

SOUTH AUSTRALIA

Report
of the
Auditor-General
for the
Year ended 30 June 2004

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**Report Pursuant to Sections 32 and 36 of the
Public Finance And Audit Act 1987: Matters Associated
with the 2001-02 Proposal Concerning the Establishment
of an Ambulance Station at McLaren Vale**

By Authority: J. D. Ferguson, Government Printer, South Australia

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Government
of South Australia



**Auditor-General's
Department**

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9th Floor State Administration Centre
200 Victoria Square
Adelaide
South Australia 5000

Telephone +61 +8 8226 9640
Facsimile +61 +8 8226 9688
DX 56208 Victoria Square

The Hon R R Roberts, MLC
President
Legislative Council
Parliament House
ADELAIDE SA 5000

The Hon I P Lewis, MP
Speaker
House of Assembly
Parliament House
ADELAIDE SA 5000

E-mail: admin@audit.sa.gov.au
Web: <http://www.audit.sa.gov.au>

ABN: 53 327 061 410

Gentlemen,

**AUDITOR-GENERAL'S REPORT: REPORT PURSUANT TO SECTIONS 32 AND 36
OF THE PUBLIC FINANCE AND AUDIT ACT 1987: MATTERS ASSOCIATED
WITH THE 2001-02 PROPOSAL CONCERNING THE ESTABLISHMENT
OF AN AMBULANCE STATION AT MCLAREN VALE**

Pursuant to sections 32 and 36 of the *Public Finance and Audit Act 1987*, I herewith provide to each of you a copy of my 'Report Pursuant to Sections 32 And 36 of the *Public Finance and Audit Act 1987*: Matters Associated with the 2001-02 Proposal Concerning the Establishment of an Ambulance Station at McLaren Vale'.

Yours sincerely,

K I MacPherson
AUDITOR-GENERAL

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	1
PART 1 – THE AUDIT MANDATE AND THE CONDUCT OF THE EXAMINATION	
Audit Request	13
Scope of the Examination	13
The Audit Mandate	13
Other Matters	14
The Concept of ‘Improper’ and ‘Improper Conduct’ for the Purposes of this Report	14
Conduct of the Examination	15
PART 2 – BACKGROUND – ESTABLISHMENT AND GOVERNANCE ARRANGEMENTS OF THE SOUTH AUSTRALIAN AMBULANCE SERVICE	
The Statutory Arrangement for the Provision of Ambulance Services	16
The Minister’s Statutory Obligations under the <i>Ambulance Services Act 1992</i>	16
The Relevant Rules of the SAAS	17
The Relationship of the Minister and the Board of the SAAS	17
Principles of the Governance of the SAAS	17
PART 3 – PUBLIC FINANCIAL ADMINISTRATIVE MATTERS RELEVANT TO THIS AUDIT EXAMINATION	
Background	19
Fundamental Principles	19
Control of Public Funds	19
<i>Public Finance and Audit Act 1987</i>	19
Consolidated Account	20
Authority to Apply Money	21
<i>Appropriation Act</i>	21
Special Deposit Accounts	22
The Budget Process	22
Flexibility in Appropriations	23
Government Funding for SAAS	24
The State Rescue Helicopter Service	25
Summary of SRHS Arrangements	25
State Rescue Helicopter Service Sponsorship Arrangements in 2001-02	25
State Rescue Helicopter Service Administration Arrangements	26
The Police Operating Account	26
Budget Information	27
Financial Reporting	28

TABLE OF CONTENTS

	Page
PART 4 – FACTUAL CIRCUMSTANCES ASSOCIATED WITH THE PROPOSAL TO ESTABLISH AN AMBULANCE STATION AT McLAREN VALE	
Some Background Issues Concerning the need for an Ambulance Station in the South	29
Consideration by SAAS of a New Station	29
The Availability of Land at the Southern Districts War Memorial Hospital	30
SAAS Proceeds with an Objective Statistical Analysis	31
The State Rescue Helicopter Sponsorship	33
SAAS Board Meeting on 26 June 2001	34
The Re-allocation of the Helicopter Sponsorship Funds	36
The Minister Seeks Advice on Funding the Proposed McLaren Vale Ambulance Station	36
The SAAS Board Conditionally Approves the Proposal	37
The Minister Receives Advice on Funding the Proposed McLaren Vale Ambulance Station	38
The Minister Approves Funding for the Proposed McLaren Vale Ambulance Station	39
The Receipt by SAAS of State Rescue Helicopter Sponsorship Funds	40
Concerns on the Accounting for the Receipt by SAAS of State Rescue Helicopter Sponsorship Funds	40
Claim of ‘Pork Barrelling’	42
The McLaren Vale Ambulance Station is Officially Announced	42
Budget Bi-laterals	43
State Election 2002	44
SAAS Resolve to Transfer State Rescue Helicopter Sponsorship Funds to SAPOL	44
McLaren Vale Station Deferred	45
The Present Position	45
PART 5 – AUDIT ANALYSIS AND OPINION	
Introduction	46
The Exercise of Ministerial Powers: The Matter of Claims of ‘Political Pork Barrelling’	46
Was the Process of Securing Funding for the Proposed McLaren Vale Ambulance Station Undertaken Properly and in Accordance with Law?	47
Fundamental Principles	47
The Unlawful Payment to SAAS	48
A Warning is Given	49
The Application of Sponsorship Funds	49
The Advice Given to the Minister	50
The Minister’s Decision	51

TABLE OF CONTENTS

	Page
The Treatment of Sponsorship Monies	52
The Public Announcement of the Proposal for the Ambulance Station	53
The Matter of Personal Ministerial Responsibility	54
The Advice to the Minister Re Deployment of Sponsorship Funds	55
What Should have Happened	56

PART 6 – RECOMMENDATIONS

Appendices	59
1. Copy of Advertisement seeking Sponsorship Funds for the State Rescue Helicopter Service	
2. Minute from Acting Chief Executive Officer SAAS to the Minister for Police, Correctional Services and Emergency Services dated 28 June 2001	
3. Letter from SAAS Chief Executive to the Minister for Emergency Services of 6 August 2001	
4. Minute from the Minister for Emergency Services to the Chief Executive SAAS dated 15 August 2001	
5. SAAS Invoice dated 15 August 2001	
6. Emails titled State Rescue Helicopter Sponsorship Money of 21 August 2001	
7. Minister, together with the then Premier Mr Olsen, publicly announced the project at the site of the proposed station	
8. Minute from the Chief Executive SAAS to the Chief Executive Officer Justice of 15 March 2002	
9. Letter from the Minister for Emergency Services to the Chief Executive Officer SAAS of 12 April 2002	
10. Copy of the State Rescue Helicopter Sponsorship Agreement	

EXECUTIVE SUMMARY

INTRODUCTION

Background Considerations

This matter raises several important issues of principle with respect to public financial administration in this State. It also raises issues concerning the adequacy of the controls associated with the exercise of Ministerial Executive power in circumstances that can give rise to an actual or potential conflict of interest and duty.

Notwithstanding the fact that the amount of money associated with this matter is not significant in public sector terms,¹ this examination has identified matters where there has been a failure to appreciate the application of certain requirements of public importance in the administration of public finances in this State. In my opinion, having regard to other instances in recent times of agency senior management failing to appreciate the need to comply with legislative requirements, there is a need to review the level of awareness of relevant personnel and to re-emphasise the importance of compliance regarding these matters.²

South Australian Ambulance Service (SAAS), at the relevant time, was an entity that received government grant funding through the Emergency Services portfolio.³ In 2001-02, this amounted to \$40 million.

In late 2000, SAAS commenced consideration of a proposal to build and operate a new ambulance station in McLaren Vale. Provision of government recurrent funding to meet the cost of staffing the station was integral to a decision of whether SAAS would go ahead with the proposal.

In August 2001, in response to a request from SAAS for funding assistance from the State Government in relation to the then proposed ambulance station at McLaren Vale, the then Minister for Emergency Services approved, as an interim funding mechanism, the use of funds, amounting to \$170 000 excluding GST, that the Crown was to receive from a sponsorship arrangement involving the State Rescue Helicopter Service. The funds were provided directly to SAAS from the sponsor, Adelaide Bank,⁴ without first being paid into the appropriate government account as required by law. For the reasons discussed in this Report, this arrangement did not comply with the requirements of the *Public Finance and Audit Act 1987* and relevant government accounting and administrative practices.

¹ It is also to be emphasised that no public monies have been misappropriated.

² Auditor-General's Annual Report 2003-04, Part A, Memorandum to Parliament.

³ The SAAS operational, funding, and administrative arrangements have now been brought within the jurisdiction of the Health Portfolio.

⁴ It is to be emphasised that nothing in this Report is critical of any matters concerning the Adelaide Bank. The Bank has acted honourably in this matter and had no responsibility and/or knowledge of the failure within government to comply with the operative statutory requirements. The circumstances in this matter regarding the failure to comply with the internal legislative requirements within government is analogous to the comments in the Auditor-General's 1995 Annual Report, Part A, page 65 regarding the matter of non-compliance with the *State Supply Act 1985* referred to in that Report.

In September 2001, issues were raised in the Parliament associated with the matter of the proposed ambulance station.

The audit examination has highlighted the need for constant attention to adherence to the standards and practices mandated in the public sector to ensure that public confidence in public administration and, in particular, public financial administration, is maintained.

A policy of openness/transparency will, in my opinion, do much to allay suspicion that there has been unacceptable conduct. The exercise of Ministerial discretionary powers should, in my opinion, be undertaken so as to avoid perceptions of a conflict of interest and duty. This is a matter of particular importance in those circumstances where the beneficiary is, for political and/or other reasons, the Minister himself/herself in the Minister's own electorate.

The present position is that, at this stage, no ambulance station has been built at McLaren Vale. This is simply a matter of the Government of the day determining its own priorities and policy goals having regard to available financial resources.

Audit Request

After an earlier audit request from the Treasurer had been overtaken by other events,⁵ on 12 May 2004, the Treasurer, the Hon Kevin Foley MP, made a request to the Auditor-General in the following terms:

In accordance with section 32 of the Public Finance and Audit Act 1987, I request that you examine the accounts of the South Australian Ambulance Service and the efficiency and economy of its activity with respect to the proposal to establish an ambulance station at McLaren Vale

Other Matters

Whilst this is a report pursuant to section 32 of the *Public Finance and Audit Act 1987*, for completeness, I have included some observations regarding some matters that should, in my opinion, be brought to the attention of the Government and the Parliament.

Both the SAAS and a Minister of the Crown are 'public authorities' within the meaning of the *Public Finance and Audit Act 1987* and are subject to audit by the Auditor-General.⁶ When considering whether the controls exercised by both the SAAS and the then responsible Minister in relation to the McLaren Vale Ambulance Station were 'sufficient to provide reasonable assurance' that the financial transactions relating to that station 'have been conducted properly and in accordance with law', it is necessary, inter alia, to identify any improper and/or unlawful elements associated with the transaction.

During the course of my examination I became aware of certain matters relating to the establishment and funding of the proposal for the McLaren Vale Ambulance Station that raised the question whether the financial transactions of the SAAS and the conduct of the Minister were proper and in accordance with law.

⁵ The other events included the tabling of the Dawkins Task Force Report 'Emergency Services Review' in Parliament in May 2003.

⁶ Section 4, *Public Finance and Audit Act 1987*.

For the purposes of my reporting obligations under section 36 (1)(a)(iii) and section 36 (1)(b) relating to any matter that should, in my opinion, be brought to the attention of Parliament and the Government, I determined that I should prepare a Supplementary Report under section 36(3) relating to that matter and deliver that Supplementary Report to the Parliament at the same time as the report pursuant to section 32.

In summary, instead of delivering two separate reports relating to the same subject matter, this Report deals with both my obligation in respect of my examination under section 32 and my reporting responsibilities under sections 36(1)(a)(iii) and 36(1)(b).⁷

FUNDAMENTAL PRINCIPLES

Public Financial Administration

Fundamental to the public finances is the principle that all revenue received by or on behalf of the Crown (public money) is subject to the control of Parliament. Public money is collected and administered by the Crown and spending of public money may not occur without Parliamentary appropriation/authority.

In South Australia these principles are established in the *Public Finance and Audit Act 1987*. The legislative controls are, in turn, supported by conventions and administrative practices.

Good and proper public administration requires compliance with relevant statutory requirements and adherence to established conventions and administrative practices. I have stated previously that this is essential to protect the community from the arbitrary exercise of governmental power and the misapplication of public monies.⁸ A failure to maintain proper standards has the capacity to undermine the requirement of the need for compliance and thereby magnify the risk of further breakdown of control.

For the reasons discussed in this Report, in the case of the funding arrangements for the then proposed McLaren Vale Ambulance Station, the use of sponsorship funds for that purpose failed to comply with the relevant statutory requirements for the public accounts. In giving the direction that he did in this matter, the then Minister, in my opinion, assumed a prerogative authority that he did not possess, and hence, his direction, for the reasons discussed in this Report, was unlawful.⁹

Furthermore, the arrangements in this matter, undertaken at Ministerial direction, established a commitment that was, in my opinion, pre-emptive of due budget processes and, as such, was contrary to good and proper public administration. It was also inconsistent with long standing practices concerning the funding of unforeseen expenditure that arises between the annual budgets presented by the Government (ie the Crown) and considered by Parliament as the basis for the appropriation of the public finances.

⁷ There is an interdependency that arises from the common factual situation that, in this matter, is relevant to both section 32 and section 36.

⁸ Supplementary Report of the Auditor-General for the year ended 30 June 2002 — Report on the Process of Procurement of Magnetic Resonance Imaging Equipment by the North Western Adelaide Health Service, page 1.

⁹ Case of Proclamations (1610) 12 Co Rep 74. The Minister for Emergency Services was the agent of the Crown and any former prerogative power in matters of this type to deal with public monies are now the subject of statutory control.

Procedures/processes of government that are contrary to law are not either efficient or economic in that, on discovery, unnecessary cost is incurred in implementing corrective measures.

In this context, the following commentary from the Report of the United Kingdom Committee of Public Accounts 'The Proper Conduct of Public Business' is, in my opinion, relevant:

Some allege that the drive for economy and efficiency must be held back to some extent because of the need to take specific care with public money. Others argue that if economy and efficiency are to be forcibly pursued then traditional standards must be relaxed. We firmly reject both these claims. The first is often urged by those who do not want to accept the challenge of securing beneficial change. And the second is often put forward by those who do not want to be bothered to observe the right standards of public stewardship. Quite apart from the important moral and other aspects involved we consider that any failure to respect and care for public money would be a most important cause of a decline in the efficiency of public business. But there is no reason why a proper concern for the sensible conduct of public business and care for the honest handling of public money should not be combined with effective programmes for promoting economy and efficiency.¹⁰

Exercise of Ministerial Executive Power

With respect to the matter of the exercise of Ministerial Executive power, there is judicial authority that such power must be exercised for a public purpose and not for a private purpose.¹¹ It has also been judicially acknowledged that in some cases where public power is exercised it may be exercised after taking into account a factor which is political, and further, that the public power in question may be exercised for the purpose of achieving a political object.¹²

Political practice, even commonly accepted political practice, does not excuse conduct that may, on analysis, be shown to be contrary to law and/or such as to be otherwise inappropriate as being contrary to the principles of good public administrative practice.

A Minister whose portfolio responsibilities necessarily extend to matters within his or her own electorate cannot abdicate responsibility for dealing with those matters as may be required in the public interest. He or she would, in general, have a legitimate interest in expressing views about those matters. Nonetheless, he or she would also be aware that allegations of electoral self-interest may well be made if he or she makes decisions that favour that electorate (or is seen to improperly influence others who are responsible for such decisions, or who advise the Minister in relation to such decisions). In those circumstances, the key issue may concern the defensibility of such decisions according to the principles of good public administration, rather than whether legal sanctions (criminal or civil) may flow.

¹⁰ The Eighth Report of the Committee of Public Accounts UK, 'The Proper Conduct of Public Business' (1994).

¹¹ *Greiner v Independent Commission Against Corruption; Moore v Independent Commission Against Corruption* (1992) New South Wales Court of Appeal.

¹² *ibid*; Mahoney JA.

High standards are properly required of those in public office.¹³ Nonetheless, as Professor Paul Finn (now Justice Finn of the Federal Court of Australia) has pointed out:

*We have to realise that public office is based on a conflict between duty and interests. We would be deluding ourselves if we did not start on the premise that politics is concerned about compromise, partiality and self interest behaviour. The problematic question is where on the spectrum does that behaviour become unacceptable.*¹⁴

RESPONSIBILITIES OF THE AUDITOR-GENERAL

From the point of view of the discharge of the statutory responsibilities of an Auditor-General pursuant to the *Public Finance and Audit Act 1987*, one of the important issues in a matter of this type is whether the controls associated with the way in which political factors were taken into account, and the management of the apparent conflict of interest and duty to act with impartiality, provide reasonable assurance that the decisions regarding the expenditure of public money and the incurring of liabilities conforms with established objective standards of propriety and lawfulness.

THE ISSUES THAT ARISE FOR REPORT

The audit examination of this matter indicated that the issues that arise are as follows:

- The lawfulness of the processes concerning the expenditure of public monies and the accounting therefore.
- The exercise of Ministerial powers in circumstances that can give rise to the perception of a conflict of interest and duty and claims of 'political pork barrelling'.
- Project approval processes within SAAS with respect to the proposal regarding the establishment of a 24 hour manned ambulance station at McLaren Vale in 2001-02.
- The matter of personal Ministerial responsibility for decisions.
- The matter of public sector advice to Ministers as applicable in the circumstances examined in this Report.

Each of these issues is the subject of analysis and report herein.

AUDIT OPINION AND COMMENT

Legal Compliance and Accounting for the Expenditure of Public Monies

In this matter, the responsible Minister was acting as the agent of the Crown.¹⁵ Monies received by him were required to be dealt with in accordance with the established legal framework including, as mentioned above, the requirements of the *Public Finance and Audit Act 1987*.

¹³ Bowen Committee Report (1979), 'Public Duty and Private Interest'.

¹⁴ Quotation taken from 'Members of the Parliament: Law and Ethics', Gerard Carney (2000), Prospect media at page 338. Evidence by P Finn to the New South Wales Parliamentary ICAC Committee 1992.

¹⁵ See agreement dated 15 August 2001 between the Minister and the Adelaide Bank Ltd, refer Appendix 10.

Where, for whatever reason, there is a dealing with public monies that is inconsistent with the expenditure approvals granted by the Parliament, and/or there is non-compliance with relevant statutory requirements, it is the responsibility of the Auditor-General, should he/she consider it to be appropriate, to bring such matters to the notice of the Parliament. In my opinion, for the reasons stated in this Report, the monies received by the Minister for the purpose of the State Rescue Helicopter Service were not dealt with in the manner required by law.

Concerns were raised by a SAAS staff member regarding the accounting arrangements to be adopted in this matter. These concerns were dismissed by Mr Pickering, the then Chief Executive Officer of the South Australian Ambulance Service (SAAS) on the basis of his earlier advice from Mr Birch¹⁶ and a Ministerial direction given at that time. In my opinion, for the reasons discussed in this Report, Mr Birch's advice was not correct, and, the Minister did not have the authority to give such a direction. Accordingly, the dismissal by Mr Pickering of the concerns raised by the SAAS employee was, at the least, misinformed.

In the event, the matter of eventually putting the sponsorship funds through the proper government accounts was corrected, but only, in my opinion, due to circumstances associated with a change in the Government in March 2002. Following the change in the Government there has been a deferment of the project for the time being. No ambulance station has been built at McLaren Vale.

The Exercise of Ministerial Powers: The Matter of Claims of 'Political Pork Barrelling'

The conditional approval in 2001 by the SAAS Board regarding the McLaren Vale Ambulance Station would not have been carried through without the prior approval of the then Minister to authorise the use of the sponsorship funds for recurrent funding in 2001-02. It follows that the Minister's decision was material in the processes of the SAAS Board in the latter deciding to proceed with the establishment of the McLaren Vale Ambulance Station.¹⁷

A matter that arose in the course of this examination was whether the decision to establish an ambulance station at McLaren Vale involved an unlawful and/or improper exercise of Ministerial power. This arose from the fact that the decision on the part of the then Minister related to the establishment, in his own electorate, of an unbudgeted and previously unplanned ambulance station in circumstances where claims were raised publicly that there was some dispute as to the need to establish an ambulance station at that time and in that location.

It is important to emphasise that in this matter the Minister was relating with an independent Board, ie SAAS.

The factual circumstances give rise to a question as to the exercise of Ministerial powers in circumstances that can give rise to the perception of a conflict of interest and duty. In short, this matter has given rise to claims of what is colloquially termed, 'political pork barrelling'.

¹⁶ Mr Birch was at this time the Deputy Chief Executive of the Attorney-General's Department with responsibility in matters associated with the Emergency Services portfolio.

¹⁷ Had it not been for the threshold decision by the then Minister regarding the use of sponsorship funding to meet recurrent costs, the SAAS Board would not have proceeded with the McLaren Vale proposal in the 2001-02 financial year.

Having regard to all of the evidence, and for the reasons discussed in this Report, apart from the matter of the arrangements for recurrent funding in the 2001-02 financial year that are the subject of separate analysis herein, in my opinion, the decision making process associated with the proposal to establish an ambulance station at McLaren Vale, did not involve the improper exercise of Ministerial power.

The Approval Processes within the SAAS Regarding this Matter

Having regard to all of the evidence, it has been established to my satisfaction that the decision to establish an ambulance station at McLaren Vale was made independently by the Board of SAAS. It is clear from the evidence that the then Minister indicated a 'strong interest' in having the McLaren Vale Ambulance Station established in 2001-02. Nonetheless, whilst noting the Minister's strong interest, the SAAS Board did independently assess the need for a ambulance station. This need was determined on the basis of objective criteria.

The Board did not simply do as requested by the Minister, although it is obvious that it was the Minister's interest that prompted the Board to undertake its own analysis of the need in the McLaren Vale area, which, absent the then Minister's expressed interest, it was not, of its own volition, minded to do at that time.

Although the term 'pork barrelling' may be used to described situations of this type, in my opinion, the then Minister was not acting unlawfully/improperly in urging the Board to consider his request. A Minister, within the law, has the right to advocate his/her point of view.¹⁸ It would be a different matter if the Minister had sought to improperly influence the Board, ie by implied threat of some form of retaliation if it did not do as he desired. There is, in my opinion, no evidence of that or any other form of improper pressure being brought to bear on the SAAS Board having occurred.

The decision of the Board to approve a 24 hour manned ambulance station was a judgment call to be made by the Board. There is no evidence that suggests that the Board acted otherwise than with due diligence and in good faith in making this decision. A full time crew at McLaren Vale would achieve the improvement in response times for ambulance services in that area that was consistent with the response criteria that the Board had established as desirable for the Ambulance Service.

Although McLaren Vale was not budgeted for in the 2001-02 financial year, the provision of recurrent funding, with the prospect of continuing recurrent funding, together with the availability of land for a peppercorn rent, was an opportunity that the Board of SAAS determined to be in the interests of the Ambulance Service.

For the reasons referred to in this Report, the Board of SAAS acted responsibly in ensuring that no ongoing recurrent commitments were entered into without receiving an assurance that funding would be made available. In this particular matter, as discussed in this Report, the Ministerial commitment to meet ongoing funding was not confirmed through the regular processes of government. Having regard to the involvement of the then Premier in the launching ceremony at McLaren Vale on 17 October 2001, and the Ministerial approval of funding from the sponsorship monies received from the Adelaide Bank for 2001-02, it was not unreasonable for the Board to have acted as it did regarding approval to proceed. It needs to be noted that the Board proceeded with due

¹⁸ It is necessary to again emphasise that in this matter the Minister was dealing with an independent Board. A Minister's relationship with a Department of State is, of course, governed by different considerations.

caution in this matter in that it sought confirmation from the Government regarding the 'ongoing funding' for this station as an essential part of its own approval process.¹⁹

The Matter of Personal Ministerial Responsibility

One of the issues that has arisen in the context of this examination is that of the reliance by a Minister of the Crown on the advice of others, in this case a senior departmental manager, ie a Deputy Chief Executive. In my opinion, where the Minister is the person who makes the actual decision, although the Minister may be acting upon, and indeed, is reliant upon, the advice of a senior departmental officer, the Minister/himself/herself is personally responsible for that decision. For the situation to be otherwise, it would mean that there would be no personal accountability for any actions or decisions that a Minister may do or make where it was possible to claim that the Minister was simply acting on the basis of advice. Vis-a-vis the Minister, those providing advice are acting in an 'advisory capacity'. The Minister at all times remains the decision maker and is free to accept, modify or reject any advice received.

Where the Minister has not been personally involved in the making of the decision or giving the direction to undertake a course of action, ie the matter has arisen and been determined by public officials within the Minister's Department, in my opinion, the Minister in these circumstances, whilst Ministerially accountable to the Parliament, is not responsible in the sense of being personally culpable.

What this type of issue does underline is the necessity for a Minister to ensure that those who provide advice, ie departmental, personal staff, consultants, etc possess the necessary knowledge and judgment that is relevant to the particular circumstances involved.²⁰ Notwithstanding the advice received from others, it is basic that the Minister must exercise his/her personal judgment to overlay the advice received from others.

In a public sector environment, Ministers can rightly expect that senior departmental managers are knowledgeable of those important legislative and procedural requirements that are applicable, and that they will alert the Minister should the Minister be minded to pursue a policy objective or course of action that may be in contravention of express statutory prohibitions, or may otherwise be inimical to the principles of good public administrative practice. In circumstances where a departmental manager is uncertain about a particular matter, due diligence requires that proper inquiry be made before advice is tendered to a Minister.

Where a Minister seeks, and then relies upon the advice from persons who would reasonably be considered competent to provide that advice, and the advice for whatever reason is incorrect, whilst the Minister must accept the personal responsibility for any outcome that may eventuate, in my opinion, in these circumstances, subject to the Minister acting reasonably and in good faith, the Minister's personal culpability would be considerably mitigated.

¹⁹ There was an element of risk as regards funding for recurrent costs beyond 2001-02 as the decision on this funding was to be discussed in the forthcoming bi-laterals. However, as stated in the text, the public involvement of the then Premier was a factor that could reasonably give comfort to the SAAS regarding the outcome of the forthcoming bi-laterals. At first sight, it may appear that the SAAS was taking a degree of risk regarding funding beyond 2001-02. On closer analysis of the facts this was not the case. The arrangements within SAAS was such that it did not advance its position in incurring binding obligations prior to being in a situation of being aware of the outcome of the first round of bi-laterals.

²⁰ Matters associated with this issue involve recruitment/employment processes and are outside of the scope of this Report.

The Advice to the Minister Re Deployment of Sponsorship Funds

In the matter of the use of sponsorship monies, the Hon Robert Brokenshire MP JP (the then Minister of Emergency Services) relied upon the advice of Mr Birch. Mr Birch was the Deputy Chief Executive of the Attorney-General's Department. In my opinion, the Minister was correct to require that the advice of the Department was sought before he made a decision.

The advice provided by Mr Birch was that the Minister could authorise the re-allocation of the sponsorship monies.

With respect, in my opinion, Mr Birch was, for the reasons discussed in this Report, mistaken in his view that this course of action was open to the Minister. In short, Mr Birch's advice led to the payment of the sponsorship monies directly to SAAS without first being paid into the SAPOL Special Deposit Account from which they would then be payable into the Consolidated Account. The course followed in the application of the monies was in fact unlawful in that it was contrary to the provisions of the *Public Finance and Audit Act 1987*.

There is no evidence that suggests that Mr Birch was not acting otherwise than in good faith in providing the advice that he did.²¹ Nonetheless, he had a professional responsibility to take the necessary care to properly advise the Minister. Compliance with mandated legislative requirements is of central importance in the exercise of government powers. Regrettably, Mr Birch, for whatever reason, did not alert the Minister to the applicable legislative arrangements that, in my opinion, applied in relation to this matter.

The Treatment of Sponsorship Monies

On 16 August 2001, a formal ceremony for handing over the sponsorship cheque was held at the Adelaide Airport, attended by the Minister, the Managing Director of the Adelaide Bank, and others. It was not known to the sponsor at the time of passing over the cheque, that on the previous day, the monies being paid over had already been authorised to be redirected to the use of the SAAS for the purpose of the recurrent funding of the proposed McLaren Vale Ambulance Station.

In my opinion, for a Minister to publicly receive monies by way of sponsorship for a stated purpose that had been the subject of a government advertisement in the knowledge that the money was already committed to be used for another different purpose, raises questions as to the propriety of the conduct involved.²² In short, in my opinion, such conduct, on becoming publicly known, has the tendency to undermine the confidence of the public in the integrity of government processes and may discourage donations to those public and charitable causes which are managed by or through the Government. Assessed on objective standards, there was a lack of transparency in the manner in which this transaction was undertaken.²³

²¹ Mr Birch did advise SAAS that it had a responsibility to independently determine the viability of the need for an ambulance station at McLaren Vale.

²² As noted above, the Minister in this matter was acting for and on behalf of the Crown and the payment of monies directly to the SAAS, an entity that was not the Crown, was unlawful.

²³ Refer to further comments on this matter in Part 5 'The Public Announcement of the Proposal for the Ambulance Station' of this Report.

Although this was a contractual relationship between the Minister (on behalf of the Crown) and the sponsor, it did involve the understanding that the sponsorship monies were for a particular nominated purpose, ie support of the operations of the State Rescue Helicopter Service. The monies were not provided for the purpose of being immediately directed to cover the recurrent expenses for a proposed ambulance station at McLaren Vale.

There should, in my opinion, be no uncertainty/ambiguity regarding the application of funds received from the community (corporate and public) associated with the operations of a facility that has importance for the community in times of crisis and disaster. Where funds are not applied strictly as intended when contributed from corporate/public sources concerns can justifiably arise.²⁴

Mr Brokenshire has stated that:

The Adelaide Bank sponsorship was a commercial arrangement which allowed the Bank to be associated with SRHS. The helicopters used in that service frequently appear on television screens and pursuant to the sponsorship, they carry the Bank's signage. The Bank received the commercial and community advantage to which it was properly entitled. I understood that the contract with the Bank did not require the funds to be spent on the helicopters. Their operating costs were already funded from government sources. What happened in relation to previous sponsorship funds was not relevant because the Bank was a new sponsor under a new contract.

Mr Brokenshire is correct in that the money that was received was not required 'to be spent on the helicopters'. In making this representation, Mr Brokenshire, with respect, has failed to understand the mandated statutory obligations that were incumbent upon him as a Minister of the Crown with respect to the receipt of this money.

For the reasons stated in this Report, I do not accept Mr Brokenshire's view of the matter. In my opinion, a Minister in receiving sponsorship monies in the circumstances of this case involving a public advertisement should ensure that the matter is dealt with transparently and in a manner that does not have the potential to undermine the confidence of the donating public.²⁵

WHAT SHOULD HAVE OCCURRED?

The Minister of Emergency Services had responsibility for the administration of the *Ambulance Services Act 1992*. The construction and replacement of ambulance stations was a regular aspect of annual financial activity reported in the annual budget papers in relation to SAAS.

²⁴ See 'Report of the Inquiry into the Australian Red Cross Bali Appeal', August 2003, New South Wales Government.

²⁵ In my opinion, this should be the operative standard regardless of whether the matter is subsequently publicly made known or not. This is simply, in my respectful opinion, a matter of the standards that should inform the conduct that governs the operational affairs of government.

The proposal to develop an ambulance station at McLaren Vale arose for consideration after the finalisation of the 2001-02 Budget. No mention is made of that project in the 2001-02 budget papers, notwithstanding that other station projects are recorded.

There are established processes to deal with new and unforeseen activities that arise between budgets and there is appropriation authority in place to facilitate funding within established limits.

Actions taken by the then Minister of Emergency Services were, in my opinion, pre-emptive of the due processes in place for budget approvals. The Minister advised SAAS in August 2001 of his intention to 'bid' for additional crew staff at the next budget bi-laterals. The budget bi-lateral process at the relevant time was conducted in two phases. A preliminary information session was held before Christmas each year and finalisation of the process occurred in the period March to May in the next year.

Mr Brokenshire does not agree that his decision was pre-emptive of the budget process as he had every expectation and confidence that the long term funding for the McLaren Vale Ambulance Station would be provided. Mr Brokenshire stated:

My confidence in relation to the long-term funding was based on my knowledge of the urgent need for the station, of the ongoing priorities of the Government of which I was a member and also the support of the SAAS Board and the objective evidence which supported the project.

Notwithstanding the view expressed by Mr Brokenshire, for the reasons stated in this Report, I remain of the view that the approval to use sponsorship monies and the subsequent announcement of the McLaren Vale Ambulance Station was pre-emptive of the budget process.

In August 2001 the Minister approved funds to meet the operating costs of the new station in 2001-02. It was clearly anticipated that the station would be built and operating before the end of the 2001-02 year and for this to occur, development and construction of the new station would have coincided with the timing of the budget bi-laterals.

The Minister also attended a site launch with the then Premier for the new ambulance station in October 2001. Making a public announcement before the bi-laterals process had commenced would, for practical purposes, have substantially reduced the likelihood of the funding not being approved.²⁶

In this case, in my opinion, the matter should have been dealt with through Cabinet and the Treasurer. The estimated ongoing cost to the Government of the new station was \$630 000 per year in 2002-03 dollar terms. If the long term funding commitments associated with the proposed ambulance station were consistent with the Government's budget priorities, funding would have been approved and an allowance built into the forward estimates process before commencement of the budget bi-laterals for the 2002-03 Budget. Payment could then have been lawfully made from the Consolidated Account. The entire process would also then have had the necessary qualities of transparency, proper process, authority, and accountability.

²⁶ ie the 'embarrassment factor' of having a Premier involved would be influential against Treasury opposition to the provision of funding for future recurrent expenditure.

This would also have been consistent with established practice that utilises Parliament's approved flexibility in the appropriation process and would have avoided the failure to comply with the *Public Finance and Audit Act 1987* requirements that occurred.

The sponsorship funds were used because of their convenience and ready availability in the circumstances. In my opinion, for the reasons stated in this Report, the funds were not available for this purpose but rather were required to be credited to the South Australian Police Department (SAPOL) Special Deposit Account and then credited to the Consolidated Account.

The treatment of the sponsorship funds for the State Rescue Helicopter Service should have been kept separate from the funding for the proposed ambulance station. There were long standing procedures in place for the application of the sponsorship funds and those procedures were consistent with the requirements of the law and with advice given to Cabinet over a number of years.

PART 1

THE AUDIT MANDATE AND THE CONDUCT OF THE EXAMINATION

AUDIT REQUEST

After an earlier audit request from the Treasurer had been overtaken by other events,²⁷ on 12 May 2004, the Treasurer, the Hon Kevin Foley MP, made a request to the Auditor-General in the following terms:

In accordance with section 32 of the Public Finance and Audit Act 1987, I request that you examine the accounts of the South Australian Ambulance Service and the efficiency and economy of its activity with respect to the proposal to establish an ambulance station at McLaren Vale

SCOPE OF THE EXAMINATION

The scope of the audit examination undertaken is:

- ascertaining all relevant facts relating to the proposed building of a station at McLaren Vale;
- forming a view as to whether funding arrangements in relation to the proposed ambulance station were conducted lawfully, and were otherwise conducted properly in the circumstances;
- forming an opinion as to whether the controls exercised by the Minister of Emergency Services and the SAAS in relation to the receipt and expenditure of money, the acquisition and disposal of property and the incurring of liabilities were sufficient to provide reasonable assurance that the financial transactions of the Minister and SAAS have been conducted properly and in accordance with law in connection with the then proposed ambulance station.

THE AUDIT MANDATE

Section 32 of the *Public Finance and Audit Act 1987* sets out the requirements on the Auditor-General for the examination of publicly funded bodies and projects. In particular:

32. (1) The Auditor-General must, if requested by the Treasurer

(a) examine the accounts of a publicly funded body and the efficiency and economy of its activities; or

(b) examine accounts relating to a public funded project and the efficiency and cost-effectiveness of the project.

(1a) An examination may be made under this section even though the body or project to which the examination relates has ceased to exist.

²⁷ The other events included the tabling of the Dawkins Task Force Report 'Emergency Services Review' in Parliament in May 2003.

(2) After making an examination under subsection (1), the Auditor-General must prepare a report setting out the results of the examination.

(3) The Auditor-General must deliver copies of the report to the Treasurer and to the President of the Legislative Council and the Speaker of the House of Assembly.

OTHER MATTERS

Whilst this is a report pursuant to section 32 of the *Public Finance and Audit Act 1987*, for completeness, I have included some observations regarding some matters that should, in my opinion, be brought to the attention of the Government and the Parliament.

Both the SAAS and the Minister are 'public authorities' within the meaning of the *Public Finance and Audit Act 1987* and are subject to audit by the Auditor-General.²⁸ When considering whether the controls exercised by both the SAAS and the Minister in relation to the McLaren Vale Ambulance Station were 'sufficient to provide reasonable assurance' that the financial transaction relating to that station 'have been conducted properly and in accordance with law', it is important, inter alia, to identify any improper or unlawful elements associated with the transaction.

During the course of my examination I became aware of certain matters relating to the establishment and funding of the McLaren Vale Ambulance Station that raised the question whether the financial transactions of the SAAS and the conduct of the Minister were proper and in accordance with law.

For the purposes of my reporting obligations under section 36 (1)(a)(iii) and section 36 (1)(b) relating to any matter that should, in my opinion, be brought to the attention of Parliament and the Government, I determined that I should prepare a Supplementary Report under section 36(3) relating to that matter and deliver that Supplementary Report to the Parliament at the same time as the report pursuant to section 32.

In summary, instead of delivering two separate reports relating to the same subject matter, this Report deals with both my obligation in respect of my examination under section 32 and my reporting responsibilities under sections 36(1)(a)(iii) and 36(1)(b).

THE CONCEPT OF 'IMPROPER' AND 'IMPROPER CONDUCT' FOR THE PURPOSES OF THIS REPORT

The concepts of 'improper' and improper conduct' were considered in three recent Western Australian Royal Commissions.²⁹

²⁸ Section 4, *Public Finance and Audit Act 1987*.

²⁹ (i) The Royal Commission into Commercial Activities of Government (1992); (ii) The Royal Commission into Use of Executive Power (1995); and (iii) The Royal Commission into the City of Wanneroo (1996).

The position with respect to the use of 'improper' and 'improper conduct' that has been adopted for the purpose of this Report is as set out as the principles distilled from those Royal Commission reports.

The position is as follows:

- (1) *The test of impropriety is objective, that is, it does not depend on consciousness of impropriety on the part of the person under consideration.*
- (2) *Impropriety in a particular case is to be determined by reference to the particular circumstances in which it is said to have occurred.*
- (3) *The issue is whether the conduct impugned is inconsistent with the proper discharge of the duties of the office in question. (RV Byrnes; RV Hopgood (1995) 130 ALR 529 at 538; Whitehouse v Carlton Hotel Pty Ltd (1987) 162 CLR 285; 70 ALR 251)*
- (4) *Impropriety consists in a breach of the standards of conduct that would be expected of a person in the position of the person under consideration by reasonable persons with knowledge of the duties, power and authority of the position in the particular circumstances.*

Point (2) qualifies point (1) to the extent that the particular circumstances may in some situations include the state of knowledge of the person under consideration.³⁰

CONDUCT OF THE EXAMINATION

In the course of my audit of this matter, I have examined relevant documentation and interviewed relevant participants.

In the interests of natural justice, I provided on a strictly confidential basis, the whole of, or extracts from, a draft of this Report to a number of individuals, including those whose conduct was subject to adverse comment in the draft. My purpose in so doing was to give each such individual an opportunity to make submissions to me in relation to the draft. Most (though not all) of those individuals made written submissions to me on the draft. I gave careful consideration to each of those submissions, and as a result of them made a number of changes to the draft in finalising this Report.

In this audit examination, I have applied the standard of proof on the balance of probabilities in dealing with issues and in drawing conclusions.³¹

³⁰ City of Wanneroo Royal Commission, pages 8 and 9.

³¹ See Dixon J, *Briginshaw v Briginshaw* (1938) 60 CLR 336, 362.

PART 2

BACKGROUND — ESTABLISHMENT AND GOVERNANCE ARRANGEMENTS OF THE SOUTH AUSTRALIAN AMBULANCE SERVICE

THE STATUTORY ARRANGEMENT FOR THE PROVISION OF AMBULANCE SERVICES

The legislation governing the licensing of persons who provide ambulance services and related matters is the *Ambulance Services Act 1992* ('the AS Act'). Section 3 of the AS Act repealed the *Ambulance Services Act 1985*. Prior to 1993, St John Ambulance Australia — South Australia Inc ('St John'), an association incorporated under the *Associations Incorporation Act 1985* ('the AI Act'), provided ambulance services under a licence granted pursuant to the *Ambulance Services Act 1985*.

Section 11 of the AS Act provides for the establishment by the Minister (responsible for the administration of ambulance services) and the Priory (ie the Priory in Australia of the Grand Priory of the Most Venerable Order of the Hospital of St John of Jerusalem), or a person nominated by the Minister or the Priory, of 'an association for the purpose of carrying on the business of providing ambulance services'. Also under section 11, the Association 'will be eligible for incorporation under the *Associations Incorporation Act 1985* under the name 'SA St John Ambulance Service Inc'.'

The Association was so formed in July 1993 (ie incorporated under section 20 of the AI Act), pursuant to a 'joint venture' agreement of 26 February 1993 ('the agreement') between the Minister and the Priory. The Association, which is generally referred to by its registered trading name, South Australian Ambulance Service ('SAAS'), has two members, the Minister and the Chancellor of the Priory. Pursuant to the agreement, the ambulance service formerly run by St John was effectively handed over to SAAS, which was granted a licence, without conditions, by the Minister under the AS Act. St John still performs other activities, but no longer provides ambulance services.

The AS Act facilitated these changes but did not require them (section 11 provides that the relevant parties 'may form an association'), nor does it specify how ambulance services are to be provided. On the basis that such an association is formed, the AS Act makes provision for the composition of the governing body, an advisory committee in relation to the provision of ambulance services in country regions, accounts and audit, reports, and rules for borrowing and investment by the Association.

THE MINISTER'S STATUTORY OBLIGATIONS UNDER THE *AMBULANCE SERVICES ACT 1992*

Apart from the provisions relating to the agreement, the AS Act establishes a framework for the grant and revocation of licences for the provision of ambulance services, for the charging of fees for those services, and related matters. In other words, the Minister's statutory obligations under the AS Act relate to licensing of persons who provide ambulance services, not to the provision of ambulance services as such.

THE RELEVANT RULES OF THE SAAS

St John was (and SAAS now) is the principal provider of ambulance services in South Australia.

The relevant rules of SAAS are those set out in Annexure A to the agreement (some amendments were made to those rules in 2002). The objects clause of the rules (clause 3) provides:

The object of the Association is to provide a State-wide ambulance service as it may be legally empowered to do utilising both volunteer and employed personnel in a manner consistent with the objects and directions of both members of the Association and otherwise to do anything incidental to the achievement of such objective with the exception of those activities that are at the date of this constitution the prerogative of the St John Ambulance South Australia Inc.

The rules state (clause 4) that the SAAS has, in addition to the powers conferred on it by the AI Act or otherwise expressly or impliedly conferred upon it, the power to do all things conducive to the attainment of the above object and all such other things as may be done by a natural person. The rules provide for various matters, including the establishment of the 'Ambulance Board' ('the Board'), a board of directors with power to administer the affairs of the Association, and for meetings of the Association and of the Board. The members of the Board are nominated by the Minister, the Priory and others (in accordance with clause 8.3, which reflects the nomination requirements set out in section 12 of the AS Act) and appointed by the Minister (this is implicit in clause 8.5).

THE RELATIONSHIP OF THE MINISTER AND THE BOARD OF THE SAAS

It follows that the Minister has considerable influence over the Board, as a member of SAAS and as the person responsible for appointing Board members, as well as in the capacity of Minister responsible for ambulance services generally. However, leaving aside the Minister's political responsibility and statutory power to grant licences, the Minister's legal powers in relation to SAAS stem from the AI Act and the rules of SAAS rather than from the AS Act. In my opinion, consistently with the objects clause of the rules, the Minister has no power to direct the Board otherwise than jointly with the Priory. There is no evidence that the Minister and the Priory have exercised this power to give a direction to the Board of the SAAS regarding the establishment of an ambulance station at McLaren Vale.

PRINCIPLES OF THE GOVERNANCE OF THE SAAS

The agreement also has an Annexure B, 'Principles to govern the conduct of the SA St John Ambulance Service Inc', the legal status of which is not entirely clear.

It appears from the Crown Solicitor's advice to the former Chief Executive Officer, Department for Industrial Affairs on 27 July 1995 that the principles set out in Annexure B do bind SAAS, and, this examination has proceeded on that basis. The apparent termination of the agreement on 13 September 2001 under clause 6 of the scheme approved by the Attorney-General and published in the Gazette under the *St John (Discharge of Trusts) Act 1997* would not appear to affect the ongoing need for SAAS to comply with the principles.

The principles set out in Annexure B add some detail to the governance requirements set out in the AI Act and the rules of SAAS. Under section 14 of the AS Act, SAAS 'must cause proper accounts to be kept of its financial affairs', the Auditor-General is required to audit those accounts each financial year, and Part 3 of the *Public Finance and Audit Act 1987* 'applies to, and in relation to, the Association as if it were a public authority within the meaning of that Act'.

The principles commence by stating that the role of SAAS 'is to provide a skilled and efficient ambulance service for the people of South Australia'. They then relevantly make provision for the responsibilities of the Board (clause 3), general principles of management (clause 6), subject to amendment by the members (clause 5), and business principles (clause 8).

Finally, it is to be noted that SAAS is not subject to the *Public Corporations Act 1993* which provides for the general governance of public statutory corporations, and includes provision for ministerial directions to be given to such corporations.

PART 3

PUBLIC FINANCIAL ADMINISTRATIVE MATTERS RELEVANT TO THIS AUDIT EXAMINATION

BACKGROUND

To express an opinion in relation to funding matters associated with the then proposed McLaren Vale Ambulance Station requires an assessment of the facts of the matter against the control framework that applied to the receipt and expenditure of public money and to government funding for SAAS. It also requires an understanding of funding and control arrangements applying to the State Rescue Helicopter Service as funding for the proposed McLaren Vale Ambulance Station initially involved the use of sponsorship funds relating to that Service.

FUNDAMENTAL PRINCIPLES

Control of Public Funds

In Australia the convention, supported by legislation, is that all revenue received by or on behalf of the Crown is subject to Parliamentary control.³² The fundamental principles for Parliamentary control are:

- Public money is collected and administered by the Crown.
- Spending of public money may not occur without Parliamentary appropriation.
- Parliamentary appropriation is an authority but not a requirement to spend public monies.
- If a sum appropriated is not spent within the period of Parliamentary appropriation, the monies cannot be spent and must be returned to the control of Parliament.
- An amount appropriated is the maximum that can be spent on a purpose and cannot be applied to another purpose without relevant authority.

Control of public money in South Australia is established through the *Public Finance and Audit Act 1987*. That Act is consistent with the aforementioned principles but makes specific provision in relation to the receipt and application of public monies and allows flexibility in specific areas. The legislative controls are in turn, supported by conventions and administrative practices.

Public Finance and Audit Act 1987

The *Public Finance and Audit Act 1987* (PFAA) distinguishes between control of physical money and record keeping to track the movement of public money.

³² Selway, 'The Constitution of South Australia', page 127, footnote 23.

Revenue received by the Crown is physically paid into the Crown's bank or other investment accounts.³³

The revenues received by the Crown are recorded in the ledger accounts of the Treasurer, called the public accounts, or of instrumentalities of the Crown. The latter are not relevant for this Report.³⁴

The public accounts³⁵ are all accounts shown in the general ledger maintained by the Treasurer that summarise the financial transactions of the Treasurer.

The Act sets out specific provisions for establishing some parts of the public accounts, eg special deposit accounts, and also establishes controls over the receipt (crediting) and application (debiting) of monies to and from the public accounts.³⁶

Consolidated Account

Section 5 of the *Public Finance and Audit Act 1987* provides that all revenue of the Crown is to be credited to the Consolidated Account unless authorised by law to be credited to another account.³⁷

³³ *Public Finance and Audit Act 1987*, section 11:

11. The Treasurer may, on such terms and conditions as the Treasurer thinks fit, deposit or invest money under the Treasurer's control-

(a) with the Reserve Bank of Australia; or

** * * * **

(d) with a bank or any other prescribed ADI; or

(e) with a dealer in the short term money market-

(i) in relation to whom the Reserve Bank of Australia stands as a lender of last resort; or

(ii) who has been declared by regulation to be an approved dealer for the purposes of this section; or

(f) with SAFA; or

(g) with a prescribed person or a person of a prescribed class; or

(h) in a prescribed manner.

³⁴ The Crown Solicitor has indicated in the past that the legal structure of the South Australian Ambulance Service is complex and the Service was not an instrumentality of the Crown in the context of a range of statutory purposes.

³⁵ *Public Finance and Audit Act 1987*, section 4:

"public accounts" means the Consolidated Account, special deposit accounts, deposit accounts, accounts of money deposited by the Treasurer with SAFA, imprest accounts and all other accounts shown in the general ledger;

³⁶ Selway, 'The Constitution of South Australia', at page 127, footnote 21 explains 'The distinction between the government's bank accounts and the ledger accounts often seems to cause conceptual difficulties. Although the analogy is inexact, the Treasury can be seen as the government's bank. Money received into the Treasury is credited to one or other of the ledger accounts. ... However, the Treasury then deals with that money as its own and puts the money in its own bank accounts or invests it.'

³⁷ *Public Finance and Audit Act 1987*, section 5:

Subject to this Act and to any other law to the contrary, there will be credited to the Consolidated Account—

(a) money received by the Treasurer in repayment of loans and advances made from the Consolidated Account;

(b) money received by the Treasurer from the Commonwealth;

(c) money received by the Treasurer from the sale of real or personal property belonging to the Crown;

(d) money borrowed by the Treasurer for the general purposes of the State (other than money paid to SAFA at the direction of the Treasurer);

(e) all other revenue of the Crown that is not authorised by law to be credited to any other account.

The Consolidated Account is the main ledger account of the public accounts.

The Consolidated Account is credited with general Crown revenues including all State taxation, Commonwealth general purpose grants and other receipts such as contributions from State undertakings, fees and charges and recoveries of various costs.³⁸ These revenues are used to fund Crown activities after appropriation by Parliament.

Authority to Apply Money

Section 6 of the *Public Finance and Audit Act 1987* requires that public monies cannot be issued or applied (debited) from the Consolidated Account without authorisation by an Act of Parliament.³⁹

The principal instrument providing authority for the application of money from the Consolidated Account, that is relevant to this Report, is the annual Appropriation Act.

Appropriation Act

The annual Appropriation Act sets out the purposes and amounts authorised by Parliament to be applied from the Consolidated Account pursuant to the Act. In South Australia, purposes are broad, generally being ministerial or departmental purposes. The Act is passed at the conclusion of the Parliament's examination of the annual Budget. The budget papers are provided to Parliament to support the annual Appropriation Bill and set out the total funds estimated to be available and the proposed annual spending activity, principally by government departments, whether funded from Consolidated Account appropriations or other sources. While the budget papers provide some detail, they are not so precise as to exactly establish the nature and extent of the purposes set out in the Appropriation Act.⁴⁰

The annual appropriation from the Consolidated Account to a department is determined having regard to other funding sources available to fund departmental activity. In effect, the Consolidated Account meets the cost of services which are not funded from other sources of revenue that were directly credited to a department's special deposit account as discussed in the next section.

In practice, to a large degree, appropriations from the Consolidated Account are simply fund transfers between ledger accounts involving debiting the Consolidated Account and crediting the special deposit accounts of agencies from where funds are applied to authorised purposes.

³⁸ See, for example, Report of the Auditor-General for the year ended 30 June 2004 Part B, Volume V, Appendix, Statement A pages 3-6.

³⁹ *Public Finance and Audit Act 1987*, section 6:

(1) *Money must not be issued or applied from the Consolidated Account except under the authority of—*

(a) *this Act; or*
(b) *an annual Appropriation Act; or*
(c) *a Supply Act; or*
(d) *some other Act of Parliament.*

(2) *The Treasurer must, when issuing or applying money from the Consolidated Account, act in accordance with the Act by or under which the money has been appropriated.*

⁴⁰ Selway, 'The Constitution of South Australia', page 128 notes 'The meaning and extent of a departmental purpose can only be determined in terms of the past practice of the relevant department and (perhaps) by reference to the Budget Papers'.

Special Deposit Accounts

Section 8 of the *Public Finance and Audit Act 1987* provides that money appropriated or provided in accordance with law for an approved purpose may be credited to a special deposit account opened for that purpose.⁴¹

In South Australia it has been practice since the early 1990s for the financial activities of government departments to operate through special deposit accounts. The practical effect is that all revenues relating to a department's activities are credited to its special deposit account when received.

A department's special deposit account may therefore be credited with its annual appropriation from the Consolidated Account and also be credited directly, (that is, without going through the Consolidated Account) with specific purpose Commonwealth grants for departmental purposes and fees and charges raised by the department for services provided.

Parliament has provided a standing authority for departments to spend money standing to the credit of a special deposit account for the approved purpose of that account.⁴²

THE BUDGET PROCESS

As mentioned, legislative provisions are supported by administrative practices.

The budget process is the method by which the Government's spending and revenue proposals are determined. The budget process is a discretionary matter for the Executive Government to establish as it is concerned with coordination of the Government's economic, social and fiscal policies. The process is supported by the Department of Treasury and Finance which provides advice and coordinates resource allocations.

The budget process for 2001-02, was that budget proposals, including cost pressures, new initiatives, and capital project proposals, were negotiated over two rounds of budget bi-lateral meetings (budget bi-laterals). The budget developed was ultimately approved by the then Ministry, comprising Cabinet and delegate Ministers, and presented in the 2001-2002 Budget Papers.

⁴¹ *Public Finance and Audit Act 1987*, section 8:

(1) *The Treasurer may establish a special deposit account for an approved purpose of, or relating to, a government department.*

(2) ...

(3) *The Treasurer may credit any money appropriated or provided in accordance with law for an approved purpose to a special deposit account opened under this section for that purpose.*

...

(9) *In this section—*

'approved purpose' means a purpose of, or relating to, a government department approved for the time being by the Treasurer under subsection (7).

⁴² *Public Finance and Audit Act 1987*, section 8:

(4) *The Treasurer may, without Parliamentary appropriation, issue and apply any money standing to the credit of a special deposit account for the purpose for which that account was opened.*

Budget bi-laterals were attended by the Treasurer and the relevant Portfolio Minister supported by departmental/statutory authority officers. Practice was that the first round of meetings, held before Christmas each year, identified general directions, priorities and cost pressures without decisions being made.

The second round of bi-lateral meetings, held around March each year, was a budget negotiation round focussed on making decisions such that the budget for the forthcoming year could be finalised for Ministry approval.

For the purposes of financial control, this process set the financial parameters within which agencies should operate to allow the Government to meet its operational and financial targets.

The budget processes of the time were set out in a range of Department of Treasury and Finance publications.⁴³

Flexibility in Appropriations

Flexibility is provided in the appropriation and budget processes through both legislative provisions and administrative practices. This flexibility provides for the funding of matters not foreseen at the time of the budget that require funding before the conclusion of the next budget and Appropriation Act.

In particular, the Governor's Appropriation Fund⁴⁴ and contingency allowances provided within the annual Appropriation Act,⁴⁵ provide the authority for the Government to meet the cost of activities not foreseen or finalised at the time of the budget.⁴⁶

Initiatives not funded through the Ministry approved budget submissions could only be funded by re-allocation of existing funds within portfolios.

⁴³ Three relevant publications were: *Budgeting Process* – a guide describing features of the budgeting process approved by the Government; *Budget Revisions* – a guide for people seeking approval for changes to the Government's budget and forward estimates; *Preparation of 2001-02 Budget Papers – Treasury Circular No. 313* – a circular to summarise the deadlines and information requirements for the production of the 2001-02 Budget.

⁴⁴ *Public Finance and Audit Act 1987*, section 12:

(1) *The Governor may, in any financial year, appropriate from the Consolidated Account to the public purposes of the State, an amount not exceeding the maximum prescribed by subsection (2).*

(2) *The maximum amount that may be appropriated under subsection (1) is-*

(a) *three per cent of the total of the amounts set out in the annual Appropriation Acts for appropriation from the Consolidated Account in respect of the previous financial year; less*

(b) *any amounts previously appropriated under this section and not recouped under subsection (4).*

(3) *Money appropriated under subsection (1) may be issued and applied by the Treasurer for the public purposes of the State during the financial year in which it is appropriated.*

⁴⁵ For example the contingency balances for employee entitlements, supplies and services and purchase of plant and equipment, included under the purpose Treasury and Finance – Administered Items for the Department of Treasury and Finance *Appropriation Act 2003*.

⁴⁶ There is also legislative provision for the transfer of appropriations between purposes. In particular section 13 of the *Public Finance and Audit Act 1987* and section 5 of the *Appropriation Act 2003*.

Governor's Appropriation Fund and Contingency Allowances

The Treasurer may apply money from the Governor's Appropriation Fund or from contingency allowances in a financial year. To control the application of money from these sources, the practice is that spending proposals are put to the Treasurer for approval. Subject to the amounts and other considerations, some of the proposals arise from Cabinet submissions. The Treasurer's approval process ensures that proposals continue to be considered within the priorities and policies of the Government and, that approved proposals incurring ongoing commitments are properly included within budget data.

Proper capture and recording of approved budget variations was a matter that concerned the Government and the Department of Treasury and Finance and in 2000 the 'Budget Revisions' guide was issued by the Department of Treasury and Finance. An aim of the guide was to '... ensure a greater degree of common understanding between Treasury and Finance and agencies regarding budget changes, and improve integrity within the budget numbers'.

GOVERNMENT FUNDING FOR SAAS

The following sets out arrangements that were in place in 2001-02. Some of those arrangements may have changed since that time.

Government funding for SAAS represented about 46 percent of SAAS revenues in 2001-02. Government funding for SAAS that year totalled \$40 million and was provided in three main categories namely, for general operations (\$33 million in 2001-02), for the South Australian Government Radio network (\$4.4 million in 2001-02) and for vehicle purchases (\$2.7 million in 2001-02).

The majority of funding was within the amount of the Parliamentary appropriation for the purpose described in the *Appropriation Act 2001* as Justice.⁴⁷ Some funding was also provided from the Community Emergency Services Fund.⁴⁸ The distribution of these funds was administered by the Attorney General's Department as part of its role within the Justice portfolio.

In 2001-02, negotiation of funding for SAAS was included in the negotiation of the Justice portfolio budget. SAAS, Attorney General's Department, and the Department of Treasury and Finance were all involved in the budget bi-lateral process.

Details of specific achievements and new targets for the SAAS were set out in the Portfolio Statements for 2001-02.⁴⁹ Funding for SAAS is not separately identified but is included in the total funding amounts for the various output classes identified in the Budget Paper.

⁴⁷ *The Appropriation Act 2001* detailed in the Schedule titled 'Amounts proposed to be expended from the Consolidated Account during the financial year ending 30 June 2002' under the Purpose of Appropriation — Purchase of Outputs — Department of Justice \$557 million.

⁴⁸ The Community Emergency Services Fund is credited with the emergency services levy and payments are made directly to emergency service agencies.

⁴⁹ For example, Portfolio Statement 2001-02, Volume 1, Budget Paper No 5, pages 5.14-15, 5.27.

Details of budgeted upgrades and replacements of ambulance stations have been a feature in past budget papers. The 2001-02 Budget Papers detail in the targets for 2001-02 to build new ambulance stations at Redwood Park, Camden Park and Elizabeth in the metropolitan area; Coober Pedy, Port Wakefield and Murray Bridge in the country region.⁵⁰ No mention is made of a new ambulance station at McLaren Vale to be commenced in 2001-02.

THE STATE RESCUE HELICOPTER SERVICE

The State Rescue Helicopter Service is an arrangement whereby helicopters are leased by the South Australian Government from a private supplier and are available to be accessed by the Police and other emergency services in the State.

A series of Cabinet submissions over the period from May 1996 to July 2002 dealing with provision of the State Rescue Helicopter Service give background on the Service and its funding arrangements.

A feature of the submissions was the consistent reference to the cost of the service being partly offset by corporate sponsorship and promotional use of the helicopters. Discussion on sponsorships noted at various times that:

- if an increase in sponsorship was offered the net cost to the Government would reduce;
- there was a sponsorship agreement for the State Rescue Helicopter Service from Adelaide Bank for \$170 000 per year for three years from July 2001;
- further opportunities for increased sponsorship would be pursued in the future.

Summary of SRHS Arrangements

From the preceding, it is apparent that the long standing arrangements for the State Rescue Helicopter Service, communicated to Cabinet for decision making purposes, have involved the State Budget providing for the full cost of the Service but with those costs being offset by income generated by the Service resulting in a lower net cost of the Service to the Government. Sponsorship arrangements are specifically and consistently mentioned in this regard over the period from 1996 to 2002.

Financial administration arrangements for the Service have, over a number of years, been consistent with the advice provided to Cabinet. The full cost of operating the Service has been appropriated from the Consolidated Account and recoveries from various sources have been returned to the Consolidated Account.

STATE RESCUE HELICOPTER SERVICE SPONSORSHIP ARRANGEMENTS IN 2001-02

On 16 August 2001 the then Minister for Emergency Services and Adelaide Bank Limited entered into a new agreement for the three years August 2001 to July 2004. The terms of the agreement with Adelaide Bank were consistent with past sponsorship arrangements except that the value of the sponsorship was substantially higher. The agreement involved the Adelaide Bank paying the Minister \$170 000 plus GST (\$187 000

⁵⁰ Portfolio Statement 2001-02, Volume 1, Budget Paper No 5, page 5.14.

in total) annually in return for various sponsorship rights involving promotional matters, availability of helicopters for the sponsor when not required for emergency services and signage on the helicopters with the Adelaide Bank logo.

The sponsorship agreement is an arrangement between the Crown, as represented by the Minister for Emergency Services, and a private party. The sponsorship payment is, by virtue of the Minister for Emergency Service's position, revenue of the Crown, subject to the controls for public money set out in the *Public Finance and Audit Act 1987*.

STATE RESCUE HELICOPTER SERVICE ADMINISTRATION ARRANGEMENTS

Administration of the operating arrangements for the State Rescue Helicopter Service involves a number of emergency services agencies as users of the aircraft. SAAS was the contract administrator. Budget reporting and the accounting and financial reporting of the arrangements rests with the South Australian Police Department (SAPOL) as SAAS is not a government department.

The Police Operating Account

SAPOL's financial activities are recorded in a special deposit account established from 1 July 1994. The approved purpose of the Police Operating Account was:

To record all the activities of the Police Department (including those formerly carried on by Security Services in the Department of Housing and Construction) including recurrent and capital expenditures, revenues from various activities, injections of funds provided from the Consolidated Account and borrowings.⁵¹

Administration of the State Rescue Helicopter Service financial activities was one of the activities of the SAPOL. This practice commenced as a matter of administrative convenience. No documentation requiring SAPOL to undertake this activity has been produced to Audit.

However, in an internal Treasury minute dated 30 June 1994 seeking approval of the Police Operating Account, the Treasurer was advised that:

*The Commissioner's request to account for the helicopter via a separate deposit account is not supported and this position has been discussed with officers from the Police Department. Under existing arrangements legal advice on the provisions under the Public Finance and Audit Act is that it would not be appropriate for a section 8 or a section 21 account to be established. Briefly, this is because the Minister is responsible for the helicopter lease, not a department as is required for a section 8 account and **the sponsorship contributions (provided to the Minister) should not be credited to a section 21 account, but rather direct to Consolidated Account as required under section 5 of the Act.** Given this situation and until the responsibility for the helicopter is assigned to a department we suggest that the operations be accounted for under the Minister for Emergency Services – Other Payment on a gross basis. That*

⁵¹ The purpose of the account was changed in 2003-04.

is, expenditure would be shown as a gross amount, with the receipts recorded as recoveries against two receipt lines in Consolidated Account; showing the relevant amounts from sponsorships and the recoveries from government agencies, eg Police, CFS, Health commission etc.
 [emphasis added]

In his evidence, Mr Brokenshire was of the opinion that this minute was never circulated outside Treasury. As a consequence he stated:

Not surprisingly I never saw it, nor was there any occasion for me to do so. Nor would the Deputy Chief Executive of my Department have any occasion to see it.

Nonetheless, it is evident from practice over a number of years that since the establishment of the Police Operating Account, administering the SRHS arrangements has involved financial transactions passing through the Police Operating Account from and to the Consolidated Account. Notwithstanding Mr Brokenshire’s comment, the abovementioned Treasury minute does no more than state the legal position regarding the treatment of monies that are received with respect to the SRHS.

Budget Information

The annual budget papers include budgeted payments and receipts information in relation to the helicopter service.

The 2001-02 Budget Papers show a summary of Consolidated Account estimated payments and receipts. Included in estimates of payments was Administered items for the South Australia Police Department and in estimates of receipts, helicopter service — recovery of costs and sponsorships.⁵²

The 2001-02 Budget Papers also set out further details of the estimated receipts and payments including administered items for each relevant agency. For the Police Department, the following information on the State Rescue Helicopter Service was included under the heading ‘Additional Administered Items Information for the Police Department Statement of Cash Flows’.⁵³

CASH FLOWS FROM:	2001-02 Budget \$’000
Receipts	
Helicopter Service - Recovery of costs and sponsorships	772
Payments	
Provision of helicopter service	3 143

The information presented in the 2001-02 Budget Papers is consistent with the arrangements advised to Cabinet and the Treasurer, that is, funding for services from the Consolidated Accounts offset by expected receipts from recoveries including sponsorships.

⁵² Estimates Statement 2001-02, Budget Paper No 4, pages 15 and 20.

⁵³ 2001-02 Budget Paper 5, Volume 1, page 5.68. Total payments for Police Department administered items were estimated to be \$51.2 million. State Government appropriation toward these payments was \$3 565 000 of which \$3 343 000 was included in the *Appropriation Act 2001* with the balance appropriated under other Acts.

Financial Reporting

The Police Department has included specific disclosure of the provision of the helicopter service in a schedule of administered expenses and revenues⁵⁴ in its annual financial report for a number of years.

The following table details activity reported for the six years to 30 June 2004.

	1999	2000	2001	2002	2003	2004
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
ADMINISTERED EXPENSES						
Provision of Helicopter Service	2 677	2 861	2 715	3 178	4 292	3 790
Payments to Consolidated Account	512	639	518	763	1 695	2 114
Total	3 189	3 500	3 233	3 941	5 987	5 904
ADMINISTERED REVENUES						
State Government appropriations	2 532	3 006	2 715	3 015	3 920	3 987
Recovery of costs and sponsorships ^(a)	543	693	453	1 502	1 694	2 102
Total	3 075	3 699	3 168	4 517	5 614	6 089
REVENUES LESS EXPENSES	(114)	199	(65)	576	(373)	185

(a) In 2004 revenues are categorised as intra government transfers and sales of goods and services.

Each year the money appropriated by the Parliament for the operating costs of the service is credited to the Police Operating Account as revenue (State Government appropriations) and operating costs for provision of the Service are debited to that account as expenses (Provision of helicopter service).

Monies received from sponsorships and other sources are also credited to the account and are subsequently credited to the Consolidated Account on an annual basis by SAPOL ('Payments to Consolidated Account' in the preceding table), in compliance with the requirements of the *Public Finance and Audit Act 1987*. This is also consistent with the arrangements reported to Cabinet and the Treasurer, that is, offsetting the costs to the Government of the Service.

Gross receipts and payments relating to the SRHS are also included in the Treasurer's Statements which report actual Consolidated Account⁵⁵ receipts and payments for a financial year.

In relation to sponsorship arrangements, practice has been that SAPOL raise an invoice for the sponsorship monies and credit that money to the Police Operating Account. This occurred before and after 2001-02. There was an exception to this practice in 2001-02.

⁵⁴ The SAPOL 2001-02 financial statements report the following in relation to administered items:

Administered Resources

SAPOL administers on behalf of the Government of South Australia certain resources over which it does not have control. Although accountable for the transactions relating to these administered resources, SAPOL does not have control or discretion to apply these resources to achieve its objectives.

Transactions and balances relating to these administered resources are not recognised as SAPOL's revenues, expenses, assets or liabilities, but are disclosed separately in the Schedule of Administered Expenses and Revenues, and the Schedule of Administered Assets and Liabilities as appropriate.

⁵⁵ See, for example, Report of the Auditor-General for the year ended 30 June 2002 Part B, Volume III, Appendix, Statement A, pages 5 and 8.

PART 4

FACTUAL CIRCUMSTANCES ASSOCIATED WITH THE PROPOSAL TO ESTABLISH AN AMBULANCE STATION AT McLAREN VALE

SOME BACKGROUND ISSUES CONCERNING THE NEED FOR AN AMBULANCE STATION IN THE SOUTH

At some time in 1998 or 1999, Mr Ian Pickering, the then Chief Executive Officer of the South Australian Ambulance Service (SAAS), and the then Minister for Emergency Services (the Minister), discussed the possibility of a new ambulance station in the Fleurieu Peninsula region, south of Adelaide.

The discussion centring on ambulance facilities in the south arose because of a perceived need. During the course of the inquiry, I heard evidence that within SAAS there was an awareness of a high number of serious accidents occurring on the Adelaide to Victor Harbor road.

The closest existing stations to that area were at Victor Harbor and Aldinga. In his oral testimony, Mr Pickering indicated that he had concerns about the ability of those stations to cope with increased workloads, particularly in light of the growing populations in centres such as Seaford Rise and McLaren Vale.

Evidence was given before the inquiry that Mr Pickering and the Minister met at least monthly. Both Mr Pickering and Mr Chris Lemmer, then acting SAAS Director of Regional Services, gave evidence that the Minister was enthusiastic about the development of a new ambulance station in the region.

The enthusiasm of the Minister must be viewed in light of some significant incidents involving accidents along the McLaren Vale to Victor Harbor road. Evidence was heard from several witnesses about the frequency and magnitude of road trauma cases on that road. In particular, I note that Mr Brokenshire gave evidence that he had come across car accidents along the road including where victims of those accidents had died. Some of these serious accidents occurred on the highway adjacent to the Minister's property. In his oral testimony it was clear that the Minister was aware of numerous accidents along the road and a recent death in the Southern area due to a heart attack and was concerned about the ability of ambulance services to adequately respond.

CONSIDERATION BY SAAS OF A NEW STATION

The construction of an ambulance station south of Adelaide was not raised, at least at the SAAS Board level, until late 2000.

On 12 October 2000 the SAAS executive met. The minutes of that meeting indicate that the previous day, 11 October 2000, the Minister met with Mr Pickering. At that meeting the Minister asked that SAAS look into a possible ambulance station at McLaren Vale.

The minutes of the executive meeting noted that an opportunity had arisen for SAAS to obtain a parcel of land in McLaren Vale at less than market rates. In his oral evidence, Mr Pickering identified that this land was at the time occupied by the Electricity Trust of South Australia.

On further investigation SAAS concluded that the available land was too large for the required use and subdivision would have been impractical in the circumstances. The cost of the land was also beyond the financial capacity of SAAS at that time.

The Board of SAAS considered the issue on 28 November 2000. Before the Board at that meeting was a proposal to consider submitting a tender for the land at McLaren Vale. The Board rejected the proposal and decided not to proceed. The reasons stated were: 'the project was not budgeted; the property cost and size is likely to exceed SAAS' affordability and needs; analysis results indicate the non-optimum site; and the property is not an urgent priority'.

At the meeting on 28 November 2000 the Board decided to continue to consider the viability of such a location for future station needs. Mr Pickering was instructed by the Board to convey the Board's decision to the Minister which he subsequently did.

The SAAS Board did not further consider the issue until some five months later, in late April 2001.

THE AVAILABILITY OF LAND AT THE SOUTHERN DISTRICTS WAR MEMORIAL HOSPITAL

By that point in time a parcel of land at the Southern Districts War Memorial Hospital in Aldersie Street, McLaren Vale was being offered, at least in an informal way, for use for the construction of an ambulance station.

It was not entirely clear from the evidence given to the inquiry how the availability of the Aldersie Street land came to the attention of SAAS. Mr Pickering gave evidence that it was probably from the Minister from whom he first heard of the availability of that land. Evidence was also given that the Chief Executive Officer of the Hospital contacted Mr Pickering offering the land for the use by SAAS as an ambulance station. Either way, I am satisfied that the Hospital saw synergies with the co-location of an ambulance station and probably made the first approaches to SAAS, possibly via the Minister.

In his oral evidence Mr Pickering stated that he and Mr Lemmer attended the Aldersie Street site for an inspection with the CEO of the Hospital. On the basis of that inspection Mr Pickering concluded that the offer of land was worth pursuing.

At a meeting of the SAAS Board on 24 April 2001, Mr Pickering reported that an opportunity had arisen for SAAS to obtain land at McLaren Vale at minimal cost for the future development of an ambulance facility. The land in question was the parcel he and Mr Lemmer had inspected which was being offered by the Southern Districts War Memorial Hospital in Aldersie Street, McLaren Vale.

At the meeting the SAAS Board was asked to provide its approval for Mr Pickering to demonstrate SAAS's interest in the land 'and for SAAS to undertake further investigation of the merits of developing a station at McLaren Vale in the future'. The Board provided such approval.

On 14 May 2001, Mr Pickering wrote to Ms Judy Craig, the Chief Executive Officer of the South Districts War Memorial Hospital. The letter advised Ms Craig that the SAAS Board had agreed that an approach be made to the Board of the Hospital 'to ascertain the availability of land for use as an ambulance centre'.

By letter dated 24 May 2001, Ms Craig replied to Mr Pickering and stated that the Board of Management of the Hospital had voted in favour of the possibility of establishing an ambulance centre on the property and proposed that a lease arrangement be negotiated with a peppercorn rental.

On 8 June 2001, the SAAS Executive met, and in light of the favourable response from the Southern Districts War Memorial Hospital, agreed that a statistical study of response times and workload was required prior to progressing the matter any further. The minutes of the Executive Meeting note that Mr Pickering had met with the Minister and that the Minister had 'expressed his continued desire for a development at McLaren Vale'.

SAAS PROCEEDS WITH AN OBJECTIVE STATISTICAL ANALYSIS

Following the meeting of the SAAS Executive, on 8 June 2001, Ms Roslyn Clermont, a Corporate Information Officer at SAAS, was instructed by Mr Lemmer to prepare a report on workload for SAAS for the McLaren Vale region.

It is evident from Ms Clermont's oral testimony that consideration was not only given to McLaren Vale but also to other outer metropolitan areas or 'fringe metropolitan' areas.

Consideration of the issue within SAAS showed that existing stations at Stirling, Mt Barker and Murray Bridge adequately served the eastern metropolitan fringe. Accordingly, SAAS' consideration indicated that the other logical place for an outer metropolitan station was in the north, there being no career station between Gawler and Pt Pirie. SAAS determined that the comparable area to McLaren Vale in the north was Port Wakefield. The analysis of the Port Wakefield region is discussed later.

On 22 June 2001, a SAAS internal memorandum was prepared on first response workload.

The report of 22 June 2001 did not draw any conclusions as such. It contained raw statistical data. The purpose of this Report was to assess whether further, more detailed, statistical analysis was required.

The analysis looked at the 12 month period from 1 April 2000 to 30 March 2001. The analysis indicated that there were 698 dispatches to 623 incidents where over half were Priority One cases (53.7 percent).⁵⁶

The first round of data demonstrated to SAAS that there was a sufficient workload within the McLaren Vale area to warrant a closer look at establishing a station. This further work was to look at response times to incidents, that is the time it takes for an ambulance to attend the scene of an motor vehicle accident or some other medical emergency.

SAAS progressed with further statistical analysis of workload response times for the McLaren Vale area. The work culminated with a second report from Ms Clermont on 28 June 2001. The work on response times looked at the same geographical area used in the earlier report of 22 June on workload, and measured the actual time it took in each case for an ambulance to respond to an incident.

⁵⁶ A 'Priority One Case' is a 'Life Threatening' incident.

SAAS uses a functional criteria for ambulance response times which is also used by other interstate ambulance services. The statistical analysis on response times for the McLaren Vale region showed that SAAS was well outside the benchmark criteria, as shown in the following table:

	Actual Response Time	Career Station Benchmark Criteria (a)	Volunteer Station Benchmark Criteria (b)
Priority One cases (c)			
50th percentile	13.48	7	13
90th percentile	22.72	12	18
Priority two cases (d)			
50th percentile	19.19	11	17
90th percentile	40.04	30	36

- (a) A Career station is staffed by paid ambulance officers who, at the relevant time would have undertaken a 3-year course of study graduating with an Advance Diploma in Ambulance Studies. Further post-graduate study may be undertaken to qualify as an intensive care paramedic.
- (b) A volunteer station is staffed by ambulance officers who are unpaid volunteers. Volunteers qualify by undertaking an SAAS in-house training.
- (c) Priority One cases are life-threatening, 'lights and sirens' cases.
- (d) Priority Two cases are urgent but not immediately life threatening.

I referred earlier in this Report to a similar assessment made by SAAS of workload in the northern metropolitan fringe area. That assessment was presented in a report dated 29 June 2001, again prepared by Ms Clermont. The report stated that its subject was the equivalent area in the north based on Port Wakefield to that of McLaren Vale in the south and was an alternative location for an additional career ambulance station. The analysis looked at the twelve month period from 1 April 2000 until 31 March 2001. The statistics showed that there were 199 dispatches with over half (55.3 percent) being Priority One cases.

The statistics for the Port Wakefield region demonstrated to SAAS that the workload was significantly lower in that region than for the McLaren Vale region. On that basis, SAAS did not consider that any further analysis was warranted for Port Wakefield. The inquiry heard evidence from the Chairman of the SAAS Board, Ms Robyn Pak Poy, that, although anecdotally Port Wakefield may have been perceived as a location in the fringe-metropolitan region notorious for serious accidents, the statistics demonstrated that the workload was substantially lower than the workload for ambulance services in the south and this gave a clear basis for concluding that for a metropolitan fringe station, the highest priority was in the south.

On the basis of the three reports I have referred to that were prepared by SAAS (that is, the reports of 22 June 2001; 28 June 2001; and 29 June 2001), SAAS looked at a more detailed consideration of the McLaren Vale region and the preparation of a larger report for the purposes of broader distribution and consideration by the SAAS Board.

A further statistical study was prepared by Ms Clermont entitled 'Analysis of Workload and Response Time in the Urban Fringe of Adelaide' and dated 12 July 2001. The study identified that if a new ambulance station were to be developed in the urban fringe of Adelaide, the most appropriate location would be the southern fringe.

The report of 12 July also contained particular conclusions which SAAS had made based on the statistical analysis. The report included the following conclusions:

The analysis has shown that, if a new ambulance station were to be developed in the urban fringe area, the most appropriate location would be the southern fringe. This has the additional benefit of utilising land that would be made available by McLaren Vale Hospital.

Analysis of response times shows that such a station should be a career station. Current response times to the area are only slightly higher than the criteria for volunteer crews, and a crew on station would be required to have an impact on reducing response times. In addition, the high proportion of Priority One cases, and major road trauma in particular, indicates that the higher clinical skills of career staff are likely to have a significant impact on patient outcomes.

THE STATE RESCUE HELICOPTER SPONSORSHIP

At around the same time as SAAS was investigating the possibility of constructing an ambulance station in the southern fringe, arrangements were being made in relation to the sponsorship of the State Rescue Helicopter Service.

SGIC, the former sponsor of this service, had decided not to renew its sponsorship arrangements.

Expressions of interest were invited for the helicopter sponsorship by an advertisement in The Australian Financial Review in May 2001.⁵⁷

Mr Greg Reid, a Marketing Consultant with the Adelaide Bank saw the advertisement and responded on the Bank's behalf, expressing interest in the potential sponsorship.

Sometime during the week beginning 14 May 2001, Mr Reid met with Mr Pickering and other members of the State Rescue Helicopter Management Committee regarding potential sponsorship. Mr Reid explored the opportunity in more depth, in particular, the question of how much money would be required.

This and another meeting on 25 May 2001 resulted in a formal written offer from the Adelaide Bank.

On the morning of 26 June 2001, Mr Pickering and Mr Lemmer met with Mr Reid. Mr Pickering was present in his capacity as the Chairman of the State Rescue Helicopter Service Management Committee. At the meeting he learned that Adelaide Bank was prepared to offer \$170 000 per year to sponsor the State Rescue Helicopter Service.

The offer was for \$170 000 per year for three years with a right to renew the sponsorship arrangements for a further three years and was subject to the Minister's final approval. Naturally, the Bank was keen to attract some publicity for the sponsorship arrangement and discussions with the State Rescue Helicopter Service Management Committee centred on a signing ceremony involving the Minister and the Managing Director of the Bank, Mr Barry Fitzpatrick.

⁵⁷ Refer Appendix 1.

Early in July 2001, the Minister approved the sponsorship offer from the Adelaide Bank and the task of drafting the contractual arrangements were undertaken by SAAS. The terms of the contract were negotiated between SAAS and the Adelaide Bank and the contract was signed at a ceremony at Adelaide airport on 16 August 2001, an event which I will address in more detail later.

SAAS BOARD MEETING ON 26 JUNE 2001

On 26 June 2001 at 1730 hours the Board of SAAS met. The Board received a paper, apparently prepared that day, on the issue of the McLaren Vale proposal containing several dot points of which the first three read as follows:

- *The Minister of Emergency Services strongly supports this initiative.*
- *There is potential for additional funds to staff the new station.*
- *The Southern Districts War Memorial Hospital are enthusiastic about the proposal and there is land available.*

At the Board meeting the McLaren Vale matter was considered. The minutes of the Board meeting relevantly read as follows:

McLaren Vale Hospital has indicated that it would lease the land to SAAS cheaply. The CEO reported that in view of the growing population of the region and the low cost to SAAS, SAAS should pursue the concept of a possible station at McLaren Vale. The Board's approval was sought to enable the CEO to continue progressing the matter.

The Board APPROVED

1. *The CEO obtain written confirmation from McLaren Vale about the terms and conditions of the lease for the purposes of an ambulance station;*
2. *The CEO seek the Minister's guidance into the crewing composition for McLaren Vale;*
3. *The CEO pursue the formalisation of a lease subject to the first two outcomes.*

When Mr Pickering attended the SAAS Board meeting on 26 June 2001 he would have had knowledge of the fact that the Adelaide Bank had offered sponsorship money to the State Rescue Helicopter Service. The formal written offer from the Adelaide Bank was sent to the Sponsorship Committee on 26 June and the SAAS Board met later in the evening. No witness gave evidence that the matter of sponsorship monies was discussed at the SAAS Board meeting in the evening of 26 June, nor do the minutes record that the helicopter sponsorship was discussed. Mr Pickering submitted that the reason for this was that the SRHS business was not raised at SAAS Board meetings. He kept the role of CEO SAAS and the Chair SRHS separate.

The next day, Wednesday 27 June 2001, the matter was taken up by Mr Lemmer, at that time Deputy CEO of SAAS. The circumstances were that the CEO, Mr Pickering, had left Australia for an overseas conference immediately after the Board meeting.

In his oral evidence, Mr Lemmer indicated that at the time he was nervous with the manner in which the construction of an ambulance station at McLaren Vale might be perceived. Notwithstanding the statistical case that had been shown to exist for a station, Mr Lemmer said his nervousness on this issue arose because the proposal involved the station being constructed in the Minister's electorate. Mr Lemmer sought advice from Mr Jim Birch, then Deputy Chief Executive of the Attorney-General's

Department. Mr Birch's response was to the effect that the decision by SAAS should be based on a sound scientific basis and that the SAAS Board should not be pressured into making a decision outside of its normal decision-making process.

The Chair of the SAAS Board, Ms Pak Poy, gave evidence that the proposal to establish an ambulance station at McLaren Vale was considered by the Board like any other proposal. That is, it would be subject to substantial rigour, and to be approved, it would need to establish a business case. Ms Pak Poy's view was that the proposal did establish such a business case and in those circumstances the SAAS Board was happy to support it, subject to proper funding arrangements being put in place.

On 27 June 2001, Mr Lemmer also spoke to Ms Liz Moncrieff, a member of the Minister's staff who dealt with SAAS matters, to raise the matter of the sponsorship. On the basis of all of the available evidence, in my opinion, the purpose of this call was to communicate the fact of the Adelaide Bank's agreement to provide \$170 000 in the current financial year. In my opinion, based on the evidence, the inference can be made that Ms Moncrieff undertook to pass onto the Minister the news of the Bank's offer.

At 1017 hours on the next day, 28 June 2001, Mr Lemmer received a fax from the CEO of the Southern Districts War Memorial Hospital at McLaren Vale indicating that the Board of Management had agreed a peppercorn rent, being the sum of \$100 per annum, in relation to the proposed lease for the ambulance site next to the hospital.

As at 28 June 2001 it could be anticipated that, given the time required for all approvals to be obtained, for plans to be drawn up, for planning and building approval to be obtained and for the station to be erected and fitted out, the proposed new station would not be operational for long, if at all, during the financial year ending on 30 June 2002.

That same day 28 June 2001, Mr Lemmer prepared a note addressed to the Minister on the topic of the recurrent funding required.⁵⁸ The final three paragraphs of the note headed 'Minutes forming the Enclosure to the Minister' read as follows:

- *The recurrent annual expenditure to operate a single emergency ambulance on a 24 hour a day basis is approximately \$520k for salaries and \$60k for goods and services. The establishment cost would be approximately \$350k for premises (no land) and \$150k for the ambulance and equipment. If the ambulance only operated 10 hours each day, the recurrent salary cost would be approximately \$216k. No contingency for the recurrent cost has been provided in the SAAS budget. Capital costs may be able to be met by re-prioritising other projects.*
- *A suitable site for an ambulance station has been identified within the grounds of the McLaren Vale Hospital. The Hospital has subsequently confirmed the availability of land and will lease it to SAAS for an ambulance station development for a minimal consideration of \$100 per annum.*
- *The Ambulance Board has been apprised of this matter and has sought the advice of the Minister on funding for additional crewing should the development proceed ahead of the normal budget planning cycle.*

⁵⁸ Refer Appendix 2.

Later that day Mr Lemmer faxed the briefing paper to the Minister. In the conversation which followed, the Minister expressed his enthusiasm for rapidly proceeding with the proposed McLaren Vale Ambulance Station. He spoke of the matter 'proceeding before Christmas'. During the conversation, a suggestion that the sponsorship monies intended for the State Rescue Helicopter could be reallocated to meet the crewing and consumable expenses for the 2001-02 year of operation was discussed.

Later in the day on 28 June 2001, Mr Lemmer again had a discussion with Mr Birch. During that telephone conversation Mr Birch advised Mr Lemmer that he should ensure the SAAS Board made the decision regarding the establishment of the McLaren Vale Ambulance Station based on professional analysis and on normal business principles.

THE RE-ALLOCATION OF THE HELICOPTER SPONSORSHIP FUNDS

It was during the conversation between the Minister and Mr Lemmer on the 28 June 2001 that Mr Lemmer raised the issue of funding for the station. Mr Lemmer indicated to the Minister that SAAS did not have sufficient recurrent funding for full time ambulance staff. Mr Lemmer indicated to the Minister that it was not the wish of SAAS to put an 'on-call' crew at the station because an on call crew would not address the shortcomings in response times which had been shown to exist by the statistical analysis. Discussion ensued as to where the money to fund recurrent expenditure could be obtained, particularly in light of the fact that there was little 'head room' left in the budget.

In giving evidence before the inquiry both Mr Brokenshire and Ms Moncrieff recalled that during a meeting with Mr Pickering there was a suggestion that there was some additional recurrent money available because of the recent commitment by the Adelaide Bank to provide the State Rescue Helicopter sponsorship. It is not clear who made this suggestion. According to Mr Brokenshire, the discussion between himself and Mr Pickering went along the lines that if the Minister was able to make the helicopter sponsorship money available then SAAS had sufficient funds to 'top up' out of the SAAS global budget and make a day time crew available to address the issues which had been identified in relation to response times. It is apparent that Mr Pickering's offer to 'top up' only related to a day crew and not to a 24 hour crew.

There was some conjecture as to whether the sponsorship funds were available for that purpose and the Minister indicated that he would seek advice to see if that could happen.

It was the Minister's advisor Ms Moncrieff who actually sought the advice from within the Justice Department as to whether the funds from the Adelaide Bank could be redirected and used for a part of the recurrent funding for the then proposed McLaren Vale Ambulance Station.

THE MINISTER SEEKS ADVICE ON FUNDING THE PROPOSED MCLAREN VALE AMBULANCE STATION

At some time on or after 28 June 2001, Ms Moncrieff, on behalf of her Minister, telephoned Mr Birch to discuss the recurrent funding requirements of the McLaren Vale ambulance project and the possibility that the helicopter sponsorship funds could be reallocated to that project. Mr Birch told Ms Moncrieff that he would consider the matter and get back to her. Mr Birch acknowledged that he had seen the note dated 28 June 2001 prepared by Mr Lemmer.

He considered what, if any, sources of discretionary funding might be available in the Attorney General's Department or the Justice Portfolio and concluded that there were no such funds available. Mr Birch also discussed the matter briefly with Mr Frank McGuinness, a senior officer of the Attorney General's Department, who was in charge of the Community Emergency Services Fund and who sometimes advised on SAAS matters.

In his evidence, Mr McGuinness recalls raising two reservations with Mr Birch. Firstly, he doubted it was proper for the Minister to redirect monies intended for another stated purpose to SAAS when Parliament had already approved a budget for the provision of funds to that service. Secondly, even if that were to happen, the construction of an ambulance station should not go ahead without Cabinet's endorsement and in circumstances where the Treasurer was unaware of the matter. The need for this arose from its potential impact on the state budget, given the recurrent costs that would necessarily follow in future years.

The matter remained under consideration by Mr Birch.

THE SAAS BOARD CONDITIONALLY APPROVES THE PROPOSAL

On 23 July 2001, the Finance and Audit Committee of SAAS met with Mr Pickering and Mr Lemmer in attendance.

The Audit Committee considered the more fully developed paper prepared by Ms Clermont dated 12 July 2001 analysing the rationale of the McLaren Vale proposal. The minutes of the meeting relevantly read as follows:

The analysis showed that response to life threatening cases in the area is outside the criteria for urban areas. The Committee resolved to recommend to the Board to approve the proposal in principle subject to finalisation of an appropriate level of funding.

At the SAAS Board meeting on 31 July 2001, the SAAS Board again considered the McLaren Vale proposal. Included in the Board's papers had been the more comprehensive study prepared by Ms Clermont dated 12 July 2001. The Board's minutes in respect of the matter relevantly includes the following passage:

*In view of the need for SAAS to respond quickly to McLaren Vale Hospital's offer of land, the potential future development of the Fleurieu, the number of cases with response times outside criteria and the possible availability of funding,
The Board, with the exception of Mr Scott, accepted:*

The Finance and Audit Committee's recommendation that

- 1. A formal commitment to fund the recurrent expenditure for crewing the station be provided by the Government,*
- 2. A costed proposal for construction of the station be submitted to the Ambulance Board for consideration prior to tenders being let;
and*
- 3. Capital expenditure for the proposed station can be met within the parameters of the SAAS capital expenditure program.*

On 6 August 2001 pursuant to the resolution on 31 July 2001, Mr Pickering wrote to the Minister⁵⁹ attaching a copy of SAAS's report entitled 'Analysis of Workload and Response Time in the Urban Fringe of Adelaide'. The letter outlined the three conditions set down by the Board and indicated that the Board itself 'can deal with' the second and third conditions to its endorsements. The letter pressed for 'a response from you on the question of funding for that period of the 2001-02 year following the commissioning of the station ... and also as to ongoing funding'.

THE MINISTER RECEIVES ADVICE ON FUNDING THE PROPOSED MCLAREN VALE AMBULANCE STATION

By 15 August 2001, Mr Birch had advised Ms Moncrieff of the Minister's staff by telephone that it was permissible to respond to the funding request by authorising the re-allocation of the helicopter sponsorship monies and to give an undertaking to bid for the balance of the recurrent funding required during the up coming budget bi-laterals process. Mr Birch confirmed the advice in the presence of the Minister shortly afterwards in a regular meeting. It was this advice that led to the preparation by Ms Moncrieff of the minute dated 15 August 2001 which the Minister signed and which is set out below.

The verbal report of approval was not followed up with written advice from Mr Birch. Mr Birch acknowledged in his oral evidence that there was a degree of controversy around the subject because the station was proposed to be located in the Minister's electorate and he thought that the advice he gave to the Minister would have been in writing. No evidence was provided to me that there was in fact written advice to the Minister that the sponsorship funds could be used as part of the recurrent expenditure for the McLaren Vale Ambulance Station.

Mr Birch's evidence on the approval process within the Justice Department is somewhat equivocal. He stated in his oral evidence that he spoke with Mr McGuinness about the subject. According to Mr Birch, the substance of the advice from Mr McGuinness was that, subject to being able to establish a 'net benefit' to the State and obtaining the necessary approvals from the Department of Treasury and Finance, it would be possible to use the funds in the manner proposed.

By a 'net benefit' to the State Mr Birch was referring to a proposition where a Departmental budget had a revenue windfall. Mr Birch's oral evidence was that the advice given by him to Mr Brokenshire's staff was:

... whilst it was – we thought it was unusual to be able to use either donated money if it was in the form of a donation, or money that would automatically have gone into revenue, directly to fund something for a purpose for which it was not intended. However, we frequently – as we do now- have windfalls which actually improve our budget – our net position – and if ultimately the Minister was wanting to do something and it was, you know, proper and had a high priority, then provided we had a net positive budgetary position and got the necessary approvals, we of course can move money across programs.

⁵⁹ Refer Appendix 3.

Mr McGuinness gave evidence before the inquiry that he spoke with Mr Birch in mid-2001 about whether it might be possible to divert an amount equal to the State Rescue Helicopter sponsorship funds towards the McLaren Vale Ambulance Station. Mr McGuinness said that there were some legal issues that needed clarification and he had some reservations about whether the funds could be used in this way. Mr McGuinness stated that he recalled seeing a draft minute from Mr Birch to the Minister which raised a number of concerns about the proposal and said words to the effect of 'notwithstanding anything else, you know, you need to go through the Cabinet process'. No such document was ever provided to the inquiry.

THE MINISTER APPROVES FUNDING FOR THE PROPOSED MCLAREN VALE AMBULANCE STATION

On 15 August 2001 the Minister faxed to Mr Pickering a Minute⁶⁰ containing a formal approval in the following terms:

*TO IAN PICKERING, CEO, SA AMBULANCE SERVICE
Re: FUNDING TO EXPAND THE AMBULANCE SERVICE*

I refer to your minute of 6 August 2001 outlining the Ambulance Board's endorsement to establish an Ambulance Station, manned on a 24-hour basis, on the land which is currently being offered to the Service by the Southern Districts Hospital.

I note the Board's request for a formal commitment to fund the current expenditure for crewing the station and can advise that I approve for the sponsorship money received for the State Rescue Helicopter Service to be utilised for this purpose.

I also give a commitment that at the next Budget Bi-laterals, I will bid for additional crew staff for the Ambulance Service.

*Robert Brokenshire MP JP
MINISTER FOR POLICE,
CORRECTIONAL SERVICES AND EMERGENCY SERVICES*

In passing, I observe that the approval given by the Minister was not for an amount sufficient to provide recurrent funding for the McLaren Vale Ambulance Station, nor did it give (or could have given) any firm commitment that the funding would actually be received from the budget bi-laterals process.

The approval was apparently not announced immediately. It was, however, acted upon without delay as described below.

The next day, 16 August 2001, Mr Pickering received a fax from the Minister's office seeking 'a briefing paper on key issues of significant portfolio initiatives relating to the District Council of McLaren Vale'. The request related to a 'Community Cabinet Meeting' planned to be held in McLaren Vale on Monday 15 October 2001. Input was sought by Monday 3 September 2001.

⁶⁰ Refer Appendix 4.

By note dated 24 August 2001 and faxed to the Minister on 27 August 2001, Mr Pickering provided an outline of the McLaren Vale Ambulance Station initiative.

At the SAAS Board meeting of 28 August 2001 the CEO reported that SAAS had received initial funding for a 24 hour career station in McLaren Vale and that the SAAS and the McLaren Vale Hospital were currently negotiating on the land on which the ambulance station would be developed.

At the SAAS Finance and Audit Committee meeting of 17 September 2001 the Committee confirmed that funding had only been secured for staffing the McLaren Vale project for the current financial year.

THE RECEIPT BY SAAS OF STATE RESCUE HELICOPTER SPONSORSHIP FUNDS

The written approval of the Minister for the diversion of the State Rescue Helicopter Sponsorship Funds to fund the current expenditure for crewing the proposed McLaren Vale Ambulance Station was faxed to Mr Pickering at 1048 hours on 15 August 2001. SAAS immediately acted upon this notification. At 1633 hours on the same day, SAAS's Business Services Manager faxed a tax invoice⁶¹ in the sum of \$170 000 being the sponsorship monies for 12 months to 31 July 2002 to the Adelaide Bank with a request for 'assistance in arranging for a cheque to be drawn in favour of SA Ambulance Service for the launch tomorrow'.

This was a reference to the arrangements, already in place, for an announcement of the Adelaide Bank's sponsorship of the State Rescue Helicopter Service which had been planned to be made at the Adelaide Airport. On the next day, the Minister attended at the airport for the formal signing of the agreement and the formal handing over of the cheque. This had been planned to be done in the presence of the helicopters, the subject of the sponsorship.

At the announcement no mention was made of the arrangements put in place on the previous day pursuant to which all of the sponsorship monies were to be paid over to SAAS for use in respect of the McLaren Vale Ambulance Station to the exclusion of the use of those funds in respect of the helicopters.

On 16 August 2001, the State Rescue Helicopter Sponsorship Agreement between the Minister for Emergency Services on the one hand and Adelaide Bank on the other hand, was duly executed. The agreement was executed by the Managing Director of the Bank and witnessed by Mr Pickering, the CEO of SAAS, Mr Brokenshire signed it in his capacity as Minister for Emergency Services. His signature was witnessed by Mr Reid. A cheque in the sum of \$170 000 made out to the SAAS was duly received by Mr Pickering.

CONCERNS ON THE ACCOUNTING FOR THE RECEIPT BY SAAS OF STATE RESCUE HELICOPTER SPONSORSHIP FUNDS

It was not long before issues began to emerge as to the appropriate reporting of the transaction. On 21 August 2001, at 1509 hours, Mr Mike Allen, a project accountant with SAAS, inquired of Ms Phuong Chau, an officer in the Department of Justice, as to the appropriate accounting treatment. He wrote:⁶²

⁶¹ Refer Appendix 5.

⁶² Refer Appendix 6.

Phuong

I am hoping that you can help us sought out the appropriate accounting treatment for this issue as I am afraid at this time it is not correct and fully transparent.

Background:

At present, SAAS is the contract administrator for the State Rescue Helicopter Service, but as SAAS is not a Government Department, all funding for this service is appropriated through SAPOL as an administered item. These administered funds comprise funds from Treasury (appropriations), funds from the Community Emergency Services Fund (Emergency Services Levy) and sponsorship revenue from private sector organisations.

Previously, SGIC sponsored the State Rescue Helicopter and these funds would be receipted by SAPOL and then be deposited into consolidated revenue at Treasury.

Minister's Arrangements

This year the Adelaide Bank is sponsoring the State Rescue Helicopter Services at a cost of \$170,000. The Minister has made an arrangement with Ian Pickering (SAAS Chief Executive) that these funds will be available to SAAS. The Minister requested that we provide a tax invoice to Adelaide Bank for the \$170,000 plus GST for the sponsorship revenue, which we have done and we now have received the cheque. We have receipted the funds to sundry revenue until we can sort out what to do with it.

After discussing the issue with Audit, they advised that as the funds were for sponsorship of the State Rescue Helicopter Service, hence they must be receipted by SAPOL as an administered item showing them as revenue. The funds must then go into consolidated revenue and from there be forwarded to SAAS as a government grant from Treasury. This would then reflect the true nature of the transaction, but obviously this has not occurred as the Minister's arrangement has avoided the middle man. What is your recommendation on how to account for these funds correctly to ensure that this is not an issue that is raised by Audit with SAAS and SAPOL.

Regards

Mike Allen, Project Accountant SA Ambulance Service

The email, which was copied to Mr Pickering and other finance executives of SAAS, was responded to almost immediately by Mr Pickering in the following terms:

Mike

I would have expected that you might have discussed this with me before proceeding with this course of action. I had been dealing with Jim Birch on this matter as we have written authority from the Minister for the use of the funds. The Minister did not require SAAS to receipt the money – that was a request from the sponsor at the time of handing over the cheque.

Ian

On the same afternoon, approximately half an hour later, Mr Allen responded to Mr Pickering in the following terms:

Sorry Ian

I was only asking for Justice's thoughts as Peter and myself are at a loss as to how to treat this transaction correctly as we both know that as it presently stands it is not right and it is SAAS who have taken the risk as we have raised the tax invoice for the Adelaide Bank, and this matter has an impact on SAPOL. The Minister's approval aside we must account for it correctly and as it stands we have received sponsorship money which technically should have gone to SAPOL as they administer the State Rescue Helicopter Service, which SAAS then should have received back as a Government Grant via some mechanism in government. The nature of the transaction is that it is grant, but we have received the cheque from a private organisation (Adelaide Bank) not State Government. We wanted to address this matter before it is forgotten about and then is raised by Audit for incorrect accounting treatment, which would reflect poorly on the Finance Department.

I will contact Phuong over at Justice and request that she delete the email and advise her that the matter is being addressed by Jim Birch and yourself. Again I apologise. Regards Mike.

The money remained with SAAS until May 2002 as discussed later in this section. At that stage it had been made clear by the incoming Government that the McLaren Vale Ambulance Station would not proceed.

CLAIM OF 'PORK BARRELLING'

On 26 September 2001, the Hon John Hill MP raised the issue of 'pork barrelling' on the matter of a proposed 24 hour ambulance station in McLaren Vale. A media release dated 28 September 2001 by Mr Brokenshire responded to the claim and provided some details of a new McLaren Vale Ambulance Station.

THE MCLAREN VALE AMBULANCE STATION IS OFFICIALLY ANNOUNCED

Almost one month later, on 17 October 2001 the Government began a Community Cabinet meeting at McLaren Vale. On that day the Minister, the then Premier, Mr John Olsen MP and Mr Lemmer, the acting CEO of SAAS, attended an official opening ceremony at the proposed site of the ambulance station in Aldersie Street, McLaren Vale.⁶³ At this ceremony the Minister announced the proposal to build the McLaren Vale Ambulance Station and unveiled a sign on the proposed site which read:

*Future Development Site
SA
Ambulance
Service*

*McLaren Vale
Ambulance Station*

⁶³ Refer Appendix 7.

BUDGET BI-LATERALS

The budget bi-laterals for the 2002-03 Budget did not commence until December 2001. SAAS prepared a number of submissions for the first round of the bi-laterals including a submission on the proposed McLaren Vale Ambulance Station.

The submission under the heading of 'Cost Pressure' sought the full recurrent cost of operating the proposed station and included the following comments:

Description of Cost Pressure

SAAS has received funding for the 2001-2002 year from the Minister to introduce a station at McLaren Vale thereby improving response times to the area.

Additional Funding Requirement

	2002-03	2003-04	2004-05	2005-06	Ongoing
	\$'000	\$'000	\$'000	\$'000	\$'000
<i>Operating Costs</i>	630	650	680	710	740
<i>Additional Funding Requirement</i>	630	650	680	710	740

Costing Details

Salaries and wages for one 10/14 team. This is a 10 person team rostered over 24 hours, 7 days a week and takes into account 4 people on shift, 4 on rostered days off and 2 on holiday leave, training and on station time for the CTL.⁶⁴ For 2002-03, salaries and wages accounts for \$0.566 million of the total funds required.

The balance of funds for 2002-03 (\$0.064 million) is required for goods and services to support the team's activity.

On 13 December 2001 a Budget Bi-lateral meeting was held with Mr Brokenshire from the Justice Portfolio.

Department of Treasury and Finance notes of the meeting record few comments in respect of the SAAS submissions but it was recorded that the 'Treasurer pointed out that the cost pressure arising from the requirement to staff the newly acquired McLaren Vale Ambulance Station had arisen as a direct consequence of the decision to acquire the station'. Consistent with the normal process associated with the bi-laterals, no decision was made at this time regarding future funding commitments for this proposal.

No other comments were recorded in regard to the proposal.

In reporting back to SAAS, the minutes of the SAAS Finance and Audit Committee meeting of 17 December 2001 record that with regard to the 2002-03 bi-laterals, Mr Lemmer reported that McLaren Vale and certain other items had proceeded without concern from Treasury and certain other issues were not supported.

⁶⁴ 'CTL' stands for Clinical Team Leader.

STATE ELECTION 2002

In January 2002 a State election was called.

The SAAS executive considered the potential for a change in the Government at its meeting of 14 February 2002. Minutes of the meeting record that among the briefing notes to be prepared was the topic of McLaren Vale and SAAS would seek confirmation re ongoing crewing funding.

In March 2002, following the State election, a new Labor Government was formed.

Subsequent to the change of the Government, it is evident that the SAAS executive began to have some concern on the McLaren Vale funding proposal. Minutes of the planning meeting of 8 March 2002 record:

Exec discussed the viability of accommodating a MTS⁶⁵ crew at McLaren Vale - will fit within current budget and provide first response capability to emergency cases.

SAAS RESOLVE TO TRANSFER STATE RESCUE HELICOPTER SPONSORSHIP FUNDS TO SAPOL

In a minute dated 15 March 2002⁶⁶ from Mr Pickering to the CEO Justice, Mr Pickering noted that:

- *The former Minister agreed to provide \$170 000 to cover recurrent expenditure for the period to 30 June 2002 with the on-going expenditure being included in the bi-lateral round then in progress.*
- *The delays to commencement will mean that staffing the centre will not occur during this financial year. We therefore recommend that the \$170 000 be transferred to the State Rescue Helicopter Service as to date the SRHS accounts have not been adjusted to record receipt of those sponsorship funds.*

On 31 March 2002, Mr Pickering retired from the position of CEO SAAS and Mr Chris Lemmer commenced in that position.

SAAS's apparent concerns on the McLaren Vale proposal were confirmed by a letter⁶⁷ from the new Minister for Emergency Services, the Hon Patrick Conlon MP to Mr Lemmer. The letter advised that:

... notwithstanding the requirement for a new Ambulance Centre at McLaren Vale, the current financial situation in which the Government finds itself does not allow for additional recurrent expenditure to be committed at this stage.

Unless SAAS is able to absorb all future recurrent costs within its budget, the matter will be deferred to the 2003-04 budget bi-laterals.

⁶⁵ 'MTS' stands for Medical Transfer Service.

⁶⁶ Refer Appendix 8.

⁶⁷ Refer Appendix 9.

At its meeting of 22 April 2002 the Finance and Audit Committee noted that as there would be no recurrent expenditure on McLaren Vale for the financial year, \$170 000 received in helicopter sponsorship will be transferred to administered items at SAPOL.

The Committee also noted the letter from the Minister and that funding would not be available for recurrent expenditure at McLaren Vale unless SAAS absorbed it within its current budget. An options paper was requested for the next meeting.

The Finance and Audit Committee decisions were noted at the Board meeting of 30 April 2002. The Board minutes recorded that as a result of the present Government's decision not to provide additional recurrent funding for the 2002-03 year the sponsorship funds would be transferred to SAPOL. It was agreed all aspects of the project be put on hold until government funding was known and the SAAS budget finalised.

In May 2002, SAAS transferred the SRHS sponsorship funds to SAPOL by paying a SAPOL invoice dated 29 April 2002 for \$170 000. The sponsorship funds were subsequently credited to the Consolidated Account for the year ended 30 June 2002.

MCLAREN VALE STATION DEFERRED

The status of the McLaren Vale proposal was decided at the Board meeting of 27 August 2002. The Board minutes record a discussion was held on a McLaren Vale station options paper from the Director of Operations. The minutes included the following:

Mr Lemmer reported that the previous government had announced the development of an Ambulance Station at McLaren Vale. Capital funding for the building was allocated in the 2002-03 SAAS budget, however, no recurrent funding for the proposed twenty four hour emergency ambulance crew had been allocated from government. He reported that management had considered reallocating resources previously earmarked for Victor Harbor to allow for the development to proceed however this had been demonstrated not to be viable.

The Board endorsed ...

... progress with the potential to combine budgeted non-emergency staff with the current Victor Harbor team to manage workload and to include a new emergency team at McLaren Vale in the bi-lateral submissions to the government for the next financial year's funding. Defer the building of the McLaren Vale station to coincide with the introduction of the new emergency team.

THE PRESENT POSITION

No station has been built at McLaren Vale at the time of this Report.

PART 5

AUDIT ANALYSIS AND OPINION

INTRODUCTION

The matters raised in this Report involve important issues of principle regarding the management of the revenue of the Crown and the exercise of Ministerial powers. These matters are the subject of examination and comment under the appropriate headings hereunder in this part of the Report.

THE EXERCISE OF MINISTERIAL POWERS: THE MATTER OF CLAIMS OF 'POLITICAL PORK BARRELLING'

The conditional approval in 2001 by the SAAS Board regarding the McLaren Vale Ambulance Station would not have been carried through without the prior approval of the then Minister to authorise the use of the sponsorship funds for recurrent funding in 2001-02. It follows that the Minister's decision was material in the decision making process of the SAAS Board in the latter deciding to proceed with the establishment of the McLaren Vale Ambulance Station.⁶⁸

One of the matters that arose in the course of this examination was whether the decision to establish an ambulance station at McLaren Vale involved an unlawful and/or improper exercise of Ministerial power. This arose from the fact that the decision on the part of the then Minister related to the establishment, in his own electorate, of an unbudgeted and previously unplanned ambulance station in circumstances where claims were raised publicly that there was some dispute as to the need to establish an ambulance station at that time and in that location.

It is important to emphasise that in this matter the Minister was relating with an independent Board, ie SAAS.

The factual circumstances give rise to a question as to the exercise of Ministerial powers in circumstances that can give rise to the perception of a conflict of interest and duty. In short, this matter has given rise to claims of what is colloquially termed, 'political pork barrelling'.

Political practice, even commonly accepted political practice, does not excuse conduct that may, on analysis, be shown to be contrary to law and/or such as to be otherwise inappropriate as being contrary to the principles of good public administrative practise.

A Minister whose portfolio responsibilities necessarily extend to matters within his or her own electorate cannot abdicate responsibility for dealing with those matters as may be required in the public interest. He or she would, in general, have a legitimate interest in expressing views about those matters. Nonetheless, he or she would also be aware that allegations of electoral self-interest may well be made if he or she makes decisions that favour that electorate (or is seen to improperly influence others who are responsible for such decisions, or who advise the Minister in relation to such decisions). In those circumstances, in my opinion, the key issue may concern the defensibility of such

⁶⁸ Had it not been for the threshold decision by the then Minister regarding the use of sponsorship funding to meet recurrent costs, the SAAS Board would not have proceeded with the McLaren Vale proposal in the 2001-02 financial year.

decisions according to the principles of good public administration, rather than whether legal sanctions (criminal or civil) may flow.

In my opinion, the public defensibility of a Minister's decision depends on the information supporting the decision that was received by the Minister (from the SAAS Board in this particular case, and from elsewhere) and the analysis, viewed objectively, on which the decision was founded. The information and underlying analysis must necessarily be considered in the context of information and decisions about the needs of South Australians generally in relation to the provision of ambulance services.

High standards are properly required of those in public office.⁶⁹ Nonetheless, as Professor Paul Finn (now Justice Finn of the Federal Court of Australia) has pointed out:

*We have to realise that public office is based on a conflict between duty and interests. We would be deluding ourselves if we did not start on the premise that politics is concerned about compromise, partiality and self interest behaviour. The problematic question is where on the spectrum does that behaviour become unacceptable.*⁷⁰

Having regard to all of the evidence, and for the reasons discussed in this Report, apart from the matter of the arrangements for recurrent funding in the 2001-02 financial year, in my opinion, the decision making process associated with the proposal to establish an ambulance station at McLaren Vale, did not, for the reasons discussed in this Report, involve the improper exercise of Ministerial power.

On the evidence available to the Minister, there was objective justification for pursuing the McLaren Vale proposal. In my opinion, the approval, per se, of the McLaren Vale proposal did not amount to political 'pork barrelling', and for the reasons discussed in this Report, did not involve the improper exercise of Ministerial power.

WAS THE PROCESS OF SECURING FUNDING FOR THE PROPOSED MCLAREN VALE AMBULANCE STATION UNDERTAKEN PROPERLY AND IN ACCORDANCE WITH LAW?

Fundamental Principles

As discussed above in this Report, fundamental to public financial administration is the principle that all revenue received by or on behalf of the Crown is subject to the control of Parliament. Public money is collected and administered by the Crown and spending of public money may not occur without Parliamentary appropriation. In South Australia these fundamental principles are established in the law and are given expression by the *Public Finance and Audit Act 1987*. Statutory regulated controls are in turn supported by conventions and administrative practices.

Good and proper public administration requires compliance with the relevant statutory requirements and adherence to established conventions and administrative practices. I have previously stated that this is essential to protect the community from the arbitrary

⁶⁹ Bowen Committee Report (1979), 'Public Duty and Private Interest'.

⁷⁰ Quotation taken from 'Members of the Parliament: Law and Ethics', Gerard Carney (2000), Prospect media at page 338. Evidence by P Finn to the New South Wales Parliamentary ICAC Committee 1992.

exercise of governmental power and the misapplication of public monies.⁷¹ This is so, as failure to maintain proper standards has the capacity to undermine the requirement of a need for compliance and thereby magnify the risk of further breakdown of control.

The Unlawful Payment to SAAS

The consideration of how the proposed McLaren Vale Ambulance Station was to be funded by the Minister, the senior executives of the Justice Portfolio, and the senior executives of the SAAS, resulted on the 16 August 2001 in a cheque for in the sum of \$170 000 being paid to SAAS.

Since at least 1994, budget reporting, the accounting treatment, and financial reporting in relation to the State Rescue Helicopter Services (SRHS), has been conducted by the South Australian Police Department. Whilst SAAS operated in the role of contract administrator, it was only one of a number of emergency services that used the aircraft. I have already remarked that SAAS is a corporation under the Associations and Corporations Act, and at the relevant time was not a government department. It is for this reason that SAAS was not eligible to operate the finances of the SRHS.

The Minister entered into the State Rescue Helicopter Sponsorship Agreement 'as Minister for Emergency Services for and on behalf of the Crown in the right of the State of South Australia'. When sponsorship monies were paid to the Minister, those monies were paid to the Minister in this capacity. The monies therefore comprised 'revenue of the Crown' to which the *Public Finance and Audit Act 1987* applied.

In 1994, the then Treasurer approved a special deposit account pursuant to Section 8 of the *Public Finance and Audit Act* as the account through which SAPOL's financial activities would be conducted. At that time, it was approved that the operations of the helicopter service be accounted for under the Minister for Emergency Services. Practice since that time has been that the SRHS has been administered through the Police Operating Account and those arrangements have involved financial transactions passing through the Police Operating Account from and to the Consolidated Account.

The sponsorship monies should therefore have been deposited and receipted to the SAPOL special deposit account in accordance with established practice. In my view, to have deposited them to any other account except to the credit of the Consolidated Account would have been unlawful. In my view, it follows that payment of the sponsorship monies to the SAAS was unlawful because such payment was not in accordance with the requirements of the *Public Finance and Audit Act 1987*.

Mr Brokenshire has submitted that:

There was no "re-allocation" of funds because, as I was advised, there was no requirement that the funds be applied for any specific purpose other than, of course, the general purpose of advancing the objectives of our ambulance service through the rescue and rapid carriage to hospital of injured South Australians. And that was the purpose which I approved.

⁷¹ 'The Supplementary Report of the Auditor-General for the year ended 30 June 2002 — Report on the Process of Procurement of Magnetic Resonance Imaging Equipment by the North Western Adelaide Health Service', page 1.

I respectfully differ from the view Mr Brokenshire has expressed. It fails to appreciate the mandated statutory requirements of the *Public Finance and Audit Act 1987* that the monies be credited to the Consolidated Account.

The matter was corrected when the sponsorship funds were returned to SAPOL and correctly receipted as required.

This correction of the position occurred, in my opinion, because of a change in the Government and funding priorities rather than because of identification and correction of unlawful and inappropriate practices.

For completeness, I should refer to Mr Brokenshire's statement in his letter to me of 7 February 2005 that:

I do not believe that the Auditor-General has ever suggested that Ministers should be aware of every detail in every account. Indeed, there have been recent statements to the contrary.

With respect, Mr Brokenshire has confused the context in which comments of this type were made by me to the Economic and Finance Committee. The underlying principle is that there must be compliance with the mandated statutory requirements.

A Warning is Given

As I have already mentioned, concerns were raised by a SAAS staff member (ie Project Accountant) that the matter of the receipt of the sponsorship funds was not being correctly treated. Having regard to the provisions of the *Public Finance and Audit Act 1987* and the practice that had been followed pursuant to that Act, I consider the concern expressed by the Project Accountant was well founded. Indeed, the Project Accountant accurately articulated both what had occurred and what should have occurred.

While the direct receipt of funds by SAAS was inconsistent with past practice, Mr Pickering noted that it was consistent with the views expressed by Mr Birch that the funds could be re-allocated and the Minister's approval for the use of the sponsorship funds and he dismissed the concerns raised. The reasoning applied by Mr Pickering in dismissing the concerns of the Project Accountant was, in my opinion, at the least, misinformed.

In his evidence before me, Mr Pickering was unable to recall any specific arrangement being agreed with Mr Birch. While nothing in the conduct of Mr Pickering suggests any intentional wrongdoing, he did not exhibit a correct understanding of the framework in which the State Rescue Helicopter Service funds were to be administered and the responsibility to treat them as monies of the Crown.

The Application of Sponsorship Funds

On the basis of all of the evidence, I am satisfied that Mr Pickering either in the anticipation of the sponsorship funds being available or after the amount of funds that would be available was confirmed, discussed the issue of recurrent funding with the Minister. In the course of discussions, a suggestion was made that the sponsorship funds might be sufficient for salary needs to be managed for the first year. The matter might be managed by either or both of the SAAS itself finding a contribution from its own budget or by commencing the station's operations on an 0800 to 1800 hours basis. Such measures could tide the recurrent funding needs over until further funds could be found in the budget process including the budget bi-laterals process.

In this way the use of helicopter sponsorship funding came to be seen as a practical funding alternative despite its inadequacy as a sufficient funding source, and, the inappropriateness in principle, of its diversion from use in relation to the rescue helicopter operations. To proceed in these circumstances was, in my opinion, contrary to the established principles of good public financial administration.

Mr Pickering was 'on notice' that there were potential issues of concern regarding both the 'accounting treatment' for the sponsorship monies within SAAS and 'the use of the sponsorship monies being paid directly to the SAAS' for its use in relation to the McLaren Vale proposal.

These concerns were clearly identified and accurately articulated by Mr Allen (SAAS officer) and in substance questioned both the propriety and legality of what was being undertaken. Mr Pickering did make it clear to Mr Allen that he, Mr Pickering, had this matter in hand. Having regard to all of the circumstances, in my opinion, Mr Pickering was ill-advised to ignore the matters that were being raised and in dismissing Mr Allen's concerns without further inquiry. Nonetheless, in my opinion, as Mr Pickering was not a governmental employee and as he had a responsibility to act in the interests of the SAAS, he was entitled to rely on the fact that Mr Birch had confirmed the appropriateness of the re-allocation of the funds. There is no evidence that suggests that Mr Pickering acted improperly in this matter.

The Advice Given to the Minister

It is clear that through a member of his staff, the Minister sought advice from Mr Birch, a senior public servant, who held the position of Deputy Chief Executive of the Attorney General's Department. Mr Birch, being, inter alia, aware of Mr Lemmer's memorandum of 28 June 2001, was aware that the request for advice raised two issues. Firstly, how funding was to be provided to the SAAS in respect of the recurrent funding that would be required for the proposed Ambulance Station at McLaren Vale. Secondly, it raised the issue as to whether it was permissible for monies, to be re-allocated to cover part of the recurrent funding required for the new ambulance station, at least in the first year when such monies were made available to the Minister as sponsorship funds in respect of the State Rescue Helicopter Service.

The advice given was to the effect that it was permissible to respond to the funding request by authorising the re-allocation of helicopter sponsorship monies and by giving an undertaking to bid for the future recurrent funding required during the upcoming budget bi-laterals.

In my view, this advice was not correct nor was it proper advice in the circumstances. The advice failed to indicate to the Minister that the matter of obtaining a lawful approval of funds for a new project, and the matter of the proposed re-allocation of funds provided to be used for one purpose, ie the rescue helicopters, for use in another purpose, were separate issues requiring separate processes of authorisation.

The advice was delivered by telephone and confirmed verbally at a subsequent meeting between the Minister, a member of his staff, Ms Moncrieff, and Mr Birch. It was, in my view, not satisfactory for a matter of this kind to be dealt with in such an informal way without subsequent written confirmation as a proper record explaining and justifying the basis for the decision. Indeed, Mr Birch acknowledged in evidence to this examination that this was a matter which called for advice in writing, particularly in the circumstances that controversy might be attracted by the fact that the proposed ambulance station was in the Minister's own electorate. Despite the fact that, looking back, Mr Birch expected

that the advice would have been in writing and despite the service on his former Department of an appropriate summons seeking documents, no document containing a record of the advice or the consideration given to the matter, came to light.

In all the circumstances, in my view, the matter called for written confirmation of the advice that contained a consideration of the issues and specific advice to the Minister who had sought guidance. The advice ought to have dealt with the requirements for the authorisation by Cabinet or by the Treasurer of the use of public monies and the practical steps which the Minister would be required to take to obtain such authorisation.

Mr Birch was aware that the SAAS was a body incorporated under the *Associations Incorporation Act 1985* and he correctly warned that it was important that the Board of SAAS satisfied themselves, on an objective basis, that the business case supporting the establishment of the proposed McLaren Vale Ambulance Station was sound. The fact that the provision of funding would mean monies passing from the Government to a non-public service entity was a further reason to proceed cautiously, and to spell out to the Minister, in a detailed way, the steps that would be required to properly bring about his purpose.

I am satisfied that Mr Birch's failure to provide correct and specific advice was a factor that led to the unlawful receipt of the sponsorship funds by the SAAS.

The Minister's Decision

I now turn to consider the role of the Minister of Emergency Services in relation to securing funding for the proposed McLaren Vale Ambulance Station. I have already remarked that on the evidence available to the Minister, there was objective justification for pursuing the McLaren Vale proposal ahead of other possible projects.

On 28 June 2001, the Minister received a request from the Acting CEO of SAAS for 'the advice of the Minister on funding for additional crewing should the 'proposed station' proceed ahead of the normal budget planning cycle'. This request for advice, which indicated that approximately \$520 000 per year would be required for salaries, was followed up, on 6 August 2001, by a request from the Board of SAAS seeking a response from the Minister 'on the question of funding for that period of the 2001-02 year following the commissioning of the station ... and also as to ongoing funding'.

In the same period as these requests for funding were made, the suggestion had been put forward that the sum of \$170 000, which Adelaide Bank had undertaken to provide as sponsorship monies for the State Rescue Helicopter Service, be reallocated to partly fund the crewing costs of the proposed ambulance station for the 2001-02 year.

Against the background of these requests and the suggestion as to the use of the helicopter sponsorship, the Minister caused his staff to seek advice from senior public service sources in the Attorney-General's Department. In due course, as set out above, advice was received. The advice indicated that it was permissible to use the \$170 000 helicopter funding for the purpose of meeting the crewing costs of the proposed ambulance station in the 2001-02 year. As stated above, in my opinion, the advice was incorrect.

On the basis of that advice on 15 August 2002, the Minister signed the minute giving approval 'for the sponsorship money received for the State Rescue Helicopter Service to be utilised for this purpose'. The failure to first obtain the approval of the Cabinet and/or the Treasurer regarding the matter of recurrent costs pre-empted the normal budgetary processes and, as such, was contrary to good and proper public administration. For the

reasons explained in this Report, in my opinion, the receipt of the sponsorship funds by SAAS was contrary to the provisions of the *Public Finance and Audit Act 1987*, and was accordingly, unlawful.

THE TREATMENT OF SPONSORSHIP MONIES

On or about 28 June 2001 Adelaide Bank made a commitment by letter to provide the sum of \$170 000 per year for three years as sponsorship monies in respect of the State Rescue Helicopter Service. In due course, a formal agreement between the Minister and Adelaide Bank was drawn up and arrangements for a formal ceremony and the handing over of the cheque at Adelaide Airport were made for 16 August 2001. The Minister received the cheque from Adelaide Bank, given for the purpose of supporting the State Rescue Helicopter Service under the sponsorship agreement, on the day after the Minute had been signed to authorise the use of those monies in relation to the proposed McLaren Vale Ambulance Station.

For a Minister to receive monies by way of sponsorship for what had been the subject of a government advertisement for a nominated purpose in the knowledge that the money was already committed to be used for another different purpose raises the question as to the propriety of the conduct involved. As noted above, the Minister in this matter was acting for and on behalf of the Crown and the payment of monies directly to the SAAS, and entity that was not the Crown, was unlawful.

Mr G R Reid, a consultant to the Adelaide Bank on public relations, marketing and sponsorship work, when questioned on this matter responded that he was surprised to learn that the sponsorship monies were to be used for funding a proposed ambulance station.

Where the public, including business, is offered the opportunity to support an activity, such as a rescue helicopter service or an appeal to support some other cause in the public interest, there is a heightened need for both transparency and proper process. The absence of these elements tends to undermine the confidence of supporters and may tend to reduce the level of assistance forthcoming. Any conduct on becoming publicly known that has a tendency to undermine public confidence in the processes and procedures of the institutions of government is contrary to the public interest. In my opinion, this is so whether the contribution is by donation or by a commercial arrangement, in which the supporter receives something in exchange, for example, a public relations advantage.

Although it can be said that Adelaide Bank received the public relations advantage it was entitled to expect from its support of the State Rescue Helicopter Service, within the Government, the transaction nevertheless lacked transparency and proper process.⁷² A Government that does not provide a high level of assurance on these matters puts at risk the willingness of the public and of business to support highly commendable causes.

There should, in my opinion, be no uncertainty/ambiguity regarding the application of funds received from the community (corporate and public) associated with the operations of a facility that has importance for the community in times of crisis and

⁷² It is important to emphasise that the Adelaide Bank has in this matter acted honourably and nothing in this Report can in any way be regarded as critical of the Adelaide Bank.

disaster. Where funds are not applied strictly as intended when contributed from corporate/public sources concerns can justifiably arise.⁷³

Mr Brokenshire has stated that:

The Adelaide Bank sponsorship was a commercial arrangement which allowed the Bank to be associated with SRHS. The helicopters used in that service frequently appear on television screens and pursuant to the sponsorship, they carry the Bank's signage. The Bank received the commercial and community advantage to which it was properly entitled. I understood that the contract with the Bank did not require the funds to be spent on the helicopters. Their operating costs were already funded from government sources. What happened in relation to previous sponsorship funds was not relevant because the Bank was a new sponsor under a new contract.

Mr Brokenshire is correct in that the money that was received was not required 'to be spent on the helicopters'. In making this representation, Mr Brokenshire, with respect, has failed to understand the mandated statutory obligations that were incumbent upon him as a Minister of the Crown with respect to the receipt of this money.

For the reasons stated in this section of this Report, I do not accept Mr Brokenshire's view of the matter. In my opinion, a Minister in receiving sponsorship monies in the circumstances of this case involving a public advertisement should ensure that the matter is dealt with transparently and in a manner that does not have the potential to undermine the confidence of the donating public.⁷⁴

The Public Announcement of the Proposal for the Ambulance Station

The day after the Minister approved the re-allocation of monies for the sponsorship of the State Rescue Helicopter Service, the Minister caused his portfolio officer to send to the Chief Executive Officer of SAAS, amongst others, a fax announcing that the Minister would be attending a Community Cabinet Meeting on Monday, 15 October 2001, which was to be held at McLaren Vale. The Minister's fax communication to the Chief Executive Officer of SAAS sought a briefing paper on key issues on significant portfolio initiatives relating to the District Council of McLaren Vale. In due course, by a minute dated 24 August 2001, the Chief Executive Officer of SAAS was able to provide a note for the McLaren Vale Community Cabinet pointing to the poor response times for ambulance attendances in the McLaren Vale region, to the number of motor vehicle crashes in the region, and to the population growth and housing expansion in the area, as problems addressed by the Minister's action.

On 17 October 2001, in the presence of persons associated with the Southern Districts War Memorial Hospital, the Onkaparinga Council, the Southern Districts Management Board, the South Australian Police, and Families and Community Services Noarlunga of the proposed Ambulance Station site, the Premier, the Minister, and the Deputy CEO of SAAS, all made speeches, and the sign referred to earlier in this Report was unveiled.

⁷³ 'Report of the Inquiry into the Australian Red Cross Bali Appeal', August 2003, New South Wales Government.

⁷⁴ In my opinion, this should be the operative standard regardless of whether the matter is subsequently publicly made known or not. This is simply, in my respectful opinion, a matter of the standards that should inform the conduct that governs the operational affairs of government.

In my view, the announcement of the project in a manner which suggested that it was fully committed, was premature. In the financial arrangements that the Minister had made, the ongoing funding had not yet been secured and one of the key requirements upon which the SAAS Board had conditioned the commitment of capital funds, namely a government commitment to ongoing recurrent funding, was not yet in place. Furthermore, an announcement involving the Premier and the local community were matters which gave rise to an expectation that the Olsen Government had brought about the new initiative for the benefit of those resident in the McLaren Vale region. In fact the final approval required had not been obtained and, in the end, the project has not, (at least at this stage), been progressed.

Concerning the timing of the announcement, Mr Brokenshire has submitted that:

I would contend that any government or Minister is entitled to announce a new project at a time and place when it is believed the announcement will receive widest coverage amongst those who are most interested in it. I would argue that there is no sinister impropriety in the fact that this announcement was not made until the Premier visited the proposed site on 17 October 2001.

There is no issue regarding the right of the Government and/or a Minister to announce matters when it/he/she sees fit.

As regards the 'timing of the announcement' of the proposal for the ambulance station at McLaren Vale, Mr Brokenshire is correct in that he did not have an obligation to say anything at the airport ceremony on 16 August 2001, and that the timing of any announcement was a matter for the Government. However, in this matter, the fact is that the sponsorship monies had, at that time, already been directed by him to another 'purpose'. Notwithstanding that the sponsor received the benefit contracted for, this does not, in my opinion, avoid the issue that the monies were knowingly applied for a purpose that was foreign to the objective stated in the public advertisement and that it is the tendency inherent in this course of conduct that can undermine public confidence in the processes of government.

In my view, in this case, the announcement would have tended to give an impression in the public mind that the project was committed even though there is no evidence that anything other than initial funding was in place.

Furthermore, after an announcement of this kind has been made, the Minister had available the argument to put to the Treasurer in the bi-lateral budget discussions that not to approve ongoing funding would embarrass the then Government by failing to meet the expectation that had been raised by the announcement made by the Premier and the Minister.

Whilst I do not criticise the decision to seek to expedite the project, nonetheless, where haste leads to the departure from proper standards, and there is the adoption of ineffective means to achieve the objective, combined with the omission to consider matters which should be considered, then such conduct is inconsistent with the principles of economy and efficiency and good public financial administration.

THE MATTER OF PERSONAL MINISTERIAL RESPONSIBILITY

One of the issues that has arisen in the context of this examination is that of the reliance by a Minister of the Crown on the advice of others, in this case a senior departmental manager, ie a Deputy Chief Executive. In my opinion, where the Minister is the person who makes the actual decision, although the Minister may be acting upon, and indeed, is

reliant upon, the advice of a senior departmental officer, the Minister is personally responsible for that decision. For the situation to be otherwise, it would mean that there would be no personal accountability for any actions or decisions that a Minister may do or make where it was possible to claim that the Minister was simply acting on the basis of advice. Vis-a-vis the Minister, those providing advice are acting in an 'advisory capacity'. The Minister at all times remains the decision maker and is free to accept, modify or reject any advice received.

Where the Minister has not been personally involved in the making of the decision or giving the direction to undertake a course of action, ie the matter has arisen and been dealt with by public officials within the Minister's Department, in my opinion, the Minister in these circumstances, whilst Ministerially accountable to the Parliament is not responsible in the sense of being personally culpable.

This type of issue underlines the necessity for a Minister to ensure that those who provide advice, ie departmental, personal staff, consultants, etc possess the necessary knowledge and judgment that is relevant to the particular circumstances involved.⁷⁵ Notwithstanding the advice received from others, it is basic that the Minister must exercise his/her personal judgment to overlay the advice received from others.

In a public sector environment, Ministers can rightly expect that departmental managers are knowledgeable of those important legislative and procedural requirements that are applicable, and that they will alert the Minister should the Minister be minded to pursue a policy objective or course of action that may be in contravention of express statutory prohibitions or may otherwise be inimical to the principles of good public administrative practice. In circumstances where a departmental manager is uncertain about a particular matter, due diligence requires that proper inquiry be made before advice is tendered to a Minister, particularly when it is clear that the Minister will act on the basis of that advice.

Where a Minister seeks, and then relies upon the advice from persons who would be considered competent to provide that advice, and the advice for whatever reason is incorrect, whilst the Minister must accept the personal responsibility for any outcome that may eventuate, in my opinion, in these circumstances, subject to the Minister acting reasonably and in good faith, the Minister's personal culpability would be considerably mitigated.

THE ADVICE TO THE MINISTER RE DEPLOYMENT OF SPONSORSHIP FUNDS

In the matter of the use of sponsorship monies the Minister relied upon the advice of Mr Birch. Mr Birch was the Deputy Chief Executive of the Attorney-General's Department. In my opinion, the Minister was correct to seek the advice of the Department before he made a decision.

The advice provided by Mr Birch was that the Minister could authorise the re-allocation of the sponsorship monies.

With respect, Mr Birch was, for the reasons discussed in this Report, mistaken in his view that this course of action was open to the Minister. In short, Mr Birch's advice led to the payment of the sponsorship monies directly to SAAS without first being paid into the SAPOL Special Deposit Account from which they would then be payable into the

⁷⁵ Matters associated with this issue involve recruitment/employment processes and are outside of the scope of this Report.

Consolidated Account. The course followed in the application of the monies was in fact unlawful in that it was contrary to the provisions of the *Public Finance and Audit Act 1987*.

There is no evidence that suggests that Mr Birch was not acting otherwise than in good faith in providing the advice that he did. Nonetheless, it is a fact that he had a professional responsibility to take the necessary care to properly advise the Minister. Compliance with mandated legislative requirements is of central importance in the exercise of government powers. Regrettably, Mr Birch, for whatever reason, did not alert the Minister to the applicable legislative arrangements that, in my opinion, applied in relation to this matter.

WHAT SHOULD HAVE HAPPENED

The Minister of Emergency Services had responsibility for the administration of the *Ambulance Services Act 1992* and construction and replacement of ambulance stations was a regular aspect of annual financial activity reported in the annual budget papers in relation to SAAS.

The proposal to develop an ambulance station at McLaren Vale came up after the finalisation of the 2001-02 Budget and no mention is made of that project in the 2001-02 budget papers notwithstanding that other station projects are recorded.

There are long standing and established processes to deal with new and unforeseen activities that arise between budgets and there is appropriation authority in place to facilitate funding within established limits.

In this case, it is apparent that adequate funding was not available within the Justice portfolio to meet the annual recurrent operating costs of the proposed station. Accordingly, in my opinion, the matter should have been dealt with through Cabinet and the Treasurer. The estimated cost to the Government of the new station was \$630 000 per year in 2002-03 dollar terms. If the long term funding commitments associated with the proposed ambulance station were consistent with the Government's budget priorities, funding would have been approved and an allowance built into the forward estimates process before commencement of the budget bi-laterals for the 2002-03 Budget. Payment could then have been lawfully made from the Consolidated Account. The entire process would also then have had the necessary qualities of transparency, proper process and authority, and accountability.

This would also have been consistent with established practice that utilises Parliament's approved flexibility in the appropriation process and would have avoided the unlawful transaction that, in my opinion, occurred.

The sponsorship funds were used apparently because of their convenience in the circumstances. For the reason stated in this Report, the funds were not available for this purpose but rather were to be credited to the South Australian Police Department (SAPOL) Special Deposit Account and then credited to the Consolidated Account.

The treatment of the sponsorship funds should have been kept separate from the funding question for the proposed ambulance station. There were long standing existing procedures in place for the sponsorship funds and those procedures were consistent with the requirements of the law and with advice given to Cabinet over a number of years.

PART 6

RECOMMENDATIONS

Notwithstanding the fact that the amount of money associated with this matter is not significant in public sector terms, this examination has identified matters where there has been a failure to appreciate the application of certain requirements of fundamental public importance in the administration of public finances in this State.

I recommend that the matters referred to in this Report be considered as appropriate by Executive Government. In particular, I recommend that:

- When a decision is to be made that involves the exercise of a Ministerial discretion and there is the existence of a potential for a claim of a conflict of interest and duty (that is not inconsequential), such matters would be best managed by having the decision either made by another Minister or by the Cabinet without the potentially conflicted Minister's participation.
- Where a Minister seeks advice from the public service, ie departmental officers, regarding a matter of potential political and/or administrative sensitivity, in my opinion, that advice should be in writing, clearly stating all relevant issues for the information of the Minister. Adequate documentation is a pre-requisite for proper accountability.

Where relevant (ie matters regarding budgetary management and integrity) this would include the requirements for the authorisation by Cabinet or by the Treasurer of the use of public monies and the practical steps which the Minister would be required to take to obtain such authorisation.

- In circumstances where a number of government and semi-government agencies are involved in an activity such as the SRHS, steps should be taken to ensure that the framework, within which those individuals with the administrative responsibility for those activities operate, clearly sets out the governance, accountability and funding protocols applicable.
- Prior to the formal announcement of specific projects, governments should ensure that all antecedent processes relevant to good public administration are complete including securing funding approvals. When capital projects are to be undertaken that will require significant ongoing recurrent funding and that will have a consequence for future budgetary management, in my opinion, it is essential in the interests of good public administration that there be compliance with all applicable mandated requirements.
- Having regard to the circumstances discussed in this Report and other recent instances of agency management failing to appreciate the need to comply with legislative requirements, there is a need to review the levels of awareness of relevant personnel of the principles of public finance and the practical application of those principles in the South Australian context.⁷⁶

⁷⁶ Auditor-General's Annual Report 2003-04, Part A, Memorandum to Parliament.

This Report has involved the analysis of procedures associated with a request by the Government in a public advertisement for public involvement in a service, ie the SRHS. The SRHS is funded by government but is an activity for which sponsorship is sought to offset the cost to South Australian taxpayers. The issues that arise in this context that, in my opinion, should be emphasised are as follows:

- Where a Minister of the Crown enters into a contract 'for and on behalf of the Crown' all revenues arising under that contract must be dealt with according to law. Unless otherwise specifically authorised by statute, the monies must be credited to the Consolidated Account.
- When monies provided by the public (individual/corporate) are stated to be for a nominated purpose, they, ie the monies received, should not be directed to another different purpose otherwise than as may be authorised by law.

As with other forms of public fund raising, disclosure and transparency are of particular importance. Any process/conduct by government and its agents that has the tendency to undermine public confidence in the processes and procedures of the institutions of government must be eschewed in the public interest.