Licences and Services Contracts were signed in mid 2005.

Managed Network Services Contract – The State has a private data network that links all its IT devices. It enables the connection of desktop computers to servers, central services such as messaging and mainframe computing, as well as allowing access to the Internet. The network is based on the Internet Protocol (IP) and aims to provide a secure and controlled environment that protects the State's information. This contract was signed in February 2006 with transition to a new service provider taking place in late March 2006.

Client Computing and Server Equipment Contracts – Client computing includes personal computers and related devices used for office automation. It also includes servers and devices that, store data, enable printing and manage software applications. Contracts were signed with four individual vendors in June 2006.

Mainframe Computing Services Contract – These services enable agency portfolios to run critical business applications such as financial management, criminal justice and housing management systems. The contract will provide those services currently provided under the mainframe business segment of the IT Services & State Economic Development (ITSSSED) Agreement. This contract was signed in July 2006 with an operational date of December 2006 for the revised arrangements to take effect.

Five other Tranche 1 contract areas have been finalised and are in operation. The value of contracts executed to date is in the vicinity of \$315 million. Remaining Tranche 1 procurements, including the significant contract areas of Electronic Messaging Services, Distributed Computing Support Services, and Printer and Photocopier Equipment, are in various stages of negotiation or evaluation and are expected to be finalised in late 2006.

With respect to Tranche 2 procurements, the contract area of Telecommunications Carriage and Related Services is in the evaluation stage after completion of a request for proposal release to the market in mid 2006. There is an anticipated completion date for this procurement of mid 2007. The remaining two contract areas of Telecommunications Technology and Related Equipment, and the State Wireless System are in the planning stage. The procurement date for Telecommunications Technology and Related Equipment is not finalised while the State Wireless System procurement date is mid 2009.

Administration of the Program

The financing and the administration of the program involves two agencies of government, the Department of Treasury and Finance, and DAIS.

As mentioned previously, the Future ICT Service Arrangements Program comprises the main components of procurement of services, transition from existing legacy contracts to new contract arrangements, and disengagement of legacy contracts. The costs incurred for each component to 30 June 2006 are procurement of services \$17.9 million, transition to new contract arrangements \$4.9 million, and disengagement of legacy contracts \$4.1 million. These costs relate to program staff salaries, contractors, consultants, temporary staff, legal fees, accommodation and general operating expenses.

Audit Comment

The Future ICT Service Arrangements Program has important operational, financial and control implications for whole-of-government and individual agencies. The new initiatives give rise to revised administration and control requirements for the whole-of-government and agencies. The program also offers improvements for technical operations between service providers and agencies. The program is expected to provide overall cost savings to government.

It was anticipated that the majority of Tranche 1 contract arrangements would be in place by the end of the first quarter of 2006. While some procurement contracts and transition to new arrangements have only recently been finalised, other contract arrangements and transition remain to be completed. In addition, Tranche 2 procurements are still to be finalised.

Audit has recently commenced review of some completed Tranche 1 contract arrangements. That review is examining aspects of the finalised procurements (including probity of the processes), compliance with disengagement obligations of legacy contracts, and a review of the transition process to new contracts for a number of selected government agencies. The security and control implications and any financial reporting implications are also being considered.

Any matters of consequence arising from the review will be advised to the agencies and may be the subject of comment in a subsequent Report to Parliament.

IMPLEMENTATION IN SOUTH AUSTRALIA: PROCUREMENT ARRANGEMENTS OF REQUIREMENTS OF AUSTRALIA UNITED STATES FREE TRADE AGREEMENT (THE AGREEMENT): AUDIT COMMENT

Introduction

In my Report for the year ended 30 June 2005, I discussed the implementation of the Australia United States Free Trade Agreement (the Agreement) in South Australia. I concluded that:

*... there will need to be more detailed policy and procedural guidance provided to agencies to ensure strict controls are implemented in relation to tender processes that fall within the scope of the Agreement.*²⁸

I now provide an audit comment on developments in this regard.

Commencement of the *State Procurement Act 2005*

The *State Procurement Act 2005* commenced operation on 4 October 2005, and repealed the *State Supply Act 1985*. The State Supply Board, which had up to that time been responsible for procurement policy in South Australia under the *State Supply Act 1985*,²⁹ was replaced with the State Procurement Board.³⁰

The functions of the new State Procurement Board include the following:³¹

- To develop, issue and keep under review policies, principles and guidelines relating to the procurement operations of public authorities.
- To give directions relating to the procurement operations of public authorities.
- To investigate and keep under review levels of compliance with the Board's procurement policies, principles, guidelines, standards and directions.
- To assist in the development and delivery of training and development courses and activities relevant to the procurement operations of public authorities.

²⁸ *Report of the Auditor-General for the Year ended 30 June 2005, Part A, page 21.*

²⁹ *State Supply Act 1985, section 13.*

³⁰ *State Procurement Act 2005, section 6.*

³¹ *State Procurement Act 2005, section 12(1).*

The term 'procurement operations' is defined by section 4 of the *State Procurement Act 2005* to mean:

- (a) *the procurement of goods or services required by the authority for its operations, including (without limitation) the procurement of—*
 - (i) *a supply of electricity, gas or any other form of energy; or*
 - (ii) *intellectual property; or*
- (b) *the management of goods of the authority, including (without limitation) the care, custody, storage, inspection, stocktaking or distribution of goods of the authority; or*
- (c) *the management of the authority's contracts for services; or*
- (d) *the disposal of goods surplus to the authority's requirements,*
but does not include operations excluded from this definition by the regulations.

Regulation 5 of the State Procurement Regulations 2005 excludes 'prescribed construction projects' exceeding \$150 000 from the definition of procurement scribed construction project':

- (a) *is a project that primarily involves the procurement of construction work; and*
- (b) *encompasses—*
 - (i) *the acquisition and installation of fixtures, plant, equipment, appliances and fittings in conjunction with the construction work; and*
 - (ii) *the acquisition of survey, planning, design and other services in conjunction with the construction work; and*
- (c) *does not encompass the acquisition of goods and services for the ongoing maintenance of a building or structure.*³²

'Construction work' is defined to mean building work or the whole or part of the work of excavating or filling of land not constituting building work.³³ 'Building work' has the same meaning as in the *Building Work Contractors Act 1995*.³⁴

The effect of the exclusion of prescribed constructions projects exceeding \$150 000 from the definition of procurement operations in the *State Procurement Act 2005* is that the State Procurement Board does not have responsibility for procurement policy for prescribed construction projects. Moreover, it remains unclear which government agency has this policy responsibility.

³² State Procurement Regulations 2005, regulation 5(2).

³³ State Procurement Regulations 2005, regulation 5(3).

³⁴ State Procurement Regulations 2005, regulation 5(3). See *Building Work Contractors Act 1995*, section 3 and *Building Work Contractors Regulations 1996*, regulation 5(1).

In December 2005, the Government released the *Construction Procurement Policy – Project Implementation Process*. The Foreword to that document notes that the Minister for Infrastructure and the Minister for Administrative Services govern the construction procurement process and the infrastructure agencies administer application of the construction procurement policy.³⁵ The infrastructure agencies of government are the Department for Transport, Energy and Infrastructure, the Department for Administrative and Information Services and the Land Management Corporation. Additionally, the *Construction Procurement Policy – Project Implementation Process* notes that the Department of Treasury and Finance ‘will be involved from the outset’ in construction procurement processes.³⁶

I discuss the issue of policy regarding construction procurement below.

Coverage and Scope of the Agreement in relation to Procurement by South Australian Government Agencies

Chapter 15 of the Agreement sets out those measures that govern the conduct of government procurement activities. The overarching principle is that agencies afford the goods, services and suppliers of the United States the same treatment that applies to domestic goods, services and suppliers (which is referred to as ‘non-discrimination’).³⁷

The measures apply to ‘covered procurement’, which is defined to mean a procurement of goods, services or both:

- by any contractual means, including purchase, rental, or lease, with or without an option to buy, build-operate-transfer contracts, and public works concessions contracts;³⁸
- for which the value equals or exceeds the relevant threshold;
- that is conducted by a ‘procuring entity’;³⁹
- that is not excluded from coverage by the Agreement.⁴⁰

³⁵ *Construction Procurement Policy – Project Implementation Process*, December 2005, page ii.

³⁶ *Construction Procurement Policy – Project Implementation Process*, December 2005, page 1.

³⁷ See Article 15.2.

³⁸ Both build-operate-transfer contracts and public works concessions contracts are defined to mean ‘any contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plant, buildings, facilities, or other government owned works and under which, as consideration for a supplier’s execution of a contractual arrangement, a procuring entity grants the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of such works for the duration of the contract’: Article 15.15(1).

³⁹ As I noted in my previous Report, Chapter 15 applies only to procurements by government agencies listed in Annexure 15-A (called ‘procuring entities’): Article 15.1(2)(c). South Australian Government agencies to which Chapter 15 applies, are listed in Section 2 of Annexure 15-A. A list is also set out at *Report of the Auditor-General for the Year ended 30 June 2005*, Part A, page 19, footnote 49.

⁴⁰ Article 15.1(3) excludes certain procurement processes from the application of Chapter 15 generally. In respect to South Australian government agencies, Chapter 15 does not apply to the procurement of health and welfare services, education services, advertising services, or motor vehicles: Note 1 to the South Australian Schedule to Section 2 of Annexure 15-A. Examples of procurement processes that are excluded generally are set out in *Report of the Auditor-General for the Year ended 30 June 2005*, Part A, page 20, footnote 53.

The current threshold procurement values for South Australian Government agencies are as follows:

- For procurement of goods and services (other than construction services) – A\$705 000.
- For procurement of construction services – A\$9 933 000.⁴¹

The Agreement also sets out how a procurement is to be valued for the purpose of ascertaining whether these thresholds are exceeded.⁴² In particular:

- a procurement cannot be divided into separate procurements nor valued using a particular method so as to avoid the application of Chapter 15;⁴³
- a procurement must take into account all forms of remuneration, including the value of any options, premiums, fees commissions and interest;⁴⁴
- where the procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers, base its calculation on the total maximum value of the procurement over its entire duration;⁴⁵
- where the total estimated maximum value of a procurement over its entire duration is not known, the Agreement provides that the procurement is to be treated as a 'covered procurement', unless otherwise excluded under the Agreement.⁴⁶

Construction Services

There is no definition of 'construction services' in the Agreement. The Commonwealth Government has released specific guidance on the definition of construction services.⁴⁷

As I mentioned earlier, the Government has excluded certain prescribed construction projects from the operation of the *State Procurement Act 2005* and the State Procurement Board has no policy responsibility for the procurement of such projects. This exclusion has the unusual, and perhaps unintended, consequence that the State Procurement Board does not have responsibility for all of the matters covered by the Agreement and, in particular, the procurement of construction services which, according to the *Construction Procurement Policy – Project Implementation Process*, is the responsibility of the Minister for Infrastructure and the Minister for Administrative Services and the 'infrastructure agencies'.

⁴¹ Article 15.1(2)(b). These thresholds values commenced on 1 January 2006, which represented the first adjustment of the thresholds to be undertaken every two years according to formulas contained in Section 8 of Annexure 15-A. The term 'construction services' is not defined in Chapter 15.

⁴² See Articles 15.1(6), (7) and (8).

⁴³ Article 15.1(6)(a).

⁴⁴ Article 15.1(6)(b).

⁴⁵ Article 15.1(6)(c).

⁴⁶ Article 15.1(8).

⁴⁷ Finance Circular 2005/12 which contains guidance on the definition of procurement of construction services.

In my view, it would be preferable to have one government agency responsible for policy in respect of the whole of the Agreement.

If the current distinction between the procurement for certain prescribed construction projects and the procurement of other goods and services is maintained, there is a risk that different procurement policies may develop. This could make it harder for potential suppliers to comply with the policies, and may even result in some deciding not to participate in a procurement process. In these circumstances the agencies with responsibility for procurement policy should work closely together in the formulation and development of policy and processes.

Update of Action Taken to Date to Implement Agreement in South Australia

On 13 March 2005, the State Supply Board, now the State Procurement Board, released State Supply Board Policy Number 17, *Implementation of the Australia United States Free Trade Agreement*. I referred to this Policy in my Report for the year ended 30 June 2005.⁴⁸ The Policy was revised in January 2006 to reflect the change in the threshold values, but otherwise remains unchanged.

Under the heading 'Compliance and Penalties', the Policy states that:

*Public authorities shall ensure that they are conversant with and comply with the requirements of [Chapter 15 of the Agreement]. Penalties for non-compliance by South Australian public authorities can have a significant effect on the general business community in South Australia with potential sanctions imposed on South Australian supplier access to US markets.*⁴⁹

I agree with this statement. However, I note that apart from Policy 17, and a reference to the Agreement in State Procurement Board Policy 8 *Purchases with Imported Content*,⁵⁰ no detailed policy and procedural guidance has, as yet, been provided to agencies in relation to tender processes that fall within the scope of the Agreement.

Matters that should be the Subject of Guidance for Agencies

I now set out some of the matters contained in Chapter 15 of the Agreement that, in my view, should be the subject of detailed guidance for agencies. In my opinion, such guidance is necessary not only to comply with the requirements of the Agreement, but also to maintain the integrity of South Australian Government procurement processes and practices.

Open, Selective and Limited Tenders

Chapter 15 recognises that agencies may use open, selective or limited tendering procedures to undertake its procurement. The Chapter creates a preference for open

⁴⁸ *Report of the Auditor-General for the Year ended 30 June 2005*, Part A, pages 20-21.

⁴⁹ State Procurement Board Policy Number 17, *Implementation of the Australia United States Free Trade Agreement*, January 2006, page 1.

⁵⁰ State Procurement Board Policy Number 8, *Purchases with Imported Content*, January 2006, page 2. The Policy merely restates the principle of non-discrimination.

tendering,⁵¹ with other forms of tendering allowed only in accordance with specific conditions.⁵² Policy 17 mentions that procurements can take place by these means. The Policy also mentions that selective and limited tendering are able to be used only in certain circumstances, referring agencies to the particular Article and page numbers of the Agreement but without discussing the circumstances in which they can be used.

Preconditions for Using Selective or Limited Tendering

In relation to selective tendering, Chapter 15 provides that tenders should be invited from the maximum number of domestic and US suppliers consistent with the efficient operation of the procurement system.⁵³ An agency that wishes to apply selective tendering procedures is required to meet certain conditions set out in Chapter 15.⁵⁴

An agency may choose not to comply with the Chapter 15 measures and conduct a limited tendering process by contacting a supplier or suppliers of their choice, but again, only in certain circumstances.⁵⁵

Bearing in mind the limited circumstances when selective or limited tendering can be undertaken in respect of procurement subject to Chapter 15, South Australian Government agencies will need to be rigorous in developing their procurement strategies including giving consideration to probity issues,⁵⁶ to ensure that they meet the pre-conditions set out in Chapter 15 for using those tendering processes. Failing to conduct a procurement process with due regard to probity and fair dealing may

⁵¹ Article 15.2(3). This reflects Chapter 15's overarching principle of non-discrimination. Agencies should be particularly aware of this requirement in order to structure procurement processes so that there is no unfairness to potential United States suppliers who wish to participate in a particular procurement.

⁵² As set out in Article 15.7 (for selective tendering) and Article 15.8 (for limited tendering).

⁵³ Article 15.7.6.

⁵⁴ Articles 15.7(6)-(9) require an agency to undertake a selective tender process in accordance with particular procedures, that is, use either a multi-use list, a list of suppliers that have responded to a notice inviting applications for participation, or to an expression of interest (EOI), or a list of suppliers that comply with particular licensing or other legal requirements that exist independently of the procurement process.

⁵⁵ These circumstances are outlined in Article 15.8 (1) and include:

- where a tender process has already been undertaken and either no tenders were submitted or no tenders met the requirements;
- where particular goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist, eg, due to absence of competition for technical reasons;
- where an existing supplier is in place and the agency requires additional goods and services relating to those already supplied;
- where new construction services are required consisting of the repetition of similar construction services and the initial contract was let following an open or selective tendering process;
- for purchases under 'exceptionally advantageous conditions that only arise in the very short term', eg, unusual disposals or unsolicited proposals;
- 'insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseen by the procuring agency' the goods and services could not be obtained in time under the tendering procedures otherwise set out in Chapter 15.

⁵⁶ Probity in this context refers to conducting a defensible procurement process which is able to withstand both internal and external scrutiny and achieves accountability and transparency and provides tenderers with fair and equitable treatment.

potentially leave the process open to challenge by unsuccessful tenderers.⁵⁷ Defending such challenges are generally time consuming, costly, can undermine public confidence, affect reputations and act as a distraction from government's core functions.

In my opinion, South Australian Government agencies would benefit from the State Procurement Board expressly stating its views on the use of those tendering processes. In light of the new requirements imposed by Chapter 15, the Board should review its Policies in order to ensure that they are consistent with the requirements for government procurement processes imposed by Chapter 15 of the Agreement.⁵⁸

Content of Tender Documents; Technical Specifications

Chapter 15 gives guidance about what information tender documents should contain, including:

- a complete description of the nature, scope and quantity of the goods and services and requirements to be fulfilled, including any technical specifications;
- any conditions for participation, including financial guarantees or information to be submitted;
- all evaluation criteria;
- 'any other terms and conditions relevant to the evaluation of tenders'.⁵⁹

In prescribing technical specifications for the good or service being procured, a government agency is required to specify those specifications in terms of performance and functional requirements, rather than design or descriptive characteristics.⁶⁰ Technical specifications are generally required to be based on international standards.⁶¹

Late Tenders

Article 15.5(6) provides that a procuring entity shall require all participating suppliers to submit tenders in accordance with a common deadline. Article 15.9(3) provides that an agency must not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the agency.

The Commonwealth Government,⁶² have interpreted this Article as prohibiting an agency from accepting late tenders in any circumstances other than agency mishandling. The

⁵⁷ See eg, *Hughes Aircraft Systems International v Air Services Australia* (1997) 146 ALR 1 and *Cubic Transportation Systems v State of NSW* (2002) NSWSC 656.

⁵⁸ For example, Policy Number 14, 'InSkill SA Policy' should be reviewed to ensure that it complies with the Agreement. This Policy requires bidders/tenderers to be registered with InSkill SA if wanting to tender or apply for works and services (including consultancies) contracts and associated sub-contracts valued at \$250 000 or more. To the extent that the policy gives South Australian suppliers any preference over United States suppliers, the policy may also be non-compliant with the Agreement.

⁵⁹ Article 15.6(1).

⁶⁰ Article 15.6(4)(a).

⁶¹ Article 15.6(4)(b).

⁶² Refer *The Commonwealth Procurement Guidelines* and the *Guidance on the Mandatory Procurement Procedures*.

Agreement itself does not expand upon concept of mishandling by an agency. When one considers that one dictionary defines 'mishandling' to mean handle badly, mistreat or mismanage,⁶³ it is easy to see that this is an issue which is ripe for dispute.

In my opinion, mishandling by an agency should encompass any error on the part of the agency after the tender has been lodged by the tenderer with the agency (ie, after it has left the possession of the tenderer).⁶⁴ At the very least, South Australian agencies should be informed of the State Procurement Board's views on this matter.

Conditions for Participation

The phrase 'conditions for participation' refers to the registration, qualification, and other pre-requisites for participation in a procurement.⁶⁵ Article 15.7(1) requires a procuring agency to limit any conditions for participation in a covered procurement to those that ensure that a supplier has the legal, commercial, technical, and financial abilities to fulfil the requirements of the procurement.

One particular condition for participation dealt with in Chapter 15 is a condition based on 'relevant prior experience',⁶⁶ which may be imposed only where this is 'essential to meet the requirements of the procurement'. Accordingly, while prior experience of a tenderer may be an acceptable criterion as part of the overall tender evaluation, it would seem that agencies may not be able to use prior experience (or past performance) as a mandatory screening criteria to exclude a tenderer from further participation in the process, unless such experience is essential for the purposes of the particular procurement.

Conformance with 'Essential' Requirements

A government agency is not permitted to consider a tender for award unless, at the time of opening, the tender conforms to the essential requirements of all notices issued during the course of a covered procurement or tender documentation.⁶⁷

The requirement for conformance with essential requirements is 'at the time of opening' tenders, which means that agencies may be unable to seek clarification of tenders or provision of information that may have been inadvertently omitted from a tender, unless the agencies consider that the non-compliance is an 'unintentional error of form'.⁶⁸ Accordingly, this requirement would seem to require agencies to specify in tender documentation any matters that are 'essential requirements' for the procurement. Additionally, agencies may also need to specify that 'non-conformance' or 'non-compliance' with the essential requirements will result in the tenderer's exclusion from the process (subject to correction of unintentional errors of form).

⁶³ The Macquarie Dictionary, Macquarie University, Macquarie Library Pty Ltd (online edition 2005).

⁶⁴ This is broadly similar to the definition given to agency mishandling at the Commonwealth level: see *Guidance on the Mandatory Procurement Procedures*, Financial Management Guidance Number 13, January 2005, page 46.

⁶⁵ Article 15.15(3).

⁶⁶ Article 15.7(2)(d).

⁶⁷ Article 15.9(5).

⁶⁸ Article 15.9(4).

Audit Comment

Having regard to its importance, this matter is brought to the attention of the Government and the Parliament. In my opinion, the State Procurement Board, as the main agency responsible for government procurement in South Australia, should, consistent with its functions under section 12 (1) of the *State Procurement Act 2005*:

- issue more comprehensive guidance on the application of the Agreement to South Australian Government agencies;
- consider preparing a suite of template documents (such as Requests for Tender and Evaluation Plans) for use by agencies for procurements to which Chapter 15 applies;
- conduct training on the application of the Agreement to procurement arrangements in South Australia and the use of the template suite of documents;
- review its other Policies and guidelines to ensure that they are consistent with the requirements of the Agreement.

Further, the Board should work closely with the infrastructure agencies of government that are responsible for administering construction procurement to ensure the development of consistent policies and processes relating to the application of the Agreement.