



1999

PUBLIC ACCOUNTS COMMITTEE

**REPORT ON THE
ADMINISTRATION OF THE
CONSTITUTIONAL CENTRE OF
WESTERN AUSTRALIA**

Report No. 43

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**REPORT ON
THE ADMINISTRATION OF THE
CONSTITUTIONAL CENTRE OF
WESTERN AUSTRALIA**

Report No. 43

Presented by:

Mr M.W. Trenorden, MLA (Chairman)

Laid on the Table of the Legislative Assembly
on Thursday, 25 November 1999

ORDERED TO BE PRINTED

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Committee's Functions and Powers

The Committee obtains its powers and functions from the trial Standing Orders of the Legislative Assembly.¹ Trial Standing Order 299 states that the functions of the Committee are -

... to inquire into and report to the Assembly on any proposal, matter or thing it considers necessary, connected with the receipt and expenditure of public moneys, including moneys allocated under the annual Appropriation bills and Loan Fund.

Moreover the Committee is empowered by trial Standing Order 300 to -

- (1) Examine the financial affairs and accounts of government agencies of the State which includes any statutory board, commission, authority, committee, or trust established or appointed pursuant to any rule, regulation, by-law, order, order in Council, proclamation, ministerial direction or any other like means.
- (2) Inquire into and report to the Assembly on any question which -
 - (a) it deems necessary to investigate;
 - (b) is referred to it by resolution of the Assembly;
 - (c) is referred to it by a Minister; or
 - (d) is referred to it by the Auditor General.
- (3) Consider any papers on public expenditure presented to the Assembly and such of the expenditure as it sees fit to examine.
- (4) Consider whether the objectives of public expenditure are being achieved, or may be achieved more economically.

The Committee is also empowered by trial Standing Order 264 which states that -

A committee has power to send for persons, papers and records.

¹ The Legislative Assembly agreed to trial Standing Orders on 7 September 1999.

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CHAIRMAN'S PREFACE

Mr Speaker,

I have for tabling the Public Accounts Committee's Report No. 43 on *The Administration of the Constitutional Centre of Western Australia*.

The Committee's initial interest in the Centre was prompted by media coverage that it had been experiencing budgetary and administrative problems, particularly in the first six months of the 1998-99 financial year. The Committee also received a request from the Shadow Minister for the Arts to inquire into issues related to the financial and administrative management of the Centre.

The Committee embarked on its inquiry with the view to examining the administration of the Centre from when it first opened in October 1997, with particular emphasis on -

- budgetary and financial matters;
- procurement and contractual issues; and
- overall administrative matters.

As has been the case with other investigative inquiries, the Committee focused on process-related matters and associated accountability implications, in accordance with its powers and functions.

The findings of the report reveal that administrative shortcomings occurred at both the Divisional (Federal and Constitutional Affairs Division of the Ministry of the Premier and Cabinet) and Centre Management levels. In summary, the Committee concluded that -

- the Centre's \$850,000 budget blow-out in the first six months of 1998-99 financial year resulted from deficiencies in cashflow management at the Centre coupled with inadequate Divisional Management oversight;
- the ensuing financial difficulties and budgetary constraints had an impact upon the activities, programs and staffing levels of the Centre;
- financial systems for tracking expenditure and invoices were inadequate to identify the extent of future commitments and provided a misleading financial picture. This also had an impact on the adequacy and reliability of financial information provided to the Centre's Advisory Board;
- procedures, guidelines and approval processes relating to both supply and human resources contract management were not always adhered to and had an impact on the way goods and services were procured and the way in which staff, consultants and casuals were engaged and managed; and
- information management at both the Centre and the Ministry of the Premier and Cabinet was inadequate in some areas.

It is acknowledged that a number of corrective measures have already been implemented to address administrative shortcomings at both the Centre and Divisional Management levels.

However, it is hoped that the Committee's five recommendations will have an impact on both the future operation and administration of the Constitutional Centre of Western Australia and the public sector at large.

I would like to commend the way the Members of the Committee approached the inquiry and thank them for their commitment in ensuring that the report was tabled in a timely manner.

MAX TRENORDEN, MLA
CHAIRMAN

ACRONYMS

ACN	Australian Corporation Number
CAMS	Department of Contract and Management Services
CC	Constitutional Centre of Western Australia
FASB	Financial and Administrative Services Branch (Ministry of the Premier and Cabinet)
HR	Human Resource
HRS	Human Resource Services (Ministry of the Premier and Cabinet)
HRSB	Human Resource Services Branch (Ministry of the Premier and Cabinet)
MLA	Member of the Legislative Assembly
PAYE	Pay As You Earn (Taxation)
PSMO	Public Sector Management Office
RFQ	Request For Quotation
SSC	State Supply Commission

SUMMARY OF FINDINGS AND RECOMMENDATIONS

CHAPTER TWO - BUDGET AND FINANCIAL MANAGEMENT

BUDGET MANAGEMENT

The Role of Divisional Management and Instructions for the 1998-99 Budget

Finding 1 (p.11)

There was conflicting evidence as to whether Mrs Morel-EdnieBrown was adequately informed of the expectation that she was to meet the 1998-99 budget target of \$850,000.

Mrs Morel-EdnieBrown, Mrs Judge and Mr Wood must share responsibility for the consequences of this ambiguity.

There is no evidence to indicate that Mrs Judge was providing adequate advice to Mr Wood in relation to the financial position of the Constitutional Centre. Mr Wood continued to approve expenditure and programs for the Constitutional Centre in the first half of the 1998-99 financial year. This was inconsistent with meeting its budget target of \$850,000.

The Committee accepts that Mr Wood would have expected that the Centre's 1998-99 forecast budget would have been adhered to. However, given Mrs Morel-EdnieBrown had warned of potential budget over-runs, Mr Wood should have paid closer attention to the ongoing financial position of the Centre.

FINANCIAL MANAGEMENT

Responsibility for Financial Systems Being in Place

Finding 2 (p.12)

If proper accounting standards had been applied at the Constitutional Centre, the Centre's financial management problems would have been discovered considerably earlier. Both Mrs Judge and Mrs Morel-EdnieBrown are directly responsible for this failure.

The overall responsibility for ensuring adequate financial management systems were in place resided with the Deputy Director General, Mr Wood.

Management of Invoices and Future Commitments

Finding 3 (p.16)

Financial systems for tracking expenditure and invoices were inadequate when the Centre opened in 1997 and remained so during 1998.

The Centre Director, Mrs Morel-EdnieBrown, did not manage the Centre's outstanding financial commitments adequately, which significantly diminished the ability of both Centre and Divisional Management to make informed financial decisions.

It should have been evident to Mrs Morel-EdnieBrown, Mrs Judge and Mr Wood that the entries in the cost centre summaries were grossly inadequate and provided an unreliable basis for decision-making.

Management Requirements of the Centre as a Cost Centre

Finding 4 (p.17)

Because of the qualitatively different nature of the Constitutional Centre from other Ministry of the Premier and Cabinet cost centres, Mr Wood should have ensured that appropriate management systems were in place when the Centre was established.

REPORTING TO PARLIAMENT

Finding 5 (p.20)

Due to the unique operational requirements of the Constitutional Centre, Budget Statement reporting on the Centre is inadequate.

Recommendation 1 (p.20)

That the Constitutional Centre be reported as a discrete output for the purposes of presenting agency information to Parliament in the annual Budget Statements.

CHAPTER THREE - SUPPLY AND CONTRACT MANAGEMENT

SUPPLY PROCEDURES AND APPROVAL PROCESSES

Induction/Training

Finding 6 (p.25)

As part of her role in project managing the old Hale School Project, Mrs Morel-EdnieBrown oversaw contract management by the Department of Contract and Management Services. Upon assuming the role of Centre Director, Mrs Morel-EdnieBrown became responsible for directly managing procurement activity and contracts. These distinct roles required different levels of expertise and understanding.

The Centre Director was not given adequate formal instruction by Divisional Management with respect to supply and approval procedures upon assuming her position. However, given the seniority and nature of the position, Mrs Morel-EdnieBrown also had an obligation to ensure that she fully understood these procedures.

An improved level of instruction was provided to Mrs Morel-EdnieBrown's replacement.

CASE STUDIES

Case Study 1 - Engagement of Supplier to Disassemble Exhibition Structure

Finding 7 (p.29)

The Centre did not adhere to supply and approval procedures, in that -

- verbal rather than written quotations were sought when written quotes were required for an expenditure of this amount;
- Mr Wood's approval was not sought prior to engaging the supplier although this was required for an expenditure of this amount; and
- attempts were made to engage the same supplier for a potential second contract without any competitive quotations.

Case Study 2 - Engagement of Supplier to Provide a Touring Exhibition Structure and Graphic Outputs
The Procurement Process

Finding 8 (p.31)

There is conflicting evidence as to whether the Centre sought the advice of the Supply and Asset Division in the early stages of the procurement process.

Finding 9 (p.33)

The Centre Director engaged a supplier to provide both the hardware and graphics components of the touring exhibition structure without the express approval of Mr Wood.

Given the Centre's clear preference that one supplier provide both components of the touring exhibition structure, quotations should have been sought for a single contract not two contracts.

It is reasonable to infer that the contract was split in order to avoid the need to comply with relevant supply guidelines for contracts of that line item value. A contract valued at over \$50,000 would have required a public tender process to be arranged through the Department of Contract and Management Services.

The order forms used to purchase exhibition materials from the supplier did not meet supply guidelines and procedures.

Poor records management systems impeded the Centre's ability to maintain clear and concise paper trails.

Additional Work

Finding 10 (p.34)

The Centre Director approved the supplier to perform additional work related to the exhibition structure without the appropriate approval.

Case Study 3 - Engagement of Consultant to Design an Exhibition on Women's Suffrage The Procurement Process

Finding 11 (p.37)

The weight of evidence indicates that no approval was given before the Consultant awarded the contract for the production of the light-boxes to the Contractor. This was contrary to the Consultant's conditions of engagement.

Divisional Management and the Supply and Asset Manager attempted to rectify this situation when they became aware of it.

Responsibility for ensuring the Curator and the Consultant complied with the requirements to obtain approval, particularly in relation to expenditures of this order (\$44,000 +), resided with the Centre Director, Mrs Morel-EdnieBrown.

Finding 12 (p.38)

Mr Wood's application to the State Supply Commission for a waiver of tender requirements failed to reveal relevant information.

It would have been proper to disclose this information to the State Supply Commission.

CHAPTER FOUR - HUMAN RESOURCE AND CONTRACT MANAGEMENT

INDUCTION TO THE POSITION

Finding 13 (p.42)

The Centre Director was not given adequate formal instruction in relation to human resource and contract management procedures. However, given the seniority and nature of the position, Mrs Morel-EdnieBrown had an obligation to ensure that she fully understood these procedures.

SIGNING OF CONTRACTS

Finding 14 (p.43)

Poor communication and lack of oversight on the part of Divisional Management resulted in the Centre Director exceeding her authority by signing numerous contracts over a six month period.

In view of his email response in February 1998, Mr Wood must bear the responsibility for repeated breaches in the signing of contracts up until he countermanded his earlier advice in his memorandum dated 30 October 1998.

CONTRACTS - CASUALS

Administration of Casuals' Contracts

Finding 15 (p.47)

The Educational Consultant acted beyond her authority in engaging casuals.

The Centre Director, Mrs Morel-EdnieBrown, did not ensure that all staff at the Centre were employed on the appropriate terms and conditions in writing, before they commenced work.

Neither Mrs Judge nor Mr Wood nor Corporate Business Services management provided sufficient oversight to ensure that the Centre Director was carrying out her human resource management and contracting responsibilities adequately.

CONTRACTS AND TAXATION ISSUES

Finding 16 (p.48)

The Centre Director, Mrs Morel-EdnieBrown did not take sufficient care in ensuring that the contract dealt adequately with taxation matters and did not seek advice (from the Human Resource Services Branch) concerning taxation matters with respect to the exhibitors' contracts.

At least four contracts were signed by the Centre Director, Mrs Morel-EdnieBrown, which contained clauses relating to taxation that were invalid and which later had to be deleted from the contracts.

The use of incorrect taxation clauses potentially exposed the Ministry of the Premier and Cabinet to prosecution and liability for the payment of any uncollected taxes and to penalties.

Independent Contractor (“consultant”) or Employee?

Finding 17 (p.51)

The Education Consultant's contracts for service had the hallmarks of employment contracts and on at least one occasion the contract was interpreted as a contract of service by the Human Resource Services Branch.

The Education Consultant's contracts principally required her personal labour. It may have been necessary to deduct PAYE tax from the outset, which did not occur.

Insurance and indemnity obligations were deleted from the personnel contract without any advice or a clear understanding of the legal consequences of the deletion.

Recommendation 2 (p.52)

That the Premier issue a circular to Ministers clearly outlining -

- **the difference between a contract of service and a contract for service;**
- **the circumstances underwhich each should be used;**
- **the taxation, legal liability and superannuation implications of each form of contract; and**
- **reiterating the obligation to adhere to government guidelines on engagement of contract staff.**

CHAPTER FIVE - THE ROLE OF THE CONSTITUTIONAL CENTRE ADVISORY BOARD

INADEQUATE FINANCIAL INFORMATION GIVEN TO THE ADVISORY BOARD

Finding 18 (p.54)

From the outset of its establishment, the Advisory Board should have been provided with sufficient financial information.

Finding 19 (p.56)

In view of the *Corporate Governance Guidelines for Western Australian Public Sector Board Members*, the Committee finds -

- (a) **Mrs Morel-EdnieBrown erred in asking the Board to make recommendations which had significant cost implications without providing adequate financial information relating to those proposals.**
- (b) **Mr Wood erred in not providing the Board with regular financial information on the financial status of the Centre.**

Recommendation 3 (p.56)

That a revised ‘Role of the Advisory Board’ be drafted by the Ministry of the Premier and Cabinet.

That the draft stipulate that monthly financial reports and costings of proposals will be provided to the Advisory Board.

That the revised ‘Role of the Advisory Board’ be signed by the Deputy Director General, Federal and Constitutional Affairs, before being considered for adoption by the Advisory Board.

CHAPTER SIX - OTHER MANAGEMENT ISSUES

DESTRUCTION OF FILES AT THE MINISTRY OF THE PREMIER AND CABINET

Finding 20 (p.58)

The Committee acknowledges that the destruction of files is a routine procedure and, in this case, was consistent with the General Disposal Authority, administered by the State Records Office.

Notwithstanding the provisions of the General Disposal Authority, the Ministry of the Premier and Cabinet should not have destroyed the file relating to the position of Centre Director, while the Committee was conducting its inquiry.

Recommendation 4 (p.59)

That the State Records Office General Disposal Authority be amended by including an instruction that any records that may possibly relate to an existing parliamentary committee inquiry must be retained by agencies until such time that the inquiry has been completed.

That all departments, statutory authorities, corporations and other government organisations be instructed not to destroy records that may possibly relate to a current parliamentary inquiry.

SIGNING AND DATING DOCUMENTS

Finding 21 (p.59)

The standard of documentation and the filing of that documentation relating to internal correspondence at the Constitutional Centre and the Ministry of the Premier and Cabinet were inadequate.

Recommendation 5 (p.59)

That the attention of Chief Executive Officers be drawn to the need for agencies to properly date, sign and file public records.

MINISTERIAL RESPONSE

Standing Order 277 (1) of the trial Standing Orders of the Legislative Assembly² states that -

A report may include a direction that a Minister in the Assembly is required, within not more than three months, or at the earliest opportunity after that time if the Assembly is adjourned or in recess, to report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the committee.

Accordingly, the Public Accounts Committee requests that the Hon. Premier and the Minister representing the Minister for the Arts respond to the Committee's recommendations.

² Trial Standing Orders of the Legislative Assembly were agreed to by the Legislative Assembly on 7 September 1999.

CHAPTER ONE

INTRODUCTION

BACKGROUND

1. The Committee's initial interest in the Constitutional Centre of Western Australia ('the Centre') was prompted by media interest and coverage between late December 1998 and early January 1999. The coverage focused on allegations that the Centre's 1998-99 budget had blown-out within the first six months and that there had been some problems with the overall administration of the Centre.
2. On 5 February 1999, the Shadow Minister for the Arts, Ms Sheila McHale, MLA, wrote to the Committee requesting that it inquire into and report on issues related to the financial and administrative management of the Centre. Following deliberative discussions, the Committee resolved on 10 February 1999 that Committee staff undertake a preliminary examination of the administration of the Constitutional Centre and report back to the Committee.
3. On 13 May 1999, the Committee unanimously resolved to undertake an inquiry into the administration of the Centre.

TERMS OF REFERENCE

4. The following terms of reference and inquiry objectives were adopted at a meeting held on 2 June 1999 -

That the Public Accounts and Expenditure Review Committee³ examine and report on the administration of the Constitutional Centre of Western Australia including, but not limited to -

- Budgetary and Financial Matters;
- Procurement and Contractual Issues; and
- Overall Administrative Matters.

Inquiry Objectives -

- (a) To determine the adequacy or otherwise of the financial and administrative management of the Constitutional Centre of Western Australia by both the Centre Director and the Divisional Management of the Ministry of the Premier and Cabinet;
- (b) To assess budgetary and financial issues arising during, but not limited to, the 1997-1998 and 1998-1999 financial years; and

³ The Public Accounts and Expenditure Review Committee was renamed the Public Accounts Committee, in accordance with the trial Standing Orders of the Legislative Assembly, agreed to by the House on 7 September 1999.

- (c) To evaluate the extent to which the State's financial interests were managed by adherence to proper contractual processes (procurement and contracts of service).

APPROACH TO THE INQUIRY

5. As the inquiry was investigative by nature rather than conceptual, the Committee undertook an "audit" style approach to examining documents that were held at both the Centre and the Ministry of the Premier and Cabinet. Under trial Standing Order 264 of the Legislative Assembly, a committee has 'power to send for persons, papers and records'. Committee staff conducted several informal briefings with both Centre and Ministry of the Premier and Cabinet personnel in order to clarify particular issues, procedures and approval processes.
6. The Committee's inquiry concentrated on events and issues arising from when the Centre first opened in October 1997 to January 1999. However, this did not limit the Committee from examining issues outside of this period, in particular those related to budgetary and financial matters.
7. The Committee's approach involved attempting to test or find evidence of shortcomings in the following areas, which were consistent with the inquiry terms of reference and objectives -
 - budget and financial management;
 - procurement and contracts for service;
 - engagement of employees and contracts of service;
 - overall administration, particularly information management; and
 - role and function of the Centre's Advisory Board.
8. Having identified various shortcomings, the Committee examined the financial management of the Centre and undertook a case study approach to issues related to the procurement of goods and services and human resource management.

EVIDENCE

9. The Committee held two days of open hearings on 30 June and 27 July 1999 and took oral evidence from five people (See Appendix One). Hearings of the Committee were deemed open to the press and the public.

AGENCY CO-OPERATION

10. From the outset the Committee extends its appreciation to the personnel of the Ministry of the Premier and Cabinet and the Constitutional Centre of Western Australia for their co-operation and assistance throughout the inquiry.

ESTABLISHMENT OF THE CONSTITUTIONAL CENTRE

Old Hale School Building

11. The Constitutional Centre of Western Australia is housed in the old Hale School building which is a registered building under the *Heritage of Western Australia Act 1990*. The site forms part of an “A” Class Reserve covering the Dumas House precinct and the Government Projects Office⁴ is the responsible authority.⁵
12. The establishment of the Centre within the old Hale School building resulted from the 1995 recommendations by the Western Australian Constitutional Committee and an ensuing feasibility study undertaken at the request of the Ministry of the Premier and Cabinet. The then Western Australian Building Management Authority was involved in engaging consulting architects and building contractors.⁶

OPENING OF THE CENTRE

13. Mrs Felicity Morel-EdnieBrown was appointed to the position of Centre Director on 21 July 1997, on the recommendation of a selection panel. Prior to being appointed to the position of Centre Director, Mrs Morel-EdnieBrown was employed in the Policy Coordination Unit in the Ministry of the Premier and Cabinet as a Policy Officer. In that role, she was responsible for the project management to renovate and establish the Centre and to create the initial exhibition.
14. On 29 October 1997, the Centre was officially opened by His Excellency Major General Michael Jeffery AC MC, the Governor of Western Australia, with the Hon. R.F. Court, MLA, Premier of Western Australia, launching the Centre’s website and inaugural exhibition.
15. The Centre’s principal reason for existence is to -
 - promote public awareness of our federal system of government, with particular emphasis on its constitutional basis;
 - encourage balanced debate about the development of the system; and
 - educate the general public of Western Australia about our electoral and parliamentary system.⁷

⁴ The Government Property Office was transferred from the Ministry of the Premier and the Cabinet to the Treasury Department on 1 July 1998. It was renamed the *Government Projects Office* around June 1999.

⁵ Advisory Board Meeting Papers, Item 1, *Background to the Establishment of the Centre*, 20/10/97

⁶ *ibid.*

⁷ Advisory Board Meeting Papers, Item 2, *Function and Objective of the Centre*, 20/10/1997

ROLE AND FUNCTIONS OF THE ADVISORY BOARD

16. On 19 October 1997, prior to the opening of the Centre, the Hon. Premier announced the membership of an Advisory Board and its Chairman, Mr Malcolm McCusker.
17. The Advisory Board's role (refer also to Chapter Five) is to provide -
 - overall strategic policy advice to the Minister (Premier) in regard to the activities of the Centre;
 - advice on appropriate subject matter for exhibitions and educational activities for the Centre; and
 - an avenue for community consultation on the effectiveness and appropriateness of the Centre's programs.

FUNDING AND MANAGEMENT OF THE CENTRE

18. The Centre is funded out of the Ministry of the Premier and Cabinet's budget (see Chapter Two). The Centre derives revenue from tenants: the Western Australian Electoral Commission's Electoral Education Centre; and the Centenary of Federation Committee who share in facilities management costs associated with the functioning of the Centre.
19. The Committee was told that some additional funding is obtained from Centenary of Federation grants and sponsorship funds from Edith Cowan University, which is tied to special events and not the administration of the Centre.
20. For operational purposes, the Centre is part of the Ministry's Federal and Constitutional Affairs Division, which is headed by Deputy Director General, Mr Stephen Wood and Assistant Director General, Mrs Petrice Judge. The Centre is managed by a Director (see Chapter Two). For the purposes of this report, "Divisional Management" refers to Mr Wood and Mrs Judge and the "Centre Director" refers to Mrs Morel-EdnieBrown (see Appendix Two).

CORRECTIVE ACTION TAKEN

21. There is evidence to suggest that a number of corrective measures have been implemented to address administrative shortcomings at both the Centre and Divisional Management levels -
 - An executive assistant position is occupied by a Ministry employee to handle financial matters at the Centre. This follows the earlier secondment of a Ministry officer, who was responsible for putting financial systems in place.⁸

⁸ Letter from Mrs P. Judge, Assistant Director General, Federal and Constitutional Affairs, to Mr A. Young, Senior Research Officer, Public Accounts Committee, undated.

- Divisional Management are receiving better information on the Centre's outstanding commitments and therefore a more accurate picture of the Centre's real financial position at any point in time.⁹
 - Amended procurement procedures have been implemented.¹⁰
 - Signed memoranda between the Divisional Management and Centre Management have been used to more formally and clearly establish responsibilities and lines of authority.
 - The Advisory Board is provided with more financial information.
22. Mrs Morel-EdnieBrown discontinued in the position of Centre Director from 15 January 1999.
23. Mrs Morel-EdnieBrown was transferred under section 65 of the *Public Sector Management Act 1994* to a position in the Policy Coordination and Review Division of the Ministry of the Premier and the Cabinet.¹¹

SUMMARY OF ISSUES

24. Deficiencies in cashflow management at the Centre, coupled with inadequate Divisional Management oversight, resulted in a blow-out of the Centre's \$850,000 budget within the first six months of the 1998-99 financial year. As head of the Federal and Constitutional Affairs Division, Mr Wood continued to approve expenditure and programs for the Centre in the first half of the 1998-99 financial year. This was inconsistent with meeting its budget target of \$850,000. By the end of February 1999, the Centre had exceeded its budget (see Chapter Two).
25. Financial systems for tracking expenditure and invoices were inadequate to identify the extent of future commitments and provided a misleading financial picture (see Chapter Two). This also had an impact on the role of the Centre's Advisory Board in that it was not provided with adequate financial information and costing proposals for the Centre's activities and programs (see Chapter Five).
26. Incidences of non-adherence by the Centre Director and other Centre personnel to procedures, guidelines and approval processes related to both supply and human resources contract management. Inadequate divisional and financial managerial oversight hampered the operations of the Centre during the period under examination (see Chapters Three and Four).

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ *Hansard*, Question without Notice, 10/3/99, p.6341

27. The financial difficulties and budgetary constraints had an impact on the activities, programs and staffing levels of the Centre. Some programs were either delayed considerably or cancelled, including the touring of exhibitions to regional areas. The maintenance of adequate staffing levels and the filling of vacant positions was also impeded by financial constraints. By contrast, the impact on the Federal and Constitutional Affairs Division was offset by under spending in other areas of the Division (see Chapter Two).
28. The following chapters provide an overview of the nature and extent of the mismanagement of the Centre at both the Divisional and Centre Management levels during the period under examination, with particular emphasis on issues related to -
- budget and financial management;
 - supply and contract management;
 - human resources and contract management; and
 - other management issues including the role of the Advisory Board.

CHAPTER TWO

BUDGET AND FINANCIAL MANAGEMENT

INTRODUCTION

29. In 1997-98, the Constitutional Centre underspent its \$1.1 million budget by \$319,000 (29%). In 1998-99 the Centre overspent its \$850,000 budget by \$240,407¹² (28.3%). The Committee examined the process that led to budgets being established and then determined the extent to which financial management and controls were adequate in matching operations to the budget.

BUDGET MANAGEMENT

Role of Centre Budget within Divisional Budget

30. Within the Ministry of the Premier and Cabinet, Deputy Director General, Mr Stephen Wood, is responsible for four divisions, one of which is Federal and Constitutional Affairs. From 28 February 1998, Mrs Petrice Judge became the line manager for this Division. As a component of the Federal and Constitutional Affairs Division budget, the Constitutional Centre budget allocation was established by Mr Wood, in negotiation with the Department of Treasury.
31. A budget is therefore projected for the Centre on the basis of it being a cost centre within the Division. In evidence to the Committee, Mr Wood stated -

It is discrete for projection purposes so it gives a target to aim at for the year, but it is not discrete in the overall budget sense. I am responsible for output 4, the global output. Within my discretion, I can move moneys around as priorities dictate in the output.¹³

32. Forward estimates for the Centre were for budgets of \$1.1 million in each financial year 1997-98 to 2001-02, except for 1998-99, for which a lesser budget of \$850,000 was forecast. In evidence to the Committee, Mr Wood stated the reason for this variation in 1998-99 -

When we costed out the new operations, we had to make some guesses about what would be required etc. It totalled up to about \$1.1m that we believed would be required on an annual basis. In that sense, we did not see a reason for a variation between the years. However, the \$850 000 for the second year was simply a compromise arrangement with

¹² Ministry of the Premier and Cabinet Cost Centre Summary as 6/7/99

¹³ Transcript of Evidence, 30/6/99, p.2

Treasury because it basically said that it did not think we could have as much money in that year, so we had to scale it back within that year and we agreed to take a dip within that year.¹⁴

1997-98 Budget Surplus

33. For the 1997-98 financial year the Centre was allocated a budget of \$1.1 million. By the end of the 1997-98 financial year, the Centre, in cash terms, had expended only \$800,000.

Budget Carry-Over Provisions

34. The *Financial Administration and Audit Act 1985* (FAAA) stipulates, with regard to unexpended funds -

27. (1) The Treasurer may direct that the unexpended balance of any appropriation at the end of a financial year may, to the extent necessary to meet any relevant commitment, be transferred to a suspense account to which moneys payable in connection with that commitment shall be charged, and any such transfer shall be deemed a payment correctly chargeable against such appropriation for that financial year.

35. The Committee asked Mr Wood what his approach had been to whether or not to carry-over the underspend of \$319,000 from 1997-98 into 1998-99. He replied -

The approach was to look at the advice that came forward; make a reasonable, rough assessment of what we would carry forward by way of bills; assess what we were actually up for during the financial year by way of activity; and compare that with the first year's activity, which was quite high in the first year because we were trying to get a great deal of activity going to give some life and publicity to the centre. On that basis I saw no need to say that \$850 000 was not going to be enough for the 1999 financial year, remembering one can always make adjustments as one goes through the year.¹⁵

Known Commitments Carried Over To 1998-99

36. On 8 May 1998, the Centre Director sent a memorandum to Mr Wood and Mrs Judge outlining the expected carry-over of expenditure from the 1997-98 financial year into the 1998-99 financial year (see Appendix Three). Mrs Morel-EdnieBrown explained to the Committee that the purpose of the memo was to seek a carry-over of surplus funds from the 1997-98 financial year. Mrs Morel-EdnieBrown's estimate was an end of year (1997-98) expenditure outcome for the Centre of \$765,381, well below the \$1.1 million budget.

¹⁴ ibid.

¹⁵ ibid., p.7

37. Mrs Morel-EdnieBrown calculated that the Centre would require a budget of \$1,175,663.50 for 1998-99 because of a number of commitments to be carried over into the 1998-99 financial year. This request was \$325,000 more than the \$850,000 budget projected for the Centre for 1998-99, and very similar to the Centre's surplus for 1997-98.
38. Mrs Morel-EdnieBrown's memo (8 May 1998) implied that the estimated 1997-98 expenditure of \$765,381 was a cash outcome. The memo stated -

However, it needs to be recognised that there are, currently let, contracts to the additional value of \$151,142.50 which are unlikely to be paid prior to the end of the 1997/98 financial year but which are committed to and in process. These should be allowed for because the accounts will be due within the first three months of the 1998/99 financial year.

Also, there are projects to the value of \$259,140.00 for which programme commitments were made.....For a range of reasons *these (sic)* have not been initiated but these activities will have to be funded from the 1998/99 financial year in addition to the proposed 1998/99 budget.

39. In evidence to the Committee, Mr Wood confirmed that his understanding of the purpose of the memo was consistent with Mrs Morel-EdnieBrown's stated purpose -

On the second page of that memo I believe the director was seeking the balance of the difference between \$1.1m and the \$765 381.¹⁶

40. Mr Wood did not agree with Mrs Morel-EdnieBrown's claims that the \$151,142.50 and \$259,140 were amounts that would have to be brought forward. He told the Committee that the underspend at the end of the 1997-98 financial year was \$319,000, and only \$114,000 of commitments were carried over into the 1998-99 financial year.¹⁷ On this basis, Mr Wood stated that the \$850,000 was a reasonable target for the Centre in 1998-99. Mr Wood carried over the underspend and redirected it to constitutional forums and the constitutional conventions that were also the responsibility of his Division. In evidence to the Committee, Mr Wood stated -

What I have done with it is to keep it within the division and allocate it to the constitutional forums and the constitutional convention. It happens, only by transition of time because we have not run the convention, that that money ended up covering the overspend for the Constitutional Centre which this year is about \$202 000 with about \$13 500 of bills yet to be paid.¹⁸

¹⁶ Transcript of Evidence, 30/6/99, p.3

¹⁷ *ibid.*, p.4

¹⁸ *ibid.*, p.5

Budget Overruns in 1998-99

41. At 31 May 1999, the expected out-turn for the Centre for 1998-99 was \$1,147,653 (less revenue of \$23,008), a total variation of \$274,665 over the budget of \$850,000.¹⁹
42. Only \$114,000 of commitments were carried over into the 1998-99 financial year. In the 1998-99 year the overspend at the Centre was in excess of \$200,000.
43. Mrs Morel-EdnieBrown told the Committee that the large number of commitments to be carried over into the 1998-99 financial year resulted from activities falling later in the year than anticipated. This was, in part, the result of the Centre opening in October 1997 rather than earlier in the year, as originally planned.²⁰

The Role of Divisional Management and Instructions for the 1998-99 Budget

44. In the period to February 1998, Mrs Morel-Ednie Brown reported directly to Mr Wood. After February 1998, the formal reporting structure was changed so that Mrs Morel-EdnieBrown reported to Mr Wood through the Assistant Director General, Mrs Judge. Notwithstanding, in many instances Mrs Morel-Ednie Brown continued to address her correspondence and reports directly to Mr Wood.
45. It is unclear whether Mrs Morel-EdnieBrown was managing a discrete budget that was expected to be met or whether the budget projection was nominal and to be supplemented from within the broader divisional budget.
46. Mr Wood told the Committee that he instructed the Centre Director, Mrs Morel-EdnieBrown at the start of the 1998-99 financial year that the Centre was expected to meet its budget of \$850,000.²¹ If the budget was expected to be adhered to, appropriate actions should have been taken.
47. Mrs Morel-EdnieBrown told the Committee that she was not informed by Mrs Judge and Mr Wood that the Centre was expected to meet its budget target until September/October 1998.²² Mrs Morel-EdnieBrown further stated -

¹⁹ Cashflow projection summary, 4/6/99, received by correspondence from Mrs Petrice Judge, Assistant Director General, 17/6/99

²⁰ Transcript of Evidence, 30/6/99, p.3

²¹ Transcript of Evidence, 30/6/99, p.6

²² Transcript of Evidence, 30/6/99, p.4

At the end of July I heard no comment. However, at the end of July when the financial report came through from finance I immediately prepared a forward projection and indicated that there would be a problem. I expected that I would discuss it with Steve Wood, but we did not get around to it.²³

48. The Centre had known commitments in excess of \$100,000 to carry-over into the 1998-99 financial year. It continued to run programs and engage consultants at a cost well in excess of the Centre's budget for the first half of the 1998-99 financial year.
49. Incurring these expenses required Mr Wood's approval.
50. It was not consistent to allow the Centre to operate at this level of activity if the budget was expected to be met. If Mr Wood was prepared to redirect funds from other cost centres to the Centre to support its level of activity, then he should have made this clear to Mrs Morel-EdnieBrown.
51. Instead, Mr Wood allowed the Centre to overspend its budget.

Finding 1

There was conflicting evidence as to whether Mrs Morel-EdnieBrown was adequately informed of the expectation that she was to meet the 1998-99 budget target of \$850,000.

Mrs Morel-EdnieBrown, Mrs Judge and Mr Wood must share responsibility for the consequences of this ambiguity.

There is no evidence to indicate that Mrs Judge was providing adequate advice to Mr Wood in relation to the financial position of the Constitutional Centre. Mr Wood continued to approve expenditure and programs for the Constitutional Centre in the first half of the 1998-99 financial year. This was inconsistent with meeting its budget target of \$850,000.

The Committee accepts that Mr Wood would have expected that the Centre's 1998-99 forecast budget would have been adhered to. However, given Mrs Morel-EdnieBrown had warned of potential budget over-runs, Mr Wood should have paid closer attention to the ongoing financial position of the Centre.

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ibid., p.5

FINANCIAL MANAGEMENT

Responsibility for Financial Systems Being in Place

52. The Committee asked Divisional Management and the former Centre Director to identify who was responsible for proper financial systems being in place at the Centre. The Assistant Director General, Mrs Judge²⁴ and the former Centre Director, Mrs Morel-EdnieBrown²⁵ replied that it was the responsibility of the Centre Director.
53. With regard to the responsibility for proper financial processes being in place, the *Financial Administration and Audit Act 1985* stipulates -
56. (2) The principal accounting officer for a department or statutory authority shall be responsible to the accountable officer or the accountable authority, as the case may require, for the keeping of such accounting and financial management information systems as will allow confirmation that all departmental or statutory authority revenues and expenditures have been brought to account and for the day to day supervision of the accounting functions and proper operation of the accounting systems of that department or statutory authority.
54. Mrs Judge stated in evidence to the Committee that Divisional Management were first aware of the problems with outstanding invoices in November 1998.²⁶ An administration officer, seconded from the financial section of the Ministry of the Premier and Cabinet, was placed in the Centre in early January 1999, when the Centre re-opened after its Christmas closure.²⁷

Finding 2

If proper accounting standards had been applied at the Constitutional Centre, the Centre's financial management problems would have been discovered considerably earlier. Both Mrs Judge and Mrs Morel-EdnieBrown are directly responsible for this failure.

The overall responsibility for ensuring adequate financial management systems were in place resided with the Deputy Director General, Mr Wood.

²⁴ Transcript of Evidence, 30/6/99, p.19

²⁵ Transcript of Evidence, 30/6/99, p.7

²⁶ Transcript of Evidence, 30/6/99, p.19

²⁷ *ibid.*, p.9

Cashflow Management

55. Deficiencies in cashflow management subsequently led to the Centre's budget to blow-out within the first six months of the 1998-99 financial year. By the end of February 1999, the Centre had already exceeded its \$850,000 budget. At 28 February 1999, cashflow projections and known commitments for the remainder of the financial year resulted in a forecast variation of \$326,000.

Summary of Expenditure 1/7/98 - 28/2/99 and Forecast Expenditure	
Actual Expenditure as at 28/2/99	\$ 869,736
Cashflow Projection March-June 99	\$ 168,889
Known Commitments and Invoices	\$ 51,978
Women's Suffrage Commitments	\$ 103,492
Other proposed initiatives	\$ 3,500
Expected out-turn 1998/99	<u>\$ 1,197,595</u>
Budget Allocation	\$ 850,000
Variation	(\$ 347,595)
Less Revenue	\$ 21,199
Total Variation	<u>(\$ 326,396)</u>

56. There was a deficiency in the management of expenditures and revenues at the Centre, and poor tracking of invoices. This resulted in Mrs Morel-EdnieBrown initiating activities and engaging employees which were subsequently approved by Mr Wood and Mrs Judge without any of them appearing to be aware of the Centre's real financial position.
57. The Centre's budgeting documents and memoranda indicated that the Centre staff believed it could not achieve its planned activities within the constraints of an \$850,000 budget.²⁸ Savings were nominally targeted by Centre staff in areas of services and contracts, consumable supplies, maintenance and staffing related costs. However, these costs were all likely to increase in 1998-99 due to the carry-over of programs started later than expected or not at all in the 1997-98 financial year.

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Memorandum and draft budget from Executive Assistant to Mrs Felicity Morel-EdnieBrown, Centre Director, Constitutional Centre, 27/5/98

58. A further problem for the Centre was its inability to monitor what had been spent on each expenditure item in 1997-98 when planning for budgets for 1998-99 because of poor record-keeping.
59. The Constitutional Centre's end of 1998-99 financial year cost centre summary reflected the mismatch of the budget and level of activity undertaken by the Centre.²⁹

Items From 1998-99 Cost Centre Summary for Constitutional Centre 30 June 1999			
Expenditure Category	Budget	Actual Expenditure + Commitments	% under / (over) budget
Salaries and Allowance	\$186,000	\$294,314	(58.2%)
Communications	\$12,000	\$37,950	(216.2%)
Services and Contracts	\$461,000	\$509,243	(10.4%)
Consumable Supplies	\$94,000	\$40,483	56.9%
Maintenance of plant and equipment	\$ 4,000	\$135,662 ³⁰	(3291.5%)
Purchase of plant and equipment	\$70,000	\$93,107	(33.0%)

60. Some of the extraordinary variations between actual expenditure and budget forecasts for items are indicative that budgeting was impaired by -
- inadequate financial data from the previous year and subsequent inadequate planning for 1998-99;
 - a lack of strategic commitment to meeting the budget target for 1998-99, by allowing Centre activity to exceed the budget;
 - inadequate financial controls and cashflow monitoring to allow immediate corrective action earlier in the 1998-99 financial year; and
 - lack of a strategic plan for the Centre.

²⁹ Cost Centre Summary - Recurrent, Accounting Period 12/1999, printed 6/7/99

³⁰ A Committee review of the file and invoices for this item revealed that approximately \$69,000 of expenditure was related to technical equipment purchases, rather than maintenance repairs. The line item 'Technical Equipment Parts and Repairs' was not budgeted for and so the purchases would have been more accurately recorded under 'Purchase of Plant and Equipment', a separate budget item. This would have increased the overspend under purchases.

Management of Invoices and Future Commitments

61. The Committee's examination of lists of consolidated Constitutional Centre invoices found a significant number of invoices were outstanding for periods in excess of 60 days. In evidence to the Committee, Mr Wood stated that 12 per cent of invoices were outstanding for over 60 days in the period being examined by the Committee.³¹ Mr Wood further stated -

I do not think we had established adequate systems to provide a good tracking of our bills; therefore, we were not in a position to give an accurate indication about how many bills were still outstanding.³²

62. The greater the number and dollar amounts of invoices outstanding the further distorted the Centre's financial position became in cash terms. The financial information being relied upon by the Centre and Divisional Management to December 1998 was not identifying the extent of future commitments and was providing a misleading financial picture.
63. In evidence to the Committee, Mrs Judge stated that monthly cost centre summaries 'were not keeping adequate track of future commitments'. A more adequate process of tracking outstanding commitments was implemented in December 1998.³³
64. Financial documentation used in budget negotiations between the Centre Director and Divisional Management indicate that the cost centre summaries did not track future commitments at all.
65. For example, the previously cited memo (8 May 1998) from Mrs Morel-EdnieBrown to Mr Wood and Mrs Judge³⁴ (see paragraph 36) was appended with a spreadsheet, 'Programs Committed To and In Process', which stipulated \$56,896.50 of goods and services outstanding. By contrast, the April 1998 cost centre summary (the monthly financial report used by Divisional Management) showed a nil 'Year-to-Date Commitment'.

³¹ Transcript of Evidence, 30/6/99, p.18

³² *ibid.*, p.5

³³ *ibid.*, p.18

³⁴ Memorandum, Mrs Morel-EdnieBrown, Centre Director, 8/5/98

66. Both Mrs Morel-EdnieBrown³⁵ and Mrs Judge³⁶, in separate evidence to the Committee, confirmed that Divisional Management had monthly cost centre summaries available to it. Cost centre summaries purported to report 'Year-to-Date Commitments' as an expenditure column separate from the 'Year-to-Date Actual Expenditure' column. The reporting was deficient in providing information required by management.

Finding 3

Financial systems for tracking expenditure and invoices were inadequate when the Centre opened in 1997 and remained so during 1998.

The Centre Director, Mrs Morel-EdnieBrown, did not manage the Centre's outstanding financial commitments adequately, which significantly diminished the ability of both Centre and Divisional Management to make informed financial decisions.

It should have been evident to Mrs Morel-EdnieBrown, Mrs Judge and Mr Wood that the entries in the cost centre summaries were grossly inadequate and provided an unreliable basis for decision-making.

Management Requirements of the Centre as a Cost Centre

67. The majority of functions carried out within the Ministry involve policy and advice, with line managers responsible for the management of permanent public service employees. In contrast, the Centre Director was responsible for managing a diverse range of operational activities as opposed to policy activities, including -
- a heritage building with associated works and maintenance;
 - other tenants sub-leasing from the Ministry of the Premier and Cabinet;
 - the running of exhibitions and education programs for the general public; and
 - the engagement of casuals and consultants, who made up a much greater percentage of the staffing at the Centre than permanent public service employees.

68. Mrs Morel-EdnieBrown stated, in evidence to the Committee -

In terms of our modus operandi, the programs we were undertaking and the way in which we were operating we were different from other activities that were taking place within the ministry. It was later recognised by contracts and human resources that the centre needed to have slightly different policies to

³⁵ Transcript of Evidence, 30/6/99, p.6

³⁶ Transcript of Evidence, 30/6/99, p.18

accommodate employing people for one hour or one day or needing to react to something at short notice, not necessarily having a year's lead time if we wanted to do a project. We undertook programs outside the ministry and did them externally, such as touring. They were very different functions.³⁷

69. Mr Wood also confirmed, in evidence to the Committee -

They are different in the sense that they are running an operation. Most of the other parts of the output are running policy and general administration matters. This is actually running operations with the building, the tenants and those complexities.³⁸

Finding 4

Because of the qualitatively different nature of the Constitutional Centre from other Ministry of the Premier and Cabinet cost centres, Mr Wood should have ensured that appropriate management systems were in place when the Centre was established.

IMPACT OF FINANCIAL DIFFICULTIES

Impact on Centre Services - Programs and Staffing

Programs/Exhibitions

70. The budgetary constraints had an impact on the timely implementation of, and expenditure on, planned programs and activities, including touring of exhibitions. Mrs Morel-EdnieBrown stated that during her tenure as Director, the budget problems resulted in staff cutbacks and cancellation of programs.³⁹ Mr Wood informed the Committee that the touring of exhibitions to regional centres was delayed due to the budgetary problems.⁴⁰

Staffing

71. Financial constraints impeded the maintenance of core staffing levels and the filling of vacant positions. Upon re-opening in January 1999, the Centre was staffed by just three staff -

³⁷ Transcript of Evidence, 30/6/99, pp.7-8

³⁸ Transcript of Evidence, 30/6/99, p.20

³⁹ Transcript of Evidence, 30/6/99, p.5

⁴⁰ Transcript of Evidence, 30/6/99, p.7

- An Acting Director;
- A Finance Officer (seconded from the Ministry of the Premier and Cabinet); and
- An Executive Assistant/Administration Officer (see Appendix Two).

72. The Centre has not had a curator since late 1998. Positions were advertised in April 1999 for Senior Programs Officer (Level 6) and an Administrative Assistant (Level 2).

Impact on the Division

73. Whilst the Centre overspent in 1998-99, the impact on the Federal and Constitutional Affairs Division, managed by Mr Wood, was offset by other factors. Mr Wood told the Committee that there would be an overall underspend in the Division for 1998-99, predominantly due to the non-running of the Constitutional Convention and the previously planned constitutional forums at a saving of \$354,000. Much of this unspent allocation was in the form of monies carried over from the Centre's underspend for the 1997-98 financial year.⁴¹ As reported earlier in this chapter, Mr Wood decided not to carry-over the Centre's underspend into the Centre's nominal allocation for 1998-99.

REPORTING TO PARLIAMENT

74. The Budget Papers, presented to Parliament as part of the annual estimates process and consideration of the Appropriation Bills, do not report a budget allocation for the Constitutional Centre as a discrete budget or output. The Centre's 1998-99 budget was contained within the reported budget allocation for the output called *Policy Development, Coordination and Advice* (re-named *Management of Policy* in the 1999-2000 budget statements). The output includes a range of other activities, or cost centres, in addition to the Constitutional Centre.

75. The only references in the Budget Statements to the Constitutional Centre are two performance measures that are reported for the 'Management of Policy' output -

- the number of visitors to the centre, and
- the average cost of each visitor to the centre.⁴²

76. The performance measures reported in the 1999-2000 Budget Papers for the Constitutional Centre indicate that the Centre's activities were substantially increased in 1998-99.

⁴¹ Transcript of Evidence, 30/6/99, p.4

⁴² 1999-2000 Budget Statements, Vol 3, p.1131

REPORTED PERFORMANCE MEASURES FOR THE CONSTITUTIONAL CENTRE OF WESTERN AUSTRALIA		
	Estimate for 1998-99 ⁴³	Estimated Actual for 1998-99 ⁴⁴
Performance measure - Number of visitors to Centre	18,500	39,000
Performance measure - Average cost of visitor	\$45.95	\$32
Centre's total cost ⁴⁵	\$850,075	\$1.25 Million⁴⁶

77. Mrs Morel-EdnieBrown informed the Committee that the high visitor numbers meant that the Centre needed additional staffing, including staff to assist teachers to understand why they should bring groups to the Centre. The Centre took exhibitions on tour, ran outreach programs and spent much time targeting the educational market to which there was a good response and numbers far in excess of what was anticipated.⁴⁷
78. Both measures reported significantly better figures for the 1998-99 year in the 1999-2000 Budget Statements than the targeted performance figures in the 1998-99 Budget Statements. In evidence, Mr Wood agreed with the proposition that the figures indicated that the Centre performed well in 1998-99. However, he went on to argue that the figures were not an indication of the Centre's performance on a day to day basis.⁴⁸
79. The Committee is mindful of the balance that must be struck between providing detail in the Budget Statements and making the budget and its compilation manageable. However, it has been established by this inquiry that the Constitutional Centre is unique in its operations within the Ministry of the Premier and Cabinet and would more appropriately be reported in the budget as a separate output.

⁴³ 1998-99 Budget Statements, Vol 2, p.943

⁴⁴ 1999-2000 Budget Statements, Vol 3, p.1131

⁴⁵ The total cost is not contained in the Budget Statements, but is based on multiplying the figures for number of visitors to the Centre and average cost per visitor.

⁴⁶ The final out-turn for the Centre for 1998-99 was \$1.09 million.

⁴⁷ Transcript of Evidence, 30/6/99, pp.2-3

⁴⁸ Transcript of Evidence, 30/6/99, p.12

Finding 5

Due to the unique operational requirements of the Constitutional Centre, Budget Statement reporting on the Centre is inadequate.

Recommendation 1

That the Constitutional Centre be reported as a discrete output for the purposes of presenting agency information to Parliament in the annual Budget Statements.

CHAPTER THREE

SUPPLY AND CONTRACT MANAGEMENT

INTRODUCTION

80. The number of diverse activities and programs undertaken by the Constitutional Centre (the Centre), necessitated the regular procurement of goods and services by Centre Director, Mrs Morel-EdnieBrown, and other personnel in line with Ministry of the Premier and Cabinet supply and approval procedures.
81. The Committee's examination of issues related to the above-mentioned procedures revealed mismanagement at both the Centre and Divisional Management levels. At the Centre level, supply procedures were sometimes relaxed in order to meet deadlines or accommodate the needs of suppliers. The Committee found that, on a number of occasions, Mrs Morel-EdnieBrown and other Centre personnel exceeded their procurement authority, by not obtaining approval from Divisional Management, prior to purchasing a good or service.
82. At the Divisional Management level, oversight of the Centre's activities was insufficient to ensure that the Centre adhered to correct supply procedures and obtained appropriate approvals. Intervention by Mr Wood and Assistant Director General, Mrs Judge, in the Centre's activities occurred too late to rectify a range of problems that had already occurred.
83. Later in this Chapter, a case study approach is used to illustrate the extent to which mismanagement occurred.

SUPPLY PROCEDURES AND APPROVAL PROCESSES

Overview

84. Ministry personnel involved in procurement are required to adhere to internal policies and practices which are set out in a supply procedures manual and which comply with State Supply Commission (SSC) policies and guidelines and the objectives of Government Purchasing Charter. Moreover, the Ministry through a combination of accreditation and delegation by the SSC largely manages and conducts its own purchasing in accordance with SSC policies and, where necessary, with the assistance of the Department of Contract and Management Services (CAMS). In December 1997, the Ministry was granted an increased partial exemption, by way of an accreditation compact, to purchase goods and services to a maximum value of \$250,000 per total contract value.
85. The Ministry's supply procedures manual details the importance placed on ethics in procurement which is best illustrated by the following extract -

It is the responsibility of every officer within the Ministry to ensure that procurement activity reflects the highest standards of probity, ethics, due diligence and care consistent with sound financial management practice ... Ministry personnel are expected to demonstrate the highest ethical standards at all times.⁴⁹

86. Prior to November 1998, Centre personnel were able to source and obtain quotes for goods and services where there was not a common-use contract in place and which were under \$50,000, without prior approval from Mr Wood.
87. Centre personnel had authority to make purchases valued under \$50 without prior approval.
88. For purchases up to \$5,000 per line item verbal quotations were required to be obtained and for purchases valued between \$5,000 and \$50,000 written quotations in accordance with request-for-quotation procedures. Approval by Mr Wood, was required once quotes had been obtained and prior to the Centre making a purchase.
89. Proposed purchases over \$50,000 per line item were required to be arranged through CAMS. All expenditure by the Centre should have been authorised by Mr Wood as the Incurring Officer for the Centre.
90. Centre personnel were required, depending on monetary thresholds, to liaise and provide details to the Financial and Administrative Services Branch (FASB) and the Supply and Asset Manager. In evidence, the then Supply and Asset Manager, Mr Logan, described his role, up until late 1998, as having responsibility for provision of advice on supply policy as required, compliance with SSC policies and guidelines and in financial and administrative services branch operations, and planning and coordination of the supply and asset function for the Ministry.⁵⁰
91. On 30 October 1998, new procedures and thresholds for the procurement of goods and services within the Ministry were issued and were incorporated in a revised supply procedures manual, effective from November 1998. Supply procedures and approval processes were strengthened and stipulated that staff were not authorised to initiate any procurement activity, ie. source quotations, without a formal supply delegation. The Centre Director was given delegated authority to source quotes for goods and services up to \$50,000 and the Centre's Executive Assistant up to \$5,000.
92. The Committee was informed by Mrs Judge, that as a result of the new procedures the Deputy Director General's approval was required for all expenditure by the Centre over \$100.

⁴⁹ Ministry of the Premier and Cabinet, *Supply Procedures Manual*, pre-November 1998, p.8

⁵⁰ Transcript of Evidence, 27/7/99, p.1

93. Procurement thresholds were also amended and resulted in an increased responsibility for the Supply and Asset Manager. In evidence, Mr Logan described this change as follows -

Effectively, the role changed, so that I had responsibility for managing the facilitation of the procurement and contracting function for the Ministry ... Further to that, I was to be involved in all procurement activity of \$5 000 and above, which was not previously the case.⁵¹

Centre and Divisional Management Oversight

94. At the Centre level, the Centre Director, Mrs Morel-EdnieBrown had responsibility for overseeing the procurement activity undertaken by Centre personnel, including herself. Given the diversity of programs carried out by the Centre, which often resulted in a number of activities being undertaken concurrently, procurement activity was often initiated by other Centre personnel eg. the Curator and the Executive Assistant, under the direction of the Centre Director.

95. When asked in evidence to describe her level of autonomy with respect to purchasing goods and services for the Centre, Mrs Morel-EdnieBrown said -

It varied. Steve Wood was incurring officer but we were also issued with credit cards. I had an American Express card with a limit of \$20 000 per month and other staff had cards with a limit of \$5 000 per month. Quotes were discussed prior to being obtained. We knew that with orders of under \$500 we had to source a reasonable supplier; with orders of \$500 to \$5 000 to get verbal quotes; \$5 000 to \$20 000 to obtain a written quote; and \$20 000 and over to go to supply and asset management, \$50 000 and over - a CAMS contract. I actually instructed the staff that no matter what they were doing, they should be given written faxed quotes, even if it was for \$100, so that we could be sure when we sent out an order that the suppliers were quoting apples for apples so that there was no misunderstanding about a verbal contract on the phone.⁵²

96. On the issue of when Divisional Management approval was necessary she responded -

Steve Wood wanted to know about large items of expenditure and large contracts, if we were going to employ permanent staff or conduct any advertising, of which the centre did not do a great deal. He was particularly interested to know whether we were going to do any entertaining.⁵³

97. By comparison, Divisional Management were quite adamant about their oversight role and expectations for the Centre in terms of following proper processes, as is reflected in the following comments by Mr Wood -

51 *ibid.*

52 Transcript of Evidence, 30/6/99, pp.9-10

53 *ibid.*, p.10

The committee was provided with charts on procedures, both pre and post November 1998, which give a fairly thorough outline of those procedures. Essentially the oversight of divisional management is similar to that in other areas. The initial quotations and that sort of work is done at the centre and I sign-off on contracts ... The procedures as outlined in both those drafts are adequate. In other words, there is no reason that the centre could not operate within the procedures in the charts.⁵⁴

98. The charts referred to by Mr Wood were developed for the Committee's inquiry. It is unclear whether equivalent information was provided to Mrs Morel-EdnieBrown at any time.

Induction/Training

99. Mrs Morel-EdnieBrown was not formally inducted on the Ministry's supply procedures and approval processes when she commenced in the position of Centre Director. In evidence, Mrs Morel-EdnieBrown told the Committee that she had some dealings with supply people as part of her project management role at the old Hale School redevelopment, however, that most of the contract management was managed by CAMS.⁵⁵ Mrs Morel-EdnieBrown acknowledged that she was told about some procedures and given documentation when she first started but that she had sought the advice rather than being told in the first instance.
100. Mr Wood confirmed that Mrs Morel-EdnieBrown was not inducted on the basis that she had already been undertaking procurement activity as part of her role as project managing the refurbishing and starting up of the Centre and getting the initial exhibition up and running. However, the Committee was made aware during the course of the inquiry that the curator, acting curator and executive assistant were each given instructions on supply and approval procedures.
101. The SSC noted in its audit appraisal of the Ministry, which formed part of the accreditation compact signed in January 1998, that the Ministry did not have a formal training or induction plan for the recruitment/training of purchasing staff.⁵⁶
102. The Committee notes the contrast in the level of instruction given to Mrs Morel-EdnieBrown and her replacement, Mrs Kerry Ross, Acting Centre Director, resulting from improvements and changes to supply and approval procedures in October/November 1998. In February 1999, Mrs Ross was provided with clear and concise written procedures for the purchasing of goods and services. The Committee was also advised by Mrs Judge, as a result of improvements at the Centre, that arrangements had been put in place to ensure that Centre staff were made aware of the Ministry's purchasing policies.

⁵⁴ Transcript of Evidence, 27/7/99, pp.1-2

⁵⁵ Transcript of Evidence, 30/6/99, p.9

⁵⁶ Ministry of the Premier and Cabinet, Buying Wisely Accreditation, *Accreditation Process: Audit Appraisal*, December 1997, p.2

Finding 6

As part of her role in project managing the old Hale School Project, Mrs Morel-EdnieBrown oversaw contract management by the Department of Contract and Management Services. Upon assuming the role of Centre Director, Mrs Morel-EdnieBrown became responsible for directly managing procurement activity and contracts. These distinct roles required different levels of expertise and understanding.

The Centre Director was not given adequate formal instruction by Divisional Management with respect to supply and approval procedures upon assuming her position. However, given the seniority and nature of the position, Mrs Morel-EdnieBrown also had an obligation to ensure that she fully understood these procedures.

An improved level of instruction was provided to Mrs Morel-EdnieBrown's replacement.

PROBLEMS WITH SUPPLY AND CONTRACT MANAGEMENT

103. A number of supply-related problems occurred at the Centre as a result of inadequacies and deficiencies at both the Centre and Divisional Management levels which are discussed below. The Committee examined three case studies to highlight a range of problems related to individual procurements.

Overview

104. Most of the problems encountered by the Centre resulted from non-adherence to supply and approval procedures.
105. These procedures were sometimes relaxed by Centre personnel in order to meet deadlines or accommodate the needs of suppliers. For example, Centre personnel did not always adhere to monetary thresholds and associated processes in the calling of quotations. Verbal quotations were sometimes sought when written quotations were required which did not guarantee that potential suppliers were provided with identical information upon which to base their quotation or tender. Therefore, the fairness of the competitive process could not be assured.
106. Incidences of non-adherence to the procedures for requesting quotations were also identified such as -

- quotations invited did not incorporate a quotation number for inclusion in a central register maintained by the Supply and Assets Manager nor did they include other essential components such as closing dates and times, period of contract; and
 - unofficial purchase orders were produced by the Centre instead of being raised by the Financial and Administrative Services Branch (FASB).
107. The Centre encountered some problems in the ongoing management of existing contracts, particularly in relation to variations to the contracted arrangements and the payment of invoices. Similar problems relating to the payment of invoices had also occurred when Mrs Morel-EdnieBrown was project managing the old Hale School project. Centre records showed an outstanding invoice issued on 25 April 1998 by CAMS for variations relating to overtime and furnishings, to the value of \$15,755, still outstanding at 20 January 1999.⁵⁷
108. Several outstanding invoices dating from early 1998, relating to the facilities management contract managed by CJJP Pty Ltd for such things as security and repair maintenance, remained outstanding due to disputes. These were finally cleared by the Centre in February/March 1999.
109. There is evidence that on a number of occasions Mrs Morel-EdnieBrown and other Centre personnel exceeded their procurement authority, in that they did not obtain Divisional Management approval prior to purchasing a good or service.
110. From the outset, oversight by Mr Wood, and later by Mrs Judge, was insufficient to ensure that the Centre adhered to correct supply and approval procedures. Intervention in the Centre's activities occurred too late to rectify the problems that had occurred.
111. When asked in evidence whether the Centre adhered to the correct procedures for the timing of written quotes and other supply procedures, Mr Wood responded -

At the time I believed the centre was adhering to the procedures. With hindsight there were lapses from the procedure ... They were not far off the mark in getting the job done properly, or there being any unfairness or bad breach of guidelines. The difficulty was more in terms of sloppiness. Things may have been done as a shortcut to get someone on deck to do the job.⁵⁸

Observations by the Supply and Asset Manager

112. On 11 October 1998, a synopsis of supply and staffing issues was compiled by the then Supply and Asset Manager, Mr Neil Logan. This was the result of a request from Mrs Judge for a summary of issues relating to the Centre's operations.

⁵⁷ Spreadsheet, Western Australian Constitutional Centre Invoices, 1998-99, 20/1/99, p.12

⁵⁸ Transcript of Evidence, 27/7/99, p.2

113. It is evident that at this time Divisional Management, in particular Mrs Judge, had decided to embark on a more proactive approach to overseeing the activities of the Centre. This interest was also heightened following receipt of the synopsis from Mr Logan. In evidence, Mr Logan recollected the action taken by the Ministry regarding his concerns -

The Assistant Director General of Federal and Constitutional Affairs, Petrice Judge, became heavily involved in all issues and intervened as well in new issues that were coming up. Many of those issues were complex and took a fair bit of time. She had to reconstruct histories, and also project where things were heading. As a result of that several deadlines were postponed ...⁵⁹

114. The issues raised by Mr Logan were the result of both direct dealings with the Centre involving requests to authorise and/or endorse variances to contracts and approve quotation processes and general observations.

115. So concerned was Mr Logan about the problems that he concluded his synopsis by remarking -

I have doubts in relation to the accuracy of information provided to the Ministry on procedures and timing of quotes and selection. These problems and others have only been identified after the Ministry became more involved in their seeming [sic] independent operation. What has been going on in the past, and what is yet to come.⁶⁰

116. The Centre had sought Mr Logan's advice on a number of occasions in late 1998 regarding supply policy when it was leading up to an exhibition. However, the issues had been difficult to resolve as his office had not been involved earlier and there had been an absence of forward planning by the Centre.

117. The following are extracts from his synopsis of the 11 October 1998 which highlight specific concerns -

- 'It appears that the Centre may have sought quotations from services after verbally engaging other companies — purely to indicate to the Ministry that correct procedures have been met. In one instance, one of these companies may have been given the impression that their quote will be 'filed'.
- 'There have been other issues referred to the Ministry that have caused concern but the Ministry has lent assistance to ensure compliance without effecting outcomes... '.
- 'Unofficial purchase orders (letters quoting sales tax exemption no.) have been issued to suppliers as a method of purchase'.

⁵⁹ Transcript of Evidence, 27/7/99, p.5

⁶⁰ Supply and Staffing Issues, Mr Neil Logan, 11/10/98

In evidence, Mr Logan thought that he became aware of the issue of unofficial purchase orders between August and October 1998.⁶¹

118. Mr Logan also raised concerns regarding issues arising from specific contracts and consultancies, which are explored in greater detail below.

CASE STUDIES

119. The Committee examined three case studies which illustrated problems relating to non-adherence to supply procedures and approval processes by the Centre and inadequate Divisional Management oversight.

Case Study 1 - Engagement of Supplier to Disassemble Exhibition Structure

120. On 7 August 1998, the Centre engaged a supplier to disassemble an exhibition structure at a cost of \$9,590. The same company assembled the exhibition in 1997.

121. Verbal quotes were sought from three companies with only one supplier providing a written quotation. A decision was made by Mrs Morel-EdnieBrown to proceed with engaging the supplier who had provided a written quotation and who had previously assembled the exhibition. In a letter to the Supply and Asset Manager, Mr Logan, Mrs Morel-EdnieBrown said -

Whilst it is acknowledged that the process should have involved seeking written quotations, competitive quotations were sought and it is considered that the costs and services accepted represent value for money'.⁶²

122. The Committee found no evidence that Mr Wood's approval was sought prior to the engagement although this was required for an expenditure of this amount.
123. After awarding the contract, Mrs Morel-EdnieBrown advised Mr Logan of her actions and then sought advice regarding the potential for a second contract to be awarded to the same supplier, without further quotations from other suppliers.⁶³ This was for the dismantling of another part of the exhibition for transport to the Perth Royal Show to the value of \$13,700.

⁶¹ Transcript of Evidence, 27/7/99, p.2

⁶² Letter from Mrs Morel-EdnieBrown to the Supply and Asset Manager, Corporate and Business Services Division, 12/8/98

⁶³ Email from Mrs Felicity Morel-EdnieBrown to Mr Neil Logan, 11/8/98

124. Mr Logan advised that -

The appointment of [the supplier] for both projects does not appear to be appropriate. The fact that [the supplier] assembled the exhibition would not satisfy the State Supply Commission as a reason for not testing the market. In light of this, please do not accept the second quote for the other dismantling'.⁶⁴

125. Following this advice, Mrs Morel-EdnieBrown sought quotations for comparative purposes and further work was subsequently awarded to another contractor who provided services at a significantly lower cost.

Finding 7

The Centre did not adhere to supply and approval procedures, in that -

- **verbal rather than written quotations were sought when written quotes were required for an expenditure of this amount;**
- **Mr Wood's approval was not sought prior to engaging the supplier although this was required for an expenditure of this amount; and**
- **attempts were made to engage the same supplier for a potential second contract without any competitive quotations.**

Case Study 2 - Engagement of Supplier to Provide a Touring Exhibition Structure and Graphic Outputs

Background

126. In June 1998, the Centre engaged a supplier to provide a touring exhibition structure at a cost of \$22,800 and graphic outputs at a cost of \$36,870. The same supplier performed additional work to the exhibition structure at a later date at a cost of \$9,445.38.

127. The procurement processes were documented in two memoranda, both dated 17 November 1998 from Mrs Morel-EdnieBrown to Mr Wood. Difficulties in locating information and documentation hampered the ability to reconstruct the procurement as Mrs Morel-EdnieBrown acknowledged below -

The history of the process of this procurement has been complicated by the fact that the officer responsible has since left the Public Service. A thorough search of all of the Centre files, including archived files, has

⁶⁴

Email from Mr Neil Logan to Mrs Felicity Morel-EdnieBrown, 11/8/98

discovered some information but failed to find the formal documentation ... No formal contact documentation has been found. The “order” that was faxed to [the supplier] was done so on a form which was blank with a photocopied signature.⁶⁵

128. Mrs Morel-EdnieBrown acknowledged that ‘the process should have been performed in consultation’ with the Ministry of the Premier and Cabinet. However, she claimed that she believed, at that time, that due process had been complied with.⁶⁶
129. The second memorandum detailed additional items that were supplied by the same supplier at late notice based on its involvement in creating the original touring hardware.
130. Invoices were attached to both memoranda that were recommended for payment by Mrs Morel-EdnieBrown.

The Procurement Process

131. On 3 March 1998, three suppliers were provided with request-for-quotation briefs and were asked to quote separately for the hardware and the graphics components. Written quotations were received from all three suppliers, with combined totals over \$50,000; however, only the quotation from the successful supplier could be located at the time of Mrs Morel-EdnieBrown’s memorandum of 17 November 1998. During its audit of Centre files, the Committee found evidence of written quotations from the other two suppliers, which it presumes must have been located by the Centre between November 1998 and when the files were made active in February 1999.
132. Mrs Morel-EdnieBrown implied in her memorandum of 17 November 1998 that the Centre’s Curator had initiated the procurement activity by following the request-for-quotation process. She further stated that they had discussed ‘the correct protocols’ to be followed and that the Ministry of the Premier and Cabinet Supply and Asset Division was to be involved in assisting the process. In evidence, Supply and Asset Manager, Mr Neil Logan, stated that he had no involvement with the procurement process until the time when the Centre Director asked him to endorse a variation to the contract which was in either September or October.⁶⁷
133. In evidence, Mrs Morel-EdnieBrown stated that she understood that there were to be two separate contracts and that because both were under \$50,000 and the process had been carried out in consultation with the Supply and Asset Division and CAMS that there was not a problem.⁶⁸ By comparison, in evidence Mr Logan expressed some concern when he reviewed the procurement process later in the year, with the qualification that ‘the

⁶⁵ Memorandum 1 from Mrs Felicity Morel-EdnieBrown to Mr Stephen Wood, 17/11/98, pp.1-2

⁶⁶ *ibid.*, p.2

⁶⁷ Transcript of Evidence, 27/7/99, pp.5-6

⁶⁸ Transcript of Evidence, 30/6/99, p.16

Supply Commission policy at the time provided mechanisms for separate line items, unlike now where it provides for a total contract value'. His main reasons for concern were that there would be a compatibility issue if separate components were supplied by different suppliers and a component from one supplier would not fit another.⁶⁹

134. Furthermore, Mr Logan, when asked whether it should have been a single contract, responded -

I would like to have seen it as a single contract, so that it was viewed prior to going to the market as a total contract value. Although in saying that, the policies at the time in relation to per line items made those sort of judgements difficult.⁷⁰

Finding 8

There is conflicting evidence as to whether the Centre sought the advice of the Supply and Asset Division in the early stages of the procurement process.

135. Selection of "the supplier" for both components was made by an assessment panel comprising Mrs Morel-EdnieBrown, the Curator and a Consultant working for the Centre, on 3 April 1998.
136. On 15 April 1998, a meeting was convened between Mrs Morel-EdnieBrown, Mr Wood and Mrs Judge in order to discuss the outcome of the assessment process. In evidence, Mr Wood recalled that the reason for the meeting was 'so [Mrs Morel-EdnieBrown] could bring me up to date with the request in relation to work for that particular exhibition; in other words, the quotes received'.⁷¹
137. The Centre Director claimed that she sought verbal approval to proceed at the meeting of the 15 April 1998. Mr Wood, when questioned on this claim, responded -

Not that I can recall, no ... It could have been that I gave verbal approval in the discussion of 15 April. I cannot tell you whether I did or not⁷².

⁶⁹ Transcript of Evidence, 27/7/99, p.7

⁷⁰ *ibid.*

⁷¹ Transcript of Evidence, 30/6/99, p.14

⁷² *ibid.*, p.15

Mrs Judge gave evidence, which confirmed that the meeting did take place and that she had taken notes -

... the notes say that discussions occurred on a range of matters. Mr Wood indicated that he required documentation, and he wanted that sent through to him as soon as possible ... as I said, a range of topics of conversation were involved. Primarily, the first focus was how the centre was travelling with regard to its budget, and he required very full details to go to him in the next week. Discussion was held about [the supplier] tendering for the travelling exhibition. Mr Wood's response was that he wanted full documentation sent to him.⁷³

138. And further -

My memory and also my notes indicate that no approval was given. Again it was a case of "Send up the paperwork and we will look at the issue".⁷⁴

139. Further to the meeting, Mrs Morel-EdnieBrown drafted a memorandum on 20 May 1998 to Mr Wood enclosing an analysis and a preferred supplier. The Centre Director was uncertain whether the memo was sent, despite there being a photocopy on file. In evidence, Mrs Judge confirmed that they had not received the memo.⁷⁵

140. The following excerpt explains the reasons for the engagement -

I have placed an order with [the supplier] on the basis of them being the least expensive and having supplied the display system which we are currently using at the Constitutional Forums and also supplied the graphics that went onto that display system ... [the suppliers] are the only firm in Western Australia which supplies both the hardware and the graphic components in-house, so they can tailor the graphics production specifically to meet the hardware requirements ... Where the two items are not provided by the same supplier, there is always a possibility that they will not be entirely compatible. Therefore, [the suppliers'] ability to supply both ensures ease of use and compatibility from the Centre's point of view.⁷⁶

141. The Committee considers that given the Centre's clear preference for one supplier providing both components it should have gone to the market as a total contract value, rather than having been split.

142. The order placed with the supplier was by way of a facsimile and contained a photocopied signature of the Centre Director. Attached to the facsimile was a notation listing a set of requirements including delivery dates and guarantees.

⁷³ Transcript of Evidence, 27/7/99, p.24

⁷⁴ *ibid.*

⁷⁵ *ibid.*, p.25

⁷⁶ Memorandum from Mrs Felicity Morel-EdnieBrown to Mr Stephen Wood, 20/5/98, p.3

143. Mrs Morel-EdnieBrown claimed in evidence that she had become aware that staff had been using a photocopied form with her signature on it to order goods without her approval in the beginning of 1998.⁷⁷ In October 1998, she issued a formal memorandum to all staff instructing that the practice cease.

Finding 9

The Centre Director engaged a supplier to provide both the hardware and graphics components of the touring exhibition structure without the express approval of Mr Wood.

Given the Centre's clear preference that one supplier provide both components of the touring exhibition structure, quotations should have been sought for a single contract not two contracts.

It is reasonable to infer that the contract was split in order to avoid the need to comply with relevant supply guidelines for contracts of that line item value. A contract valued at over \$50,000 would have required a public tender process to be arranged through the Department of Contract and Management Services.

The order forms used to purchase exhibition materials from the supplier did not meet supply guidelines and procedures.

Poor records management systems impeded the Centre's ability to maintain clear and concise paper trails.

Additional Work

144. Additional work was performed by the same supplier as the project was developing on the basis of their involvement in creating the original hardware. This additional work provided the basis for Mrs Morel-EdnieBrown's second memorandum to Mr Wood of 17 November 1998.
145. In evidence, Mrs Morel-EdnieBrown recollected approaching Mr Logan in September to authorise the additional work.⁷⁸

⁷⁷ Transcript of Evidence, 30/6/99, p.18

⁷⁸ *ibid.*, p.19

146. Mr Logan said he had not endorsed the variation because he was ‘not satisfied that the procurement was appropriate’.⁷⁹ This is also consistent with the following comments made in his synopsis of supply and staffing issues of 11 October 1998 -

An approach was made to authorise variances to the construction. I was unable to do this as I had concerns in relation to the sourcing of quotes etc for the original project — not enough documentation could be provided. I advised the Director that I would not endorse any variance due to my concerns in this regard.

147. In further evidence, Mrs Morel-EdnieBrown acknowledged that she approved the work.⁸⁰ As a result, the work proceeded without proper authority.

Finding 10

The Centre Director approved the supplier to perform additional work related to the exhibition structure without the appropriate approval.

Case Study 3 - Engagement of Consultant to Design an Exhibition on Women’s Suffrage

Background

148. On 19 August 1998, the Ministry of the Premier and Cabinet through the Centre engaged a Consultant to design an exhibition to commemorate the 1999 anniversary of Women’s Suffrage in Western Australia. The services to be provided included: conceptualisation; design; specification; and supervision of manufacture and installation at a cost of \$29,950. The Consultant’s *Conditions of Engagement* included reference to the following -

- The consultant shall observe State Supply Commission policies and principles concerning open and effective competition, ethics and probity, value for money and industry development when conducting purchasing activities (including sub-contracting arrangements) under cover of this contract (clause 29).
- Should there be a requirement for the Consultant to employ outside organisations to undertake work in respect of this Contract, then such work shall not proceed without the prior approval of the Ministry of the Premier and Cabinet.

Any approval given to the Contractor by the Ministry of the Premier and Cabinet to engage a sub-contractor to provide any part of the services required under this Contract shall not relieve the Contractor from any of the liabilities or obligations

⁷⁹ Transcript of Evidence, 27/7/99, p.6

⁸⁰ Transcript of Evidence, 30/6/99, p.20

under this Contract. The Contractor shall be responsible to the Ministry of the Premier and Cabinet for the work of the sub-contractor or any employee or agent of the sub-contractor (clause 30).⁸¹

The Procurement Process

149. The Consultant sought quotations for the manufacture of light-boxes for the exhibition by way of a handwritten three page specification including two sketches and received four quotation responses. The Consultant recommended that a particular Contractor be awarded the contract (\$44,450) and alluded to other work, hence additional costs, that may have been required to be undertaken by the Contractor in order to meet the requirements of the exhibitors.
150. On 8 October 1998, the Centre's Exhibition Curator faxed the quotations obtained by the Consultant to Supply and Asset Manager, Mr Neil Logan. Prior to faxing the quotations, the Exhibition Curator emailed Mr Logan seeking his assistance to 'get the show on the road on time' due to tight timelines.⁸²
151. After reviewing the specification, Mr Logan considered that it was not evident that State Supply Commission policies and principles had been adhered to in sourcing quotations.⁸³ In other correspondence, Mr Logan recalled that the '[Consultant] may have sought quotations for this exhibition on a handwritten spec. (one page) and two sketches. This is inappropriate but the Centre wants endorsement to proceed due to tight timelines - I am not prepared to give this'.⁸⁴
152. Mr Logan advised the Centre not to proceed and that formal tenders may need to be called due to the proximity of the value to the \$50,000 public tender threshold.⁸⁵ In evidence, Mr Logan sought to clarify his actions by adding -

I advised the centre not to proceed with production pending resolution of the tender issue. I understand that the Assistant Director General of Federal and Constitutional Affairs advised the centre to hold production ... To clarify the issue a meeting was held with the acting curator of the centre. That followed the receipt of documentation she provided to me seeking approval to proceed. That meeting occurred on about 15 October. It was at that meeting that we found out production had commenced and they were liable for the amount of around \$20,000.⁸⁶

81 Consultant's Conditions of Engagement, 19/8/98, pp.8-9

82 Facsimile and Email from the Exhibition Curator to Mr Neil Logan, 8/10/98

83 Letter from Mr Neil Logan to the Assistant Director General, Federal and Constitutional Affairs, 19/10/98

84 Supply and Staffing Issues notes from Mr Neil Logan to Mrs Petrice Judge, 11/10/98

85 Letter from Mr Neil Logan, 19/10/98

86 Transcript of Evidence, 27/7/99, pp.8-9

153. In supplementary information provided to the Committee, Mr Logan said -

I am not able to produce any documentation that identifies the exact date when I advised the Centre not to proceed with production pending resolution of the tender issue. It was sometime following the receipt of the fax of 8 October 1998 from the Centre containing the quotations.⁸⁷

154. In evidence, Assistant Director General, Mrs Judge said that they were aware that partial production had already commenced and they had ordered that it be stopped.⁸⁸

155. By way of clarification, in further evidence, Deputy Director General, Mr Wood advised that Mrs Judge had contacted the Centre Director to ensure that the quotation process was halted and to inform her that the opening of the Women's Suffrage Exhibition would be deferred until late January 1999.⁸⁹

156. On 15 October 1998, the Exhibition Curator emailed Mr Logan regarding a meeting with him scheduled for the next day. She confirmed that the exhibition was being manufactured by two separate companies (the Contractor and a subcontractor) and that the total value was now \$52,000. She also advised that manufacturing had begun in order to hit the deadline and that it had been put on hold until the problem had been sorted out.⁹⁰ This is supported by documentary evidence that the Consultant gave the approval to proceed, believing that he was doing the right thing for the project in terms of meeting the deadline.⁹¹

157. There is also further documentary evidence that Mrs Morel-EdnieBrown had been informed regarding the results of the quotation process and that work had begun.

⁸⁷ Letter from Mr Neil Logan to the PAERC, 6/8/99

⁸⁸ Transcript of Evidence, 30/6/99, p.21

⁸⁹ Letter from Mr Stephen Wood, Deputy Director General to Mr Max Trenorden, MLA, Chairman, PAERC, 19/8/99

⁹⁰ Email from Exhibition Curator to Mr Neil Logan, 15/10/98

⁹¹ Letter from the Consultant to the Exhibition Curator, 14/10/98

Finding 11

The weight of evidence indicates that no approval was given before the Consultant awarded the contract for the production of the light-boxes to the Contractor. This was contrary to the Consultant's conditions of engagement.

Divisional Management and the Supply and Asset Manager attempted to rectify this situation when they became aware of it.

Responsibility for ensuring the Curator and the Consultant complied with the requirements to obtain approval, particularly in relation to expenditures of this order (\$44,000 +), resided with the Centre Director, Mrs Morel-EdnieBrown.

158. On 19 October 1998, Mr Logan on the request of Mrs Judge, provided a summary of procurement issues surrounding the exhibition. It included reference to the amended figure of \$52,000 and the extent of production that had occurred thus far to the value of approximately \$20,000.
159. The Ministry continued to be concerned over the validity of the quotation process which led to the convening of a meeting between Mrs Judge, Mr Logan and the Consultant. In an email to Mrs Judge, Mr Logan explained that the reason for the meeting was 'that the Ministry will require documented assurance that the quotation process for the Lightboxes has been fair and equitable and provided we are satisfied with this, we would intend to approach the Supply Commission to seek their approval to waive the public tender process'.⁹² The Consultant responded to the request with a letter and a statutory declaration.
160. Mr Wood then wrote to the State Supply Commission (SSC) seeking approval to waive the calling of public tenders and waive a further competitive process in order to engage the Contractor to undertake further work. In his letter, Mr Wood, as Acting Director General, wrote -

The consultant has sought quotations from four (4) suppliers for the manufacture of 35 light-boxes for the exhibition. The recommended respondent - [the Contractor] provided a quotation of \$52,000. The Ministry did not immediately proceed with the works as it was above the public tender threshold and the supporting information provided by [the Consultant] relating to the quotation was insufficient to determine if [the Consultant] had met their contractual obligations in relation to purchasing activities. The recommendation however, appeared to

⁹² Email from Mrs Petrice Judge to Mr Neil Logan, 10/11/98

represent value for money. [The Consultants] have since formally responded in detail to the Ministry's concerns and the Ministry is now satisfied that: the entire process was fair and equitable; that [the Consultants] are not in breach of contract; and the quotation submitted by [the Contractor] represents value for money. In addition to the above issue, there will be a need to modify these display units after production to satisfy the specific requirements of the exhibitors. It is considered that the manufacturer is qualified to undertake these additional works due to their familiarity with all aspects of construction. These additional works are estimated at \$14,000 and the Ministry is satisfied that this represents value for money.⁹³

161. Mr Wood omitted to reveal in the letter that -

- production had commenced in early October 1998 and that it had been subsequently stopped pending resolution of the tender issue; and
- the Centre had received a progress claim for the work of the Contractor dated 30 October 1998 for \$24,500 from the Consultant.

162. The SSC approved the waiver of public tenders on 13 November 1998 and the inclusion of additional works.

Finding 12

Mr Wood's application to the State Supply Commission for a waiver of tender requirements failed to reveal relevant information.

It would have been proper to disclose this information to the State Supply Commission.

⁹³

Letter from Mr Stephen Wood, A/Director General, Ministry of the Premier and Cabinet to Mr Charles Vinci, A/Chief Executive Officer, State Supply Commission, 11/11/98

CHAPTER FOUR

HUMAN RESOURCE AND CONTRACT MANAGEMENT

INTRODUCTION

163. The Constitutional Centre's principal reason for existence is to promote public awareness of Australia's system of government as a federation and to educate the general public of Western Australia about the State and Commonwealth electoral and parliamentary systems.
164. The nature of the Centre's activities required staffing arrangements that were flexible and capable of meeting the diverse and changing needs of the Centre.
165. When the Centre was established its core staffing structure consisted of four permanent staff (the Director, a Curator, a Communications Manager and an Executive Assistant) (see Appendix 2). Consultants and casuals were employed on an "as-required" basis. In total, from July 1997 to January 1999, the Centre employed approximately 38 individuals in a range of positions and under various employment arrangements.
166. The Committee's inquiry revealed that procedures and guidelines were frequently breached. In many cases, the non-adherence to appropriate guidelines occurred in minor breaches of procedures. However, taken together, the minor errors paint a clear picture of unsystematic and "sloppy" management practices and poor Divisional Management oversight. This affected the way in which staff, consultants and casuals were engaged and managed. It also affected the amount of time required to be allocated to the Centre by the Human Resource Services Branch (HRSB) and subsequently the Deputy Director General, Mr Wood, and the Assistant Director General, Mrs Judge, sorting out the problems.

HUMAN RESOURCE CONTRACTS - OVERVIEW

167. Human resource contract management is both a procedurally and legally complex area of management. The Ministry of the Premier and Cabinet, the State Supply Commission (SSC) and the Department of Contract and Management Services (CAMS) issue policy and procedure guidelines relating to recruitment, selection and appointment of candidates, engaging consultants and general conditions of contracts for service and contracts of service.
168. Human resource contract management issues of particular importance include ensuring that -
 - the content of the contract is clear and accurate, and includes all relevant details;
 - the contract is offered and signed by those with the appropriate authority;

- the form of employment (contract for service, contract of service, casual employment) is an accurate reflection of the work required to be performed and is in accordance with Public Sector Management Office's (PSMO) *Guidelines for Engaging Private Sector Management Consultants*;
 - taxation requirements contained in the contract are accurate;
 - supplementary information (such as terms and conditions for allowances) are provided to the contractor; and
 - terms and conditions of the contract are adhered to.
169. Permanent staff were recruited and appointed under the Ministry's *Recruitment, Selection and Appointment Procedures* and in accordance with the *Public Sector Management Act 1994*.
170. Contract staff were engaged in accordance with the *Guidelines for Engaging Private Sector Management Consultants* issued by PSMO. Though the Ministry's *Recruitment, Selection and Appointment Procedures* do not apply to contract staff, contract staff must be selected in accordance with the Ministry's *Supply Procedures Manual*. The pre-November 1998 *Supply Procedures Manual* stipulates 'The Ministry is required to refer purchases in excess of \$50,000 to CAMS for the calling of public tenders'.⁹⁴
171. Casual staff were employed at the request of the Centre Director. Rates of pay were determined in consultation with HRSB. The HRSB provided a standard letter of engagement on Ministry letterhead for engaging casual staff.
172. Centre personnel and Divisional Management were required to adhere to the Ministry's procedures and guidelines in relation to human resource contract management. The Ministry's HRSB personnel provided administrative assistance, support and advice to the Centre in relation to human resource and contract management issues. The Acting Assistant Director General of Corporate and Business Services, Mr Peter King, oversaw the HRSB and was available to provide further assistance and advice in this area.
173. Several areas of human resource contract management were of concern, including:
- Mrs Morel-EdnieBrown's understanding of procedures relating to human resource (HR) contract management;
 - the level of instruction that Mrs Morel-EdnieBrown received from Mr Wood and Mrs Judge in the area of HR contract management;
 - the signing of contracts;
 - the employment of casuals;
 - taxation issues contained in employment contracts; and
 - failure to properly distinguish contracts for service from contracts of service.
174. Each of these areas is examined below.

⁹⁴

Ministry of the Premier and Cabinet. *Supply Procedures Manual* (pre-November 1998), p.26

INDUCTION TO THE POSITION

175. Human resource management formed an important component of Mrs Morel-EdnieBrown's activities in meeting the objectives of the Centre. In a period that spanned less than 18 months, Mrs Morel-EdnieBrown was responsible for the employment of over 35 individuals on contracts of or for service.
176. During a formal hearing, the Committee asked Mr Wood whether it was normal practice for Divisional Management to brief a senior staff member appointed to a newly created senior management position on the Ministry's policies and procedures in relation to human resource contract management and the engagement of staff. Mr Wood replied 'No, not necessarily as those documents are freely available and obtainable from relevant parts of the ministry'.⁹⁵
177. In evidence to the Committee, Mrs Morel-EdnieBrown, who was initially appointed to the Ministry in the position of policy officer, indicated that she was not given a formal induction in relation to the Ministry's human resource management procedures, nor was she familiar with the Ministry's recruitment and selection procedures at the time of her appointment to the position of Director in July 1997.⁹⁶ Mr Wood similarly stated that he did not provide her with an induction in relation to supply and contract management issues.⁹⁷
178. Mrs Morel-EdnieBrown⁹⁸ and Mr Wood⁹⁹ indicated that they didn't have routine meetings regarding human resource issues but that there were various meetings where those issues could be raised. It was similarly the case that there were no routine meetings between Corporate and Business Services management and Mrs Morel-EdnieBrown in relation to human resource issues.
179. Mr Wood's view was clearly that there was an expectation and "belief" that Mrs Morel-EdnieBrown, or anyone in that position, would have been familiar with the Ministry's policies and practices and would have approached Divisional Management with any queries. Mr Wood was also of the view that it was not necessary to clarify procedures, responsibilities and the extent of authority in relation to employment contracts at the outset.

⁹⁵ Transcript of Evidence, 27/7/99, p.4

⁹⁶ Transcript of Evidence, 30/6/99, p.20

⁹⁷ Transcript of Evidence, 30/6/99, p.20

⁹⁸ Transcript of Evidence, 30/6/99, p.20

⁹⁹ Transcript of Evidence, 27/7/99, p.4

Finding 13

The Centre Director was not given adequate formal instruction in relation to human resource and contract management procedures. However, given the seniority and nature of the position, Mrs Morel-EdnieBrown had an obligation to ensure that she fully understood these procedures.

SIGNING OF CONTRACTS

180. The Ministry of the Premier and Cabinet *Supply Procedures Manual* pre-November 1998 clearly states in section 3.2 -

3.2 Engagement of Consultants

...

A Letter of Engagement (to be prepared in conjunction with the Human Resources Branch) is to be signed between the relevant Chief Executive or Program Manager and the Consultant.¹⁰⁰

181. In February 1998, the Ministry underwent a restructure, which changed roles and responsibilities of some individuals in the Ministry. On 27 February 1998, the Centre Director sent an email to the Deputy Director General as follows: 'Steve, I have a letter here offering a contract to a consultant...do I put the letter on policy office letterhead and do you, Petrice or I sign it now?' to which Mr Wood emailed a reply 'new Ministry letterhead, you sign it'.¹⁰¹

182. On 30 October 1998, Mr Wood issued a memorandum to Mrs Morel-EdnieBrown that stated -

I wish to confirm our discussions earlier this week regarding the authority to enter into any contracts for or contracts of service. Any such contracts for the Constitutional Centre have to be authorised and signed by myself, as Deputy Director General prior to engagement.¹⁰²

183. When questioned about this memo, Mrs Morel-EdnieBrown stated that, in discussions with Mr Wood on 27 October 1998, he raised the issue of her signing contracts at which point Mrs Morel-EdnieBrown showed Mr Wood his response to her email of 27 February 1998. Mrs Morel-EdnieBrown indicated that the purpose of Mr Wood's memorandum of 30 October 1998 was to rescind the authority she believed she had.¹⁰³

¹⁰⁰ op. cit., p.7

¹⁰¹ Email from Mrs Felicity Morel-EdnieBrown to Mr Steve Wood, 27/2/98 and reply to same from Mr Steve Wood.

¹⁰² Memorandum from Mr Wood to Mrs Morel-EdnieBrown, 30/10/98

¹⁰³ Transcript of Evidence, 30/6/99, p.21

184. In evidence to the Committee, Mr Wood stated that, while the Centre Director had the authority to offer contracts of and for employment, '[he] would sign-off the contract'. And, in relation to the email of 27 February 1998, he stated that he would have advised Mrs Morel-EdnieBrown that he was to sign the offer. He was not aware that he had advised her otherwise. Indeed, Mr Wood informed the Committee that '[t]he memorandum [30 October] reiterates the procedures that were in place and continued to be in place'.¹⁰⁴
185. Mr Wood confirmed that there were instances when the appropriate policy relating to the signing of contracts was not adhered to and that 'there were instances in which some of the staff on the educational side were made offers, and contracts were entered into and signed by the Director, which should have been signed by me'. He stated that '[i]t occurred in error'.¹⁰⁵
186. Five contracts for service for the Women's Suffrage Exhibition were signed by Mrs Morel-EdnieBrown and the contract for service for the Education Consultant, dated 12 June 1998, was also signed by Mrs Morel-EdnieBrown without due authority. A number of contracts for casual staff were similarly signed by Mrs Morel-EdnieBrown.
187. In evidence, Mr Wood advised the Committee that the legal status of contracts signed by unauthorised Ministry personnel would not have been affected. He stated that any such contracts would have constituted 'a binding contract with a representative of the ministry' and that any difficulty would have been internal to the Ministry.¹⁰⁶
188. Though the contracts would have remained legally enforceable, Ministry procedures were not followed. During a six month period Mrs Morel-EdnieBrown understood, on the basis of emailed advice from Mr Wood, that she had the authority to sign contracts.

Finding 14

Poor communication and lack of oversight on the part of Divisional Management resulted in the Centre Director exceeding her authority by signing numerous contracts over a six month period.

In view of his email response in February 1998, Mr Wood must bear the responsibility for repeated breaches in the signing of contracts up until he countermanded his earlier advice in his memorandum dated 30 October 1998.

¹⁰⁴ Transcript of Evidence, 27/7/99, p.6

¹⁰⁵ *ibid.*

¹⁰⁶ Transcript of Evidence, 27/7/99, p.8

CONTRACTS - CASUALS

189. The nature of the activities undertaken by the Centre meant that casual staff were frequently employed for varying periods of time, from just one hour or so to several months.
190. A number of issues relating to the employment of casuals were of concern, including -
- casuals were made offers of employment by staff other than the Centre Director and without the knowledge of the Centre Director;
 - casuals were working without contracts;
 - details were not forwarded to the HRSB when requests were made to commence payment for new staff.

Authority to Offer Employment

191. The evidence before the Committee confirms that a range of staff other than the Centre Director made offers of employment to casual staff on a regular basis. Mrs Morel-EdnieBrown stated that she was not always aware when casuals were employed.¹⁰⁷ However, Mrs Morel-EdnieBrown also stated that she had delegated the authority to offer contracts to the Education Consultant, the Curator and the Communications Manager.¹⁰⁸
192. The Committee sought clarification from Mr Wood and Mrs Judge on exactly who had the authority to offer contracts of employment. The Centre Director was cited as having authority to offer contracts but that the contracts should then have been signed by the Deputy Director General.¹⁰⁹

Written Contracts Prior to Commencement

193. Mr Wood confirmed that, in accordance with supply and human resource management policy guidelines, contracts should be signed prior to work commencing.¹¹⁰
194. The evidence revealed that this requirement was often breached.

¹⁰⁷ Transcript of Evidence, 30/6/99, p.22

¹⁰⁸ *ibid.*

¹⁰⁹ Transcript of Evidence, 27/7/99, p.5

¹¹⁰ *ibid.*

Administration of Casuals' Contracts

195. On 9 October 1998, Mr Greg Moore, Manager Human Resource Services, sent an email to Mr Neil Logan, Supply and Asset Manager, summarising 12 issues of concern relating to human resource management practices at the Centre, including -

1. Offering verbal contracts to approx 20 casual staff and refusing to use standard HR contracts.
- ...
7. Insufficient information supplied by CC [the Constitutional Centre] when requesting HRS to process commencements.
8. Contracts prepared/signed/issued without due authority.
9. Late advice on payroll details of employees has caused embarrassment all round.
10. Panic situations to pay staff (within 1 day) owing to absence of proper procedures.
11. Disproportionate allocation of HRS resources to service CC as a client on a per capita basis.
12. Shopping around amongst HRS staff for the most preferred advice and then playing one lot off against the rest.¹¹¹

Evidence located on the files at the Centre supports many of the concerns contained in this email.

196. The Committee asked the Centre Director if she ever refused to use human resources contracts when employing casuals, to which she responded -

No. We were told they could be modified and then told that they could not...Some people were coming to work for us for an hour or so. There was confusion about whether they should be offered a workplace agreement and have a superannuation account set up. I understand it was finally resolved. They were offered workplace agreements and they had superannuation accounts set up...At that time I believe it was recognised that some policy may need to be developed to assist the centre to more rapidly respond to its employment needs.¹¹²

197. And in relation to the employment of casuals without contracts, Mrs Morel-EdnieBrown stated -

There were instances when we had casual employees, namely educational staff, who had been employed by the centre. They fell into the issue about whether they were to have a workplace agreement and superannuation. We asked for advice...They were current employees. The advice we had was that current employees were not to be offered workplace agreements because they were employed. We had a variety of people advising us at one stage. There was not a lot of consistency in the advice which was the difficulty for us.¹¹³

¹¹¹ Email correspondence from Greg Moore to Neil Logan, 9/10/98

¹¹² Transcript of Evidence, 30/6/99, p.23

¹¹³ *ibid.*

198. Mrs Morel-EdnieBrown was offered the opportunity to comment specifically on the allegations contained in the email from Mr Moore to Mr Logan. In relation to ‘disproportionate allocation of HR resources’, she stated -

I agree with item 11... but that was partly because of rather ponderous protocols that were being applied at the centre which were the correct protocols for Human Resources. It is just that they did not necessarily function very well in the operating situation.¹¹⁴

199. On the subject of ‘panic situations to pay staff’, Mrs Morel-EdnieBrown stated -

Item 10 would also be a situation in which people wanted to be paid. They would be there an hour or a day and they did not want to wait a fortnight, four weeks or until their workplace agreement or their superannuation policy had been resolved before they were paid. In some instances the people were concerned about that.¹¹⁵

200. On the subject of shopping around for the best advice, Mrs Morel-EdnieBrown stated -

I do not believe it was shopping around from Human Resources staff. Disparate information was given to the centre and we then asked for clarification. Later we were given one contact within Human Resources to whom to talk, which greatly eased the situation.¹¹⁶

201. Mrs Morel-EdnieBrown stated that the urgency with which some people were engaged meant that there was not sufficient time to put contracts in place and that the Ministry’s employment protocols were not suited to the environment in which the Centre was working.

202. Despite the Centre employing casuals and consultants on a regular basis, it was not until October 1998 that the HRSB designated one of its staff as ‘the contact’ for all of the Centre’s human resource management needs.

203. Similarly, it was only in October 1998 that the Assistant Director General, Mrs Judge was advised by the HRSB, and became fully aware, of the extent of the problems.

114 *ibid.*, p.26

115 *ibid.*

116 *ibid.*

Finding 15

The Educational Consultant acted beyond her authority in engaging casuals.

The Centre Director, Mrs Morel-EdnieBrown, did not ensure that all staff at the Centre were employed on the appropriate terms and conditions in writing, before they commenced work.

Neither Mrs Judge nor Mr Wood nor Corporate Business Services management provided sufficient oversight to ensure that the Centre Director was carrying out her human resource management and contracting responsibilities adequately.

CONTRACTS AND TAXATION ISSUES

204. Information contained on the Centre's files pointed to the absence of accurate taxation clauses in a number of contracts.

205. In a memorandum to the Director General dated 18 February 1999, the Acting Assistant Director General, Corporate and Business Services, Mr Peter King, stated that -

Contracts issued by the Ministry to a person or organisation other than one with and ACN contain the following Clause -

In accordance with current Australian Taxation Office Requirements, prescribed PAYE taxation will be deducted from the consultancy fee unless the Consultant can provide satisfactory evidence of alternative taxation arrangements acceptable to the Australian Taxation Office.¹¹⁷

206. The five Women's Suffrage Exhibitors' contracts were examined in relation to taxation requirements.¹¹⁸ The taxation clause contained in Mr King's letter does not appear in any of the five exhibitors' contracts. Indeed, the exhibitors' letters of engagement stated either that 'The Exhibitor...is responsible for all taxation obligations' or that 'The Consultant will be responsible for all Australian Taxation Office requirements regarding tax assessments and payments'. These statements were invalid for all but one of the five exhibitors' contracts. The exception occurred because the individual had an Australian Corporation Number (ACN).

¹¹⁷ Memorandum from Acting Assistant Director General, Corporate and Business Services to the Director General, 18/2/99

¹¹⁸ All five exhibitors' contracts were signed by the Centre Director when they should have been signed by the Deputy Director General.

207. Clause 16 of the Conditions of Appointment (relating to conditions contained in the contract that are invalid, unenforceable or illegal for any reason) was invoked and the taxation provisions contained in the letters of engagement were deemed to be deleted. The exhibitors were advised by telephone, and not in writing, of the invalid statements contained in the letters of engagement.
208. In evidence to the Committee, Mrs Morel EdnieBrown indicated that she had not sought advice on contract clauses relating to taxation obligations because she -
- had been advised previously that it was acceptable practice not to take tax off consultants who showed evidence that they would meet their taxation obligations.¹¹⁹
209. She stated in evidence ‘I believe that the contracts that had been offered to the exhibitors had actually been vetted by Human Resources’.¹²⁰
210. In evidence to the Committee, Mr King advised that the possible consequences for the Ministry of not deducting PAYE tax were that ‘the Australian Taxation Office could approach us to pay the tax directly to the ATO’.¹²¹

Finding 16

The Centre Director, Mrs Morel-EdnieBrown, did not take sufficient care in ensuring that the contract dealt adequately with taxation matters and did not seek advice (from the Human Resource Services Branch) concerning taxation matters with respect to the exhibitors’ contracts.

At least four contracts were signed by the Centre Director, Mrs Morel-EdnieBrown, which contained clauses relating to taxation that were invalid and which later had to be deleted from the contracts.

The use of incorrect taxation clauses potentially exposed the Ministry of the Premier and Cabinet to prosecution and liability for the payment of any uncollected taxes and to penalties.

119 Transcript of Evidence, 30/6/99, p.27

120 *ibid.*

121 Transcript of Evidence, 27/7/99, pp 11-12

CASE STUDY - CONTRACTS FOR SERVICE vs CONTRACTS OF SERVICE

211. The examination of the two contracts for service and one contract of service used to engage the services of an Education Consultant at the Centre, over a ten month period, raised concerns about Divisional Management's use of human resource contracts and their understanding of the legal distinction between a contract for service and a contract of service.

Independent Contractor ("consultant") or Employee?

212. The distinction between an independent contractor and an employee is an important one both in relation to the way the work is performed and the conditions that surround the performance of that work, and in relation to taxation and superannuation issues. Taxation and superannuation implications vary according to the form of contract.
213. In distinguishing between an employee and an independent contractor, the Treasury Department of Western Australia *Employee/Independent Contractor Guidelines* state -
3. Regardless of how the person doing the work is designated, if the common law test of employment is met, he or she is an employee and should be on the agency's payroll. The test of employment is a combined one of degree of supervision and integration into the business.¹²²
214. In the Education Consultant's contracts examined by the Committee, the true status of her employment was unclear. Despite the claims that the Education Consultant was engaged to conduct a 'specific program of work', her duties included 'also perform other tasks as directed by the Director to ensure efficient use of personnel (*sic*) resources'. Taking direction for the manner in which work is performed under a contract is generally associated with contracts of service.

Interpretation of contract for service

215. Lack of clarity in relation to the form of engagement for the Education Consultant was further highlighted by a difference of opinion that arose over an account for payment submitted by the Consultant. The account related to work undertaken in Canberra and time travelling to and attending a Parliamentary Educators Conference in Sydney.
216. A memorandum prepared and sent by the Human Resource Officer in HRSB to the Assistant Director General, Mrs Judge, states -

Whilst [the Education Consultant] was within her contract for service, the Director did not approve the work performed. Point 1 of the letter of contract to [the Education Consultant] states 'The Consultant...will

¹²² Treasury Department of WA *Employee/Independent Contractor Guidelines*, p.1

perform other tasks as directed by the Director to ensure efficient use of personnel resources.’ On that basis, I believe it is not appropriate to pay for any work performed that was not approved by the Director.¹²³

217. If the advice contained in this memo is correct, then it is clearly the case that this was essentially a contract of service and not a contract for service and that the Education Consultant should have been engaged as an employee. No acknowledgment or approval of the recommendations contained in this memo could be located on the Ministry’s files.

Taxation Implications

218. Taxation implications differ between contracts of service and contracts for service. Moreover, there are taxation implications for contracts for service where the contract involves principally the labour of the consultant. The Treasury Department of Western Australia *Employee/Independent Contractor Guidelines* state -

Independent contractors are by definition not employees; however, the agency is required to deduct PAYE tax from payments to independent contractors, where the contract is wholly or principally for the labour of the person to whom the payment is made.¹²⁴

219. The contracts for service with the Education Consultant principally required her personal labour. The Committee’s audit of Ministry records found that the Education Consultant did not have PAYE tax deducted for most of her first two contracts. There was no documentary evidence to indicate why the Education Consultant should not have PAYE tax deducted or why PAYE tax was subsequently deducted.

Legal Liability

220. A standard set of Ministry-drafted “Conditions of Appointment” accompany contracts for service. Several of the conditions relate to the independent contractor having responsibility for the provision of their own indemnity and legal liability insurance.
221. In the Education Consultant’s contract of 9 February 1998, Clauses 6, 7, 8 and 11 of the Conditions of Appointment, relating to insurance, indemnity insurance, professional indemnity insurance and statute compliance costs and indemnity, were struck out and initialled by the Education Consultant.
222. The deletion of key clauses relating to insurance and indemnity potentially changes the legal status of the independent contractor from that of a consultant to that of an employee. The deletion of clauses in the consultant’s contract relating to insurance and indemnity, including workers’ compensation, potentially left the Ministry liable for those areas.

¹²³ Memorandum from Human Resources Officer to Mrs Petrice Judge, Assistant Director General, 8/1/99, p.2

¹²⁴ op. cit., p.1

223. The legal ramifications of deleting Clauses 6, 7, 8 and 11 from the Education Consultant's contract did not appear to be fully understood. In evidence to the Committee, Acting Director Corporate and Business Services, Mr Peter King stated -

The deletion of those clauses would occur if we believed a minimal risk was associated with workers compensation or public liability arrangements. By agreement those clauses would be deleted, but they would not then place an onus on the Ministry of the Premier and Cabinet, as I understand it, to be responsible for that individual's workers compensation or public liability.¹²⁵

224. The PSMO *Guidelines* state -

Legal advice should be sought if any doubt exists regarding any aspects of an agreement before the final signing takes place.¹²⁶

225. When questioned by the Committee what advice was sought prior to accepting the Education Consultant's contract with clauses 6, 7, 8, and 11 struck out, Mr Wood stated that he did not seek any advice on the legal and taxation consequences of the deletion of these clauses.¹²⁷

Finding 17

The Education Consultant's contracts for service had the hallmarks of employment contracts and on at least one occasion the contract was interpreted as a contract of service by the Human Resource Services Branch.

The Education Consultant's contracts principally required her personal labour. It may have been necessary to deduct PAYE tax from the outset, which did not occur.

Insurance and indemnity obligations were deleted from the personnel contract without any advice or a clear understanding of the legal consequences of the deletion.

¹²⁵ Transcript of Evidence, 27/7/99, p.12

¹²⁶ Public Sector Management Office (April 1994), *Engaging Private Sector Management Consultants Guidelines*, p.12

¹²⁷ Transcript of Evidence, 27/7/99, p.15

Recommendation 2

That the Premier issue a circular to Ministers clearly outlining -

- **the difference between a contract of service and a contract for service;**
- **the circumstances underwhich each should be used;**
- **the taxation, legal liability and superannuation implications of each form of contract;**
- **reiterating the obligation to adhere to government guidelines on engagement of contract staff.**

CHAPTER FIVE

THE ROLE OF THE CONSTITUTIONAL CENTRE ADVISORY BOARD

INTRODUCTION

226. An Advisory Board to the Constitutional Centre was established at the outset of the Centre's operations, with members meeting monthly and being paid sitting fees.
227. The Advisory Board was established, in part, to facilitate a bipartisan approach to the activities of the Centre. A proposed role for the Board was put to its members at the first Advisory Board meeting on Monday 20 October 1997.¹²⁸
228. The document proposed that the Board be responsible for providing -
- overall strategic policy advice to the Minister (Premier) in regard to the activities of the Centre;
 - advice on appropriate subject matter for exhibitions and educational activities for the Centre; and
 - an avenue for community consultation on the effectiveness and appropriateness of the Centre's programs.

INADEQUATE FINANCIAL INFORMATION GIVEN TO THE ADVISORY BOARD

229. The *Corporate Governance Guidelines for Western Australian Public Sector Board Members*, produced by the Ministry of the Premier and Cabinet, outlines the distinction between an advisory board and a governing/management board. It states that 'the primary function of an advisory board is to provide advice and guidance to either the agency or the Minister'.¹²⁹ An advisory board, unlike a governing board, is not responsible for the agency's performance or conduct.
230. The *Corporate Governance Guidelines for Western Australian Public Sector Board Members* states -

¹²⁸ Item 3, *Role of the Advisory Board*

¹²⁹ Ministry of the Premier and Cabinet, *Better Management - Corporate Governance Guidelines for Western Australian Public Sector Board Members*, 1999, p.4.

Advisory boards rely on agency information as a basis from which to form their advice. Therefore to function effectively, board members need timely, concise, accurate and relevant information from the agency.¹³⁰

231. Whilst both the former Centre Director, Mrs Morel-EdnieBrown, and the Deputy Director General, Mr Wood, told the Committee that the Board was an Advisory Board, Mrs Morel-EdnieBrown also stated that ‘there was an expectation that if we were asked to do something by the board we would do it and do it well’.¹³¹
232. At its very first meeting the Board was asked to consider fees for exhibitions and fees for access to, or hiring of, the Centre’s facilities. Thereafter, the Board was regularly asked to endorse various project proposals that were presented to them by the Centre Director. These proposals had significant cost implications.
233. In evidence to the Committee, Mrs Morel-EdnieBrown confirmed that the Board was not provided with information about the Centre's financial position on a regular basis.¹³² Mrs Morel-EdnieBrown also stated -

I think that issue was raised by the board with Steve Wood on a number of occasions, but it was not my role to give the board that information.¹³³

234. The Board was aware that its deliberations had significant financial implications. They expressed concern about the lack of financial information available to them and consequently, in due course, requested more financial information.
235. Mrs Morel-EdnieBrown did not believe that that was the Board’s prerogative.

The board made recommendations about which programs should be undertaken. That is different from making recommendations on financial issues.¹³⁴

Finding 18

From the outset of its establishment, the Advisory Board should have been provided with sufficient financial information.

130 Ministry of the Premier and Cabinet, *Better Management - Corporate Governance Guidelines for Western Australian Public Sector Board Members*, 1999, p.9

131 Transcript of Evidence, 30/6/99, p.8

132 *ibid.*, p.31

133 *ibid.*, p.32

134 *ibid.*

236. From the outset of the Centre's operations, the Board was not distinctly advisory and its recommendations greatly influenced ultimate decision-making.
237. By mid-1998, the lack of financial information was becoming of considerable concern to the Advisory Board. Mr Wood then made undertakings to the Advisory Board to provide the Chairman of the Board with budget allocations and projections for the Centre for 1997-98 to 2001-02. Mr Wood stated in his covering letter -
- I understand from our discussions at the Board meeting, the concerns or potential tensions regarding responsibility for financial management. Proposals put to the Board in future will include an estimated cost. If at any stage the Board or any member of the Board wishes to discuss with me a concern over financial matters, I would be happy to do so.¹³⁵
238. However, the Advisory Board was not provided with regular financial updates and costings of proposed activities that could be matched against an overall financial plan for the Centre. Later in 1998, when it was becoming apparent that the Centre was expending funds and making commitments that were well in excess of its \$850,000 budget, the Advisory Board again sought increased financial information.
239. Advisory Board Minutes of 16 November 1998 state that the Advisory Board's Chairman requested that 'while the Advisory Board is not a Management Board, it does need to have regular reports on how the Centre's budget is performing, in order to minimise the risk of the board approving projects for which funds may not be available'.
240. Advisory Board Minutes of 8 February 1999 note that 'the Board will receive monthly financial reports at each Board Meeting and that all projects submitted to the Board would be costed. The Board sought the changes on the basis of increased transparency which would aid decision making, not increase its control over decision making.'
241. In evidence to the Committee, Mr Wood confirmed that the Board had not previously been supplied with the financial information on a regular basis,¹³⁶ but was now (since February 1999) being supplied with the information on a monthly basis.

¹³⁵ Letter from Mr S.Wood, Deputy Director General to Mr Malcolm McCusker QC, Chairman, Advisory Board, 15/6/98

¹³⁶ Transcript of Evidence, 27/7/99, p.20

Finding 19

In view of the *Corporate Governance Guidelines for Western Australian Public Sector Board Members*, the Committee finds -

- (a) Mrs Morel-EdnieBrown erred in asking the Board to make recommendations which had significant cost implications without providing adequate financial information relating to those proposals.**
- (b) Mr Wood erred in not providing the Board with regular financial information on the financial status of the Centre.**

Recommendation 3

That a revised 'Role of the Advisory Board' be drafted by the Ministry of the Premier and Cabinet.

That the draft stipulate that monthly financial reports and costings of proposals will be provided to the Advisory Board.

That the revised 'Role of the Advisory Board' be signed by the Deputy Director General, Federal and Constitutional Affairs, before being considered for adoption by the Advisory Board.

CHAPTER SIX

OTHER MANAGEMENT ISSUES

INFORMATION MANAGEMENT

242. The Committee's examination of files at the Constitutional Centre found that much information was not filed and that many files were created months after documentation was received or created by the Centre. For example, financial information relating to the 1997-98 financial year was on a file created in 1999. In evidence to the Committee, the Deputy Director General, Mr Wood, confirmed that 'the Centre had fallen behind in its filing'.¹³⁷
243. In further evidence to the Committee, Assistant Director General, Mrs Judge, stated -
- I understand that our records management section created a number of files, and the expectation was that the centre would place the documents on those files. That had not happened. The papers to which you refer had not been filed; therefore, they were just put on to files when we caught up with the backlog.¹³⁸
244. Inadequate information management was linked to budget and financial management problems caused by outstanding commitments and other costs not being accounted for.
245. In January 1999, a Ministry of the Premier and Cabinet officer reviewed all of the Centre's hard copy information. This involved creating and restructuring files to ensure appropriate information management at the Centre.
246. The Committee notes that, at the conclusion of its inquiry, the management of information relating to the period under examination, remained deficient (in that documents were not filed chronologically).

DESTRUCTION OF FILES AT THE MINISTRY OF THE PREMIER AND CABINET

247. The majority of files relating to the operations of the Constitutional Centre are housed at the Centre. A small number of files are housed in the records section of the Ministry. In May 1999, during the course of the Committee's inquiry, a file housed at the Ministry, relating to the position of Centre Director, was destroyed.

¹³⁷ Transcript of Evidence, 27/7/99, p.16

¹³⁸ *ibid.*

248. In evidence to the Committee, Mr Wood stated that the destruction of the file was part of a normal process of 'culling' files.¹³⁹ Mr Peter King, Acting Assistant Director General, Corporate and Business Services, further explained that -

We are required to keep those files for 12 months, and as a practice we normally keep them for around two years. We had storage problems due to a number of relocations which occurred on our floor, and we cleared files which were more than 18 months old. One of those files was the advertised vacancy file for the centre director position.¹⁴⁰

249. Mr King accepted responsibility for the destruction of the file which was carried out by staff of the Human Resource Services Branch, for which he is responsible. The Committee acknowledges that the destruction of files is a routine procedure and in this case was consistent with the General Disposal Authority, administered by the State Records Office.¹⁴¹

250. The Standing Orders of the Legislative Assembly of the Parliament of Western Australia state, amongst other things -

A Committee has power to send for persons, papers and records.¹⁴²

Therefore, during a parliamentary inquiry, all relevant files should be retained by the agency(s) involved in order to enable the Committee to discharge its responsibilities.

Finding 20

The Committee acknowledges that the destruction of files is a routine procedure and, in this case, was consistent with the General Disposal Authority, administered by the State Records Office.

Notwithstanding the provisions of the General Disposal Authority, the Ministry of the Premier and Cabinet should not have destroyed the file relating to the position of Centre Director, while the Committee was conducting its inquiry.

¹³⁹ Transcript of Evidence, 27/7/99, p.17

¹⁴⁰ Transcript of Evidence, 27/7/99, p.16

¹⁴¹ State Records Office (formerly Public Records Office of Western Australia) Library and Information Service of Western Australia. The Authority stipulates the period of time that records should be kept for a number of functional areas in agencies, including 'Establishment' (employment, recruitment).

¹⁴² Trial Standing Order 264. Normal Standing Orders were suspended by motion of the House on 7 September 1999 (to be trialed for the remainder of 1999). The trial Standing Order 264 replaced Standing Order 415(1) which stated with regard to the Public Accounts and Expenditure Review Committee - 'The Committee shall have power to send for persons, papers and records and to move from place to place.'

Recommendation 4

That the State Records Office General Disposal Authority be amended by including an instruction that any records that may possibly relate to an existing parliamentary committee inquiry must be retained by agencies until such time that the inquiry has been completed.

That all departments, statutory authorities, corporations and other government organisations be instructed not to destroy records that may possibly relate to a current parliamentary inquiry.

SIGNING AND DATING DOCUMENTS

251. A number of documents gathered as evidence were undated. A small number were found to be unsigned, and/or did not have the author's name printed. Other documents were found to have been signed using a photocopied signature without the person's knowledge (see Chapter Three).
252. The dating of documents, including contracts, letters and internal memoranda is a matter of normal administrative process. The dating of documents is of increased importance and relevance in the context of an inquiry where the chronology of events is a factor in determining the probity and effectiveness of actions taken.

Finding 21

The standard of documentation and the filing of that documentation relating to internal correspondence at the Constitutional Centre and the Ministry of the Premier and Cabinet were inadequate.

Recommendation 5

That the attention of Chief Executive Officers be drawn to the need for agencies to properly date, sign and file public records.

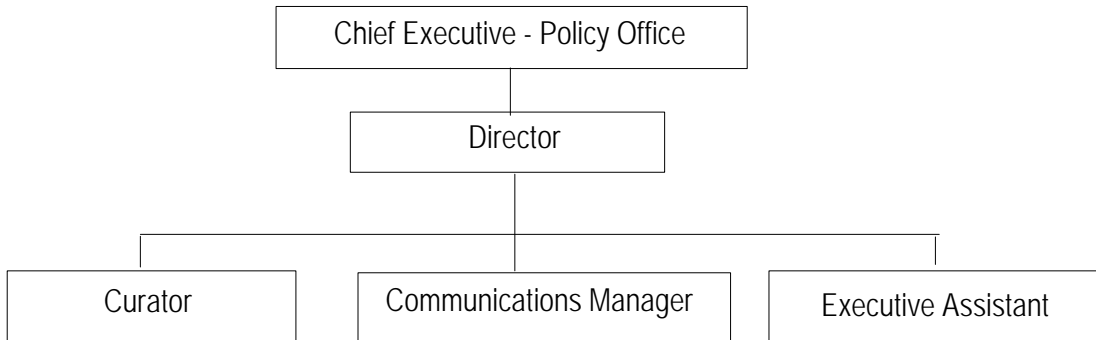
APPENDIX ONE

LIST OF WITNESSES

DATE	WITNESS	POSITION & ORGANISATION
30 June 1999	Mrs Felicity Morel-EdnieBrown	Principal Policy Officer Ministry of the Premier and Cabinet
30 June 1999 & 27 July 1999	Mr Stephen Wood	Deputy Director General Ministry of the Premier and Cabinet
30 June 1999 & 27 July 1999	Mrs Petrice Judge	Assistant Director General Federal and Constitutional Affairs Division Ministry of the Premier and Cabinet
27 July 1999	Mr Peter King	Acting Assistant Director General Corporate and Business Services Ministry of the Premier and Cabinet
27 July 1999	Mr Neil Logan	Acting Contracts Manager Ministry of the Premier and Cabinet

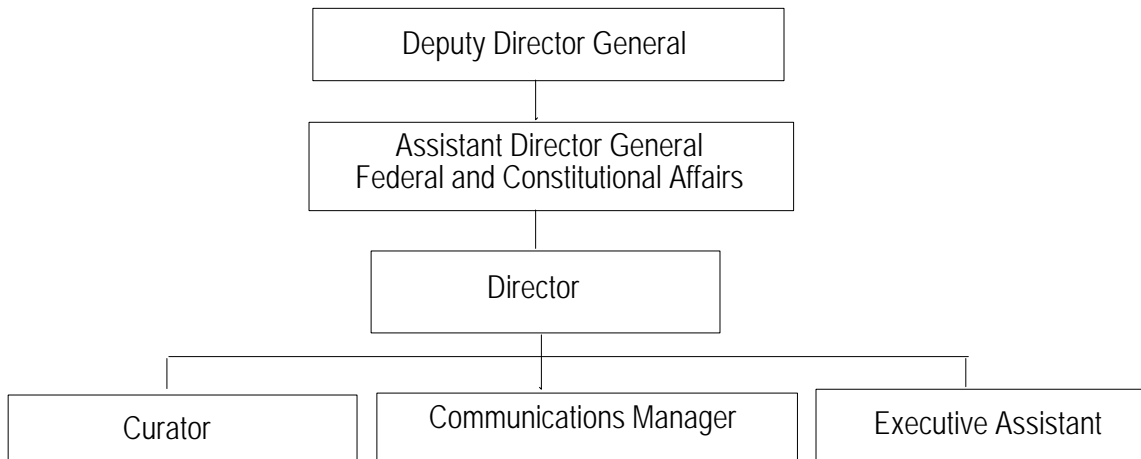
APPENDIX TWO

**Constitutional Centre Organisational Chart
From July 1997 to February 1998**



Note: A range of other staff such as consultants and various casuals were employed by the Centre as required.

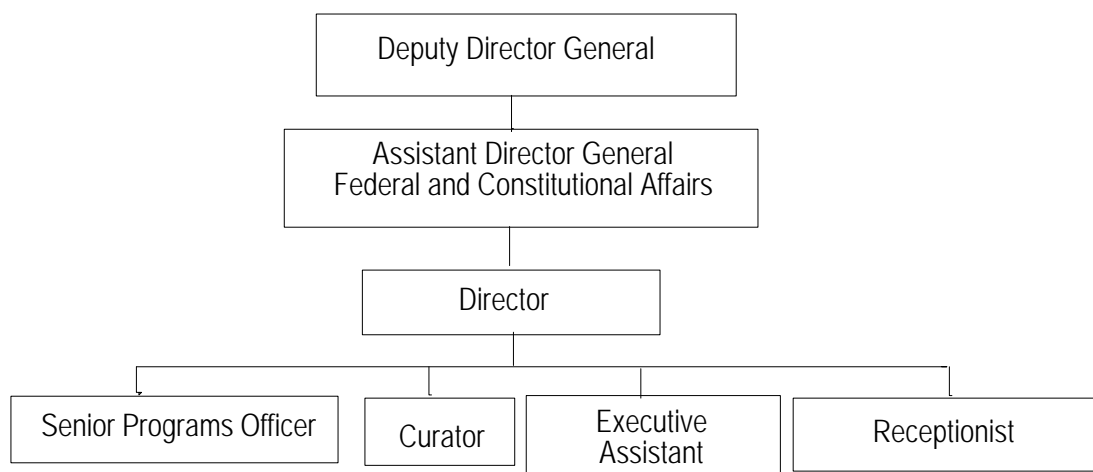
**Constitutional Centre Organisational Chart
From February 1998 to February 1999**



Note: A range of other staff such as consultants and various casuals were employed by the Centre as required .

Appendix Two cont'd.

**Constitutional Centre Organisational Chart
From February 1999**



Note: Casuals will be employed by the Centre when required.

APPENDIX THREE

[Available on request from Committee Assembly Office - Tel: [08] 92227 467]

APPENDIX FOUR

[Available on request from Committee Assembly Office - Tel: [08] 92227 467]