

The Auditor-General
Audit Report No.1 2009–10
Performance Audit

Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance

**Department of the Treasury
Department of the Prime Minister and Cabinet**

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of Australia 2009

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Canberra ACT
4 August 2009

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the *Department of the Treasury* and the *Department of the Prime Minister and Cabinet* in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit and the accompanying brochure. The report is titled *Representations to the Department of the Treasury in Relation to Motor Dealer Financing Assistance*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely



Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Abbreviations

AFP	Australian Federal Police
ANAO	Australian National Audit Office
APS	Australian Public Service
Auditor-General Act	<i>Auditor-General Act 1997</i>
CPGs	Commonwealth Procurement Guidelines
DPM&C	Department of the Prime Minister and Cabinet
FMA Regulations	<i>Financial Management and Accountability Regulations 1997</i>
Ford Australia	Ford Motor Company of Australia Limited
Ford Credit	FCA Holdings Limited trading as Ford Credit Australia Limited
MTAA	Motor Trades Association of Australia
PMO	Prime Minister's Office
PS Act	<i>Public Service Act 1999</i>
SPV	Special Purpose Vehicle
Treasury	Department of the Treasury

Summary

Summary

Introduction

1. In late October 2008, following the onset of the global financial crisis, two of the largest providers of wholesale floorplan finance¹ in Australia announced that they would cease offering motor finance from the end of 2008. Financiers and representatives of the automotive industry raised concerns with the Government about the effects of a sudden withdrawal of car financing and the inability of the market to accommodate viable dealerships. In this respect, the Department of the Treasury (Treasury) advised the Government that, in light of the role played by the Australian automotive industry in the economy, the withdrawal of two of the largest financiers, and potentially others, was likely to have adverse macroeconomic consequences. This was because, without access to finance, many car dealerships may be forced to close or scale-back their businesses.

2. In response to these circumstances, a Special Purpose Vehicle (SPV) of 'around' \$2 billion was announced by the Treasurer on 5 December 2008² to provide liquidity to car dealer financiers through the securitisation³ of wholesale floorplan loans provided to viable car dealers. The SPV was to be implemented by 1 January 2009 with the support of the four major banks. It was to be a transitional arrangement to operate for 12 months (after which its funding level would be run down) to enable viable dealers to establish new funding arrangements.

3. The announcement that the Australian Government would, through the SPV, intervene in the market to assist car dealers raised the possibility of dealers seeking further information or advice from Ministers' offices and/or Treasury concerning the scheme and its operation. An *Information Guide for Car Dealers* was released on 19 December 2008 setting out information on the SPV, how it would work, the eligibility criteria and the steps eligible dealers should

¹ Wholesale floorplan finance involves car dealerships borrowing funds to purchase the stock of cars they have on show.

² The Hon Wayne Swan, Treasurer of the Commonwealth of Australia, *Car Dealer Financing: Establishment of a Special Purpose Vehicle*, Media Release of 05/12/2008, No. 136.

³ Australian Government financial support for the SPV was to be through a guarantee expected to cover a minor proportion of the securities that would be issued.

be taking in seeking to secure wholesale floorplan financing. The Guide outlined that dealers would not have to communicate or interact with the SPV directly and should, in the first instance, apply for floorplan financing from a participating financier of their choice. In this respect, the Guide included contact details for the financiers expected at that time to participate in the SPV.

4. At the time the Guide was released, it was expected that the SPV would be established by 2 January 2009 but that it would need some time, particularly throughout January 2009, to become sufficiently capitalised and fully operational. Whilst the SPV was established on 2 January 2009, it was neither capitalised nor operational by the end of January 2009.⁴ In this context, Treasury informed the Australian National Audit Office (ANAO) that the policy environment and problems the SPV was seeking to address were evolving, which affected the need for and timing of implementation. Treasury further advised that these issues continued into the first few months of 2009.

5. In February 2009, Treasury advised the Treasurer and his Office that many dealers had obtained alternative ongoing wholesale floorplan finance as a result of the increased market confidence that had followed the announcement of Government intervention, combined with GE Money Motor Solutions and GMAC delaying their withdrawal. Nevertheless, the Motor Trades Association of Australia (MTAA) was raising concerns with Treasury that there were viable dealers that had been unable to secure alternative finance and was pressing Treasury to assist them. It was from February 2009 that some motor dealers found it necessary to approach their local Member, a Minister and/or Treasury to seek assistance with securing ongoing finance.

6. Questions were raised in the Parliament, and the media, during June 2009 concerning representations made to the Prime Minister and the Treasurer about assistance for individual motor dealers, and whether one representation made in relation to a dealership referred to as John Grant Motors, located in Ipswich, Queensland, had received favourable treatment. This led to questions in the Parliament as to whether the Prime Minister and/or Treasurer may have misled the Parliament.

⁴ One cause for the implementation delay was that some of the key contractual documents for the SPV had to be re-negotiated in light of the Government's decision to allow Ford Credit to participate in the SPV as a financier (rather than dealers who were previously financed by Ford Credit contracting with eligible financiers).

Audit objectives and scope

7. In two letters dated 19 and 22 June 2009, the Prime Minister requested a performance audit of a range of matters relating to representations to the Treasury regarding automotive finance arrangements for car dealers. In response to these requests, the Auditor-General decided that ANAO would undertake a performance audit under section 18 of the *Auditor-General Act 1997* (Auditor-General Act). The audit objective, based on the matters raised in the Prime Minister's correspondence and in the Parliament, was to examine and report on:

- any representations to the Treasury since October 2008 from all sources regarding automotive finance arrangements for car dealers, including any made in relation to John Grant Motors;
- the nature of these representations;
- the manner in which the representations were responded to by officials, having regard to any relevant standards and procedures; and
- any related administrative matters that came to attention.

8. The audit was planned and undertaken to obtain reasonable assurance that the audit conclusion is based on sufficient and appropriate evidence. Audit fieldwork was conducted between 22 June 2009 and 16 July 2009. ANAO:

- with the assistance of specialist resources, identified and examined relevant electronic and other records held by the Treasury and the Department of the Prime Minister and Cabinet (DPM&C) and met with relevant officials in those two departments;
- also with the assistance of specialist resources, identified and examined relevant electronic mail communications involving the Prime Minister's Office and the Treasurer's Office transacted through the computer systems provided by DPM&C, Treasury and the Department of Parliamentary Services. ANAO examined emails sent or received by all key officials and advisers, including emails that had been archived or held in deleted items folders; and
- through the powers provided by section 32 of the Auditor-General Act, interviewed various individuals so as to obtain information relevant to the audit objectives. These powers were used in relation to the Prime Minister and Treasurer as well as relevant staff in their respective

Offices,⁵ senior Treasury officials involved in the development and implementation of the SPV including Mr Godwin Grech,⁶ the Managing Director of Ford Credit and two motor dealers, namely: Mr Adam Kaplan, the principal of Hunter Holden in Ryde, Sydney (the motor dealer who made a representation to the Prime Minister) and Mr John Grant (the principal of Ipswich Central Motors/John Grant Motors).

9. The audit was conducted contemporaneous with, but separate to:
- an Australian Federal Police (AFP) investigation into whether an email had been sent from the Prime Minister's Office to Treasury referring for action a representation for financing assistance from an associate of the Prime Minister. The AFP has announced that preliminary results of its forensic examinations indicate that the email at the centre of its investigation has been created by a person or persons other than the purported author of the e-mail.⁷ The scope of the ANAO audit extended to all actual representations made to the Treasury. Accordingly, the matters being investigated by the AFP have a different focus to the work of the ANAO;
 - the Senate Standing Committee of Privileges inquiry into 'whether any adverse action was taken against Mr Godwin Grech in consequence of his evidence before the Economics Legislation Committee on 19 June 2009, and, if so, whether any contempt of the Senate was committed in that regard'; and
 - Treasury's consideration of probity matters and Australian Public Service (APS) Code of Conduct matters, as follows:
 - on 26 June 2009, Treasury advised the Treasurer that, in the light of recent departmental investigations in order to assist

⁵ Consistent with the focus of the audit objectives on representations to the Treasury and the handling of these representations, and having regard to the requirements of section 15 of the Auditor-General Act, the performance audit did not consider the actions of persons employed or engaged under the *Members of Parliament (Staff) Act 1984* other than the extent to which their actions related to the receipt and referral of representations to Treasury, and the way in which Treasury responded to those representations.

⁶ Mr Grech, an experienced Senior Executive Service Band 1 Treasury official, was primarily responsible for the implementation of the policy response to motor dealer industry liquidity issues.

⁷ Australian Federal Police, Media Release, *Update regarding investigation*, 22 June 2009, at <http://www.afp.gov.au/media_releases/national/2009/update_regarding_investigation> [accessed 9 July 2009].

with the AFP investigation and this ANAO audit, the department had decided not to proceed to activate the SPV until such time as certain questions concerning the establishment of the SPV had been resolved. Shortly before finalising this report, Treasury advised ANAO that its probity adviser had concluded the engagement of the Program Manager was defensible from a probity perspective; and

- Treasury advised ANAO that the Code of Conduct matters are under consideration.

10. In preparing this report, ANAO has been cognisant of the other processes currently in train.

Overall conclusion

11. Australia's parliamentary system is based on the principles of representative and responsible government. Members of Parliament are elected by the people to govern Australia in the public interest and individuals are able to approach Parliamentarians, including Ministers, for assistance. Ministers are expected to discharge their responsibilities in accordance with wide considerations of public interest; where arrangements are put in place to provide assistance to particular industries, this includes equitable treatment of industry participants, often based on publicly announced criteria.⁸

12. In December 2008, the Government decided to establish a SPV aimed at providing a possible source of finance for dealers previously financed by GE Money Motor Solutions, GMAC and possibly Ford Credit (which had yet to decide whether or not to continue operating in Australia). The increased market confidence that followed the announcement of Government intervention, combined with GE Money Motor Solutions and GMAC delaying their withdrawal, allowed many dealers to obtain ongoing wholesale floorplan finance from other providers. Nevertheless, concerns were raised by the motor dealer industry that there remained some viable dealers that had been unable to secure alternative finance. Against this background:

- at least 12 representations, either in writing or orally, were made between 2 February 2009 and 17 April 2009 on behalf of 10 eligible

⁸ Consistent with this principle, the December 2007 Standards of Ministerial Ethics outline a Minister's obligations in respect to integrity, fairness, accountability, responsibility and to act in the public interest.

motor dealers seeking assistance with securing ongoing wholesale floorplan finance;

- each representation received by Treasury was made through an appropriate channel. One oral representation was made personally to the Prime Minister (after an earlier written representation by this dealer, which the Treasurer's Office had referred to Treasury, had not been responded to by the department), eight were made to the Treasurer or his Office, and the remaining three were made direct to Treasury; and
- Treasury's response to the various representations varied markedly, from not responding to the representation to providing extensive, ongoing assistance to aid the dealer secure ongoing wholesale floorplan finance. The variability in Treasury's response⁹ did not reflect any instruction on the part of the Prime Minister or his Office, the Treasurer or his Office, or senior Treasury management that some representations were to receive more favourable treatment than others.

13. A particular focus of Parliamentary and public interest in this matter concerned:

- whether the Prime Minister or his Office was involved in the representation for assistance made in relation to Ipswich Central Motors/John Grant Motors, given the principal of this dealership is an acquaintance of the Prime Minister and had previously loaned a motor vehicle to the Prime Minister for use as a mobile electorate office; and
- whether the representation made in relation to Ipswich Central Motors/John Grant Motors received preferential treatment by the Treasurer or his Office.

14. ANAO's examination of relevant records and evidence obtained through interviews confirmed that one representation was made by a motor dealer personally to the Prime Minister. This dealer was not Ipswich Central Motors/John Grant Motors. The Prime Minister's Office forwarded the representation to the Treasurer's Office and Treasury. There was no evidence that either the Prime Minister or his Office played any role in any of the other

⁹ See Table 2.1 in the body of the report.

11 representations received by Treasury, including the representation made in relation to Ipswich Central Motors/John Grant Motors.

15. Concerning the issue of whether preferential treatment was given to Mr Grant's case, the Treasurer spoke briefly with Mr Grant, at the request of the Member for Oxley. Treasury was aware that the dealer was acquainted with the Prime Minister, but there is no evidence that the Prime Minister was aware of the representation, or that the Treasurer or his Office applied any pressure on Treasury to give this dealer more or better assistance than others.

16. Some attention has also focused on three progress reports in relation to the Ipswich Central Motors/John Grant Motors representation that were sent to the Treasurer's home facsimile. The available evidence is that the Treasurer had raised concerns that this representation indicated that delays in operationalising the SPV was having an adverse effect on motor dealers. The first report was provided at the initiative of the Departmental Liaison Officer in the Treasurer's Office so as to provide some reassurance to the Treasurer that, notwithstanding the delay with operationalising the SPV, viable dealers were still able to receive assistance. The second and third reports were provided at the initiative of Treasury, by using the 'Reply to All' function within the email system¹⁰, noting that the Treasurer was not in Brisbane when the second report was sent. Following the third report, as the Treasurer was not seeking ongoing updates on the status of this particular representation, the Treasurer's Office sought to indicate to Treasury that reports should not be sent to the Treasurer's home facsimile. No further updates were provided to the Treasurer in respect to the Ipswich Central Motors/John Grant Motors representation.

17. The approach taken to assist Ipswich Central Motors/John Grant Motors was proposed by Mr Grech and, when initial attempts to assist the dealer were unsuccessful, no further assistance was offered by Treasury, or sought by the dealer either from Treasury or Ministers. The dealer has since made arrangements for ongoing wholesale floorplan finance from other sources without further departmental assistance.

18. The audit also considered Treasury's development of the policy proposal to address the effects of reduced liquidity on motor dealers, and the

¹⁰ The Treasurer's home facsimile number is set up as an email address within the Treasury email system.

department's implementation of the policy following the Government's decision in early December 2008 to proceed with a SPV.

19. There was not a clear delineation between the policy and implementation phases given the urgency and evolving environment which required ongoing policy formulation. In this context, Treasury's approach to the development of the policy was sound, utilising independent expert advice and involving input from a range of key stakeholders. However, there was less attention given to management of the implementation of the policy measure.

20. Treasury has informed ANAO that, as an experienced Senior Executive Service (SES) officer, Mr Grech had been encouraged to raise any resourcing issues with senior management. Senior Treasury management testified to ANAO that Mr Grech was offered extra support as required, but always gave the impression that implementation was on track. Nevertheless, there was evidence that implementation was lagging, suggesting the need for Treasury to allocate additional resources and skills in light of:

- the short timeframe;
- the complexities of the SPV;
- the need to contract various advisers and service providers; and
- the need to manage responses to representations received.

21. The under-resourcing of the implementation phase of the policy placed at risk the anticipated policy outcomes. It also placed a considerable workload on Mr Godwin Grech, the Treasury official primarily responsible for the development and implementation of the policy measure, particularly in light of his medical condition.

22. ANAO's examination of the implementation phase of the policy also raised serious questions as to whether the Code of Conduct has been breached by Mr Grech. Specifically, ANAO's audit work included examination of evidence that indicated:

- confidentiality about dealings with Ministers and their staff was not maintained in relation to important elements of the development and implementation of the SPV, and the handling of some representations referred to Treasury by Ministers or their Offices;
- some of the email communications and interactions with third parties were inappropriate;

- improper use was made of confidential information in order to assist various outside parties; and
- preferential treatment¹¹ given to one representation was motivated by, amongst other things, the personal circumstances of the dealer principal and Mr Grech's understanding that the dealer principal was a supporter of, and donor to, the Liberal Party of Australia, with other records made by the official stating that he was 'Lib'.¹²

23. Treasury advised ANAO that these matters are under consideration.

24. Against the above background, this audit reinforces the importance of effective implementation to achieving policy goals. Amongst other things, implementation requires effective governance, risk management, procurement and contract management, the right type and quantum of resources, and oversight and review.¹³ The experience of the issues arising from the implementation of the motor dealer financing SPV is a timely reminder for Treasury, and public service agencies more generally, that strength in policy development needs to be matched by strength in program delivery to achieve desired outcomes.

25. The audit has not made any recommendations to Treasury as ANAO did not examine, in the time available, whether the policy implementation shortcomings identified are isolated or more widespread. However, Treasury is encouraged to review its practices more broadly in the light of the matters raised in this report so that the culture of the department, which is committed to providing quality advice to government, absorbs the experience in a positive manner.

¹¹ See further at the third dot point of paragraph 28.

¹² Testimony to ANAO by Mr Grech was that his motivation in drawing attention to these factors was to try and secure support for the passage through the Parliament of the *Car Dealership Financing Guarantee Appropriation Bill 2009*.

¹³ ANAO and Department of the Prime Minister and Cabinet, *Implementation of Programme and Policy Initiatives: Making implementation matter*, October 2006, p. 26.

Key findings by chapter

Representations for assistance to individual eligible motor dealers (Chapter 2)

26. In the course of this performance audit, ANAO identified 12 representations made either in writing or orally between 1 October 2008 and 30 June 2009 by, or on behalf of, eligible motor dealers. No representations for assistance to eligible motor dealers were made until 2 February 2009, after the publicly advised timetable for the SPV becoming operational had passed. The last identified representation was made on 17 April 2009.

27. The 12 representations were made by, or on behalf of, 10 motor vehicle dealers (two dealers each made a second representation after Treasury did not respond to the initial representation). Of the 12 representations, nine had been referred to Treasury, with three received direct by Treasury.

28. Each of the representations was seeking, to varying extents, assistance to obtain ongoing wholesale floorplan finance, either through the SPV or otherwise. Treasury's response to these representations varied markedly, as follows:

- five of the representations received very little or no direct assistance from Treasury;
- in another six instances, Treasury provided directly or indirectly a moderate level of assistance. Principally, this involved providing information on the operation of the SPV and/or referring the dealer to possible alternative financiers. The representations in this category included Ipswich Central Motors/John Grant Motors and a separate representation made directly to the Prime Minister;¹⁴ and

¹⁴ The dealer had first contacted the Treasurer's Office in February 2009, but Treasury had not provided the dealer with any assistance. Two and a half months later, the dealer approached the Prime Minister at a function in Ryde, seeking assistance. At the Prime Minister's request, the Prime Minister's Office relayed the representation to the Treasurer's Office and Treasury. The Prime Minister's Office also sought an update on the operation of the SPV, so as to assess whether the concerns expressed by the dealer may have been widespread. In respect to the second representation from this dealer, Treasury discussed the dealer's situation with an industry representative body. In a later brief providing an update on the SPV, Treasury, based on advice provided to it, included a statement to the Prime Minister that the dealer had secured finance (the Prime Minister never saw this brief). However, finance had not been secured (negotiations with the financier were not concluded) and, ultimately, the dealer arranged his own ongoing finance with Treasury unaware of, and not involved with, this process.

- one representation was provided with significantly more assistance than any other dealer, over a longer period of time. Mr Grech sought to negotiate new wholesale floorplan finance with a number of different financiers, and persisted when initial attempts were unsuccessful (which was different to the approach to a number of other dealers where no assistance was provided and/or no further assistance was provided when initial efforts were unsuccessful). Mr Grech also assisted the dealer with advice on options for rearranging the dealer's finances to assist it obtain ongoing finance.

29. Three representations, including Mr Grant's case, were raised by Treasury with Ford Credit. With the objective of assisting Ford Credit to continue operating in Australia, the Government had taken a decision in December 2008 to allow Ford Credit to participate in the SPV. At that time, however, the terms and conditions of Ford Credit's participation had yet to be settled. Accordingly, it was not the case that the Ipswich Central Motors/John Grant Motors representation was raised with Ford Credit at the time Ford Credit was seeking government assistance.

30. Nevertheless, as the commercial arrangements with Ford Credit and other financiers that were expected to participate in the SPV had not been settled, it was inadvisable for Treasury to do more than either referring dealers to potential financiers known to be active in the market, or asking the contracted Program Manager to provide assistance.¹⁵ In addition, it was not prudent for Treasury to indicate to Ford Credit that Mr Grant knew the Prime Minister and Treasurer, notwithstanding that Ford Credit has testified to ANAO that it felt in no way pressured to offer finance to Ipswich Central Motors/John Grant Motors.

Administrative matters (Chapter 3)

31. Access to financing for the motor dealer industry was one of a number of significant policy issues being worked on by the Treasury in the latter part of 2008 and into 2009 as a result of the onset of the global financial crisis. For motor dealers, two of the largest providers of wholesale floorplan finance in Australia had announced in late October 2008 that they would cease offering motor finance from the end of 2008. There were also concerns that dealers

¹⁵ On 11 June 2009, Treasury amended the contact details published on its website to indicate that inquiries should be directed to the Program Manager.

whose floorplan facilities were provided by other financiers might similarly be affected should those financiers withdraw or scale-back their operations. Industry bodies, and the Treasury, concluded that addressing what was seen as a market failure was necessary so as to avoid a significant contraction in the number of operating dealerships and the consequential impacts on economic activity and employment.

32. Treasury adopted a sound approach to developing the original policy response to meeting the funding gap resulting from the announced departure of GE Money Motor Solutions and GMAC, and the possible departure of Ford Credit. The outcome was a Government decision to establish, with the support of the four major banks, a SPV to provide wholesale floorplan financing to eligible dealers.¹⁶

33. Treasury advised ANAO that the policy environment and problems the SPV was seeking to address was evolving which affected the need for and timing of implementation. The Treasurer's Office was provided with briefings on these developments.

34. Nevertheless, there were a number of significant weaknesses in Treasury's implementation of the Government's policy decisions to address liquidity issues for the motor dealer industry. The challenges involved in turning a policy measure into effective outcomes, and the skills and effort required to do so may not always be fully appreciated.¹⁷ Further, in situations where timing imperatives have curtailed the consideration of implementation issues, the risks to successful implementation increase markedly.¹⁸ The delayed implementation of the SPV led directly or indirectly to a number of motor dealers approaching their local Member, a Minister and/or Treasury to seek assistance with securing ongoing finance.

35. In terms of administrative matters, there would have been benefit in Treasury devoting more resources, with a range of skills, to the implementation of the policy response to motor dealer industry liquidity issues. Over-reliance on a single individual was particularly problematic in this

¹⁶ One of the key criteria was that the dealership be demonstrably a viable business consistent with the usual commercial lending criteria of recognised finance providers.

¹⁷ ANAO and Department of the Prime Minister and Cabinet, *Implementation of Programme and Policy Initiatives: Making implementation matter*, October 2006, Foreword.

¹⁸ ANAO and Department of the Prime Minister and Cabinet, *Implementation of Programme and Policy Initiatives: Making implementation matter*, October 2006, p. 9.

case as it meant there was no division of responsibilities¹⁹ in the implementation of the policy measure, which involved private sector parties being contracted through direct sourcing arrangements, and departmental liaison with a range of stakeholders and other parties. In addition:

- while the risk of SPV implementation being delayed was recognised, Treasury did not develop any explicit project plans or contingency arrangements for how the department would address the identified market failure in the event that there was a substantial delay in the SPV commencing operations;
- Treasury did not maintain accurate records of all representations received, and whether the dealers concerned (presuming they were viable) had been able to secure finance with or without Treasury's assistance.²⁰ Maintaining such records was important as it would have assisted Treasury to assess the extent to which the delay with implementing the SPV was having an adverse effect on otherwise viable dealers;
- there was reporting within Treasury and to Ministers or Minister's Offices in relation to aspects of certain representations, but limited oversight of what assistance, if any, was being provided to other dealers. The nature of any assistance being provided in response to some of the representations, and the reasons, was not well understood within Treasury until recently; and
- the procurements and approval of third party service providers made by Treasury in respect to the SPV were undertaken through a direct sourcing process with a single supplier approached and contracted. Whilst the Commonwealth Procurement Guidelines permit direct sourcing in urgent circumstances such as those faced by Treasury, the department:
 - did not record the circumstances and conditions that Treasury considered justified the use of a procedure other than a tender process;

¹⁹ Segregation of duties is an accepted internal-control measure.

²⁰ More broadly, important records concerning the development and implementation of the SPV had also not been captured into Treasury's official record-keeping systems.

- did not make adequate records as to how the parties that were direct-sourced were identified as being the only party to be approached;
- agreed to various engagements before it had obtained a quote or estimate from the contractor. This approach seriously weakens the Commonwealth's negotiating position and provides little comfort that the Commonwealth is receiving value for money in agreeing to the contractual arrangements;
- once a quote or estimate was obtained, did not document the basis on which it was satisfied that the engagement terms represented value for money;
- gave insufficient priority to documenting the engagement terms, resulting in extended delays in contracts being prepared and signed; and
- did not promote accountability and transparency for these procurements, with only one of the procurements published on AusTender.

36. There are also serious questions as to whether the APS Code of Conduct has been breached by Mr Grech in certain respects. This was particularly in relation to the disclosure of confidential information to parties outside executive government that had no entitlement to this information, and the nature of some of the email communications and other interactions with third parties.

37. Given the focus of the audit, in the time available ANAO did not examine whether the implementation shortcomings are representative of Treasury's processes when implementing policy initiatives, or more broadly in respect to procurement practices and records management.

Summary of agency response

38. A proposed report was circulated to relevant departments and others who had a special interest in it (as defined in the Auditor-General Act) on 17 July 2009.

39. Section 19(5) of the Auditor-General Act states that **the Auditor-General must, in the final report, include all written comments received** from recipients of the proposed report, or an extract of the proposed report. Formal comments were provided by Treasury, Credit Suisse (the Program

Manager) and Mr Godwin Grech²¹. These comments are included in full²² in Appendix 1 of the report. Where considered appropriate, the report has been amended in the light of those comments. In addition, where relevant information had been provided by those people interviewed by ANAO, this has been taken into account in the preparation of the final report, including in response to formal comments made by recipients of the proposed report. In other areas where a response has raised a broader issue not central to the audit objectives, the matters have not been examined by the ANAO in the time available. Treasury also provided a summary of its formal comments, which is reproduced below.

Treasury

The Department of the Treasury (the Treasury) notes the key findings of the Audit Report titled *Representations to the Department of the Treasury in relation to motor dealer financing assistance*, and in response will undertake a broader review of its internal processes and practices in regard to policy implementation.

The Treasury also notes the findings that there is no evidence that either the Prime Minister or his Office made representations to the Treasury in relation to Ipswich Central Motors/John Grant Motors, or that the Treasurer or his Office applied any pressure on the Treasury to give this dealer more or better assistance than other dealers. These findings accord with the Treasury's understanding of the representations.

The Treasury notes that the investigations undertaken by the ANAO have raised serious questions as to whether the APS Code of Conduct has been breached by Mr Grech. These issues relate to indications of inappropriate dealings with third parties, improper use of confidential information, and politically motivated actions. These and other related matters are being investigated internally by the Treasury.

²¹ In providing comments to ANAO, Mr Grech's lawyer advised ANAO that: 'Mr Grech understands that, pursuant to sub-section 19(5) of the *Auditor-General Act 1997*, all of his comments will be taken into account in the ANAO publishing its final report and that they (his comments) will be published along with the final report.'

²² Apart from two representations explicitly identified by the Treasurer or the Prime Minister in their statements in the Parliament, given commercial and other relevant considerations, ANAO has not specifically identified the other individual dealers who made representations for assistance. Some formal comments on the proposed report identified a third dealer by name, and ANAO has edited these comments so as to not identify the dealer concerned, without otherwise affecting the comments provided on the proposed report.

The Treasury accepts the conclusion by the ANAO that there were significant weaknesses in implementation of the OzCar facility, and notes that this conclusion needs to be considered in the context of the issues which have been raised concerning Mr Grech's conduct. While the conduct matters remain under investigation, it would be inappropriate to express a determined view on them. However, as things presently stand (and subject to further investigation and any input from Mr Grech) it does appear that weaknesses outlined in the Audit Report regarding the implementation of the OzCar facility were substantially contributed to by actions of an individual officer.

While acknowledging the benefits of adequate resourcing for policy implementation and adherence to proper processes, the Treasury observes that the more serious issues identified by the ANAO, including the delay in implementation, may not have been substantively prevented through the provision of additional resources and improved internal processes.

In addition to the response to this Audit Report as noted above, the Treasury will also:

- ensure that the matters raised in respect of Mr Grech's conduct are dealt with appropriately; and
- address any consequential issues concerning the activation of the OzCar facility.

Audit Findings and Conclusions

1. Introduction

This chapter outlines the background to the audit and describes the audit objectives and approach.

Background

1.1 The automotive dealer financing industry is a specialised business. In recent years, in the order of 12 financiers have been operating in the Australian market.

1.2 In late October 2008, following the onset of the global financial crisis, two of the largest providers of wholesale floorplan finance in Australia announced that they would cease offering motor finance in Australia and New Zealand from the end of 2008. The Department of the Treasury (Treasury) advised the Government that, in light of the role played by the Australian automotive industry in the economy, the withdrawal of two of the largest financiers, and potentially others, was likely to have adverse macroeconomic consequences. This was because, without access to finance, many car dealerships may be forced to close or scale-back their businesses.

1.3 After obtaining input from an independent expert (Mr David Murray AO, Chair of the Future Fund Board of Guardians and the former Chief Executive Officer of the Commonwealth Bank of Australia), the major banks and representative organisations for the motor dealer industry, a Special Purpose Vehicle (SPV) of 'around' \$2 billion was announced by the Treasurer on 5 December 2008.²³ The SPV was to provide liquidity to car dealer financiers through the securitisation²⁴ of wholesale floorplan loans provided to viable car dealers.²⁵

1.4 The SPV was to be implemented by the end of January 2009 with the support of the four major banks. It was to be a transitional arrangement to operate for 12 months (after which its funding level would be run down over a

²³ The Hon Wayne Swan, Treasurer of the Commonwealth of Australia, *Car Dealer Financing: Establishment of a Special Purpose Vehicle*, Media Release of 05/12/2008, No. 136.

²⁴ Australian Government financial support for the SPV was to be through a guarantee expected to cover a minor proportion of the securities that would be issued.

²⁵ The SPV was to be available to both new vehicle and mixed vehicle dealerships that trade cars, trucks, motorbikes, boats, caravans and other commercial vehicles. The SPV was to meet the funding gap resulting from the departure of GE Money Motor Solutions and GMAC as well as, possibly, Ford Credit.

six month period) to enable viable dealers to establish new funding arrangements.

1.5 The available evidence is that the 5 December announcement provided some confidence to the motor dealer financing market²⁶ which, combined with a more orderly wind down by GE Money Motor Solutions and GMAC of their loan books than had originally been expected, enabled a number of dealers to obtain a new source of finance. Nevertheless, there remained some dealers previously financed by GE Money Motor Solutions or GMAC that had not secured ongoing finance. In this respect, between the 5 December announcement and June 2009, at least 12 representations from, or on behalf of, eligible motor dealers seeking assistance with securing finance were made either in writing or orally to the Prime Minister or the Treasurer or their respective Offices or departments.

Matters raised in the Parliament

1.6 On 4 June 2009, at a Budget Estimates hearing of the Senate Economics Legislation Committee, Treasury officials were questioned about whether representations had been made to Minister's and/or Treasury by Members of Parliament for individual dealerships.²⁷ Treasury advised the Committee that it had received representations in relation to individual dealerships from the Prime Minister's Office and the Treasurer's Office as well as from certain Government and Opposition backbench Parliamentarians. During the hearing, questions were specifically asked about any assistance provided to a dealership referred to as John Grant Motors located in Ipswich, Queensland.

1.7 Later on 4 June 2009, during Question Time in the House of Representatives, the Leader of the Opposition asked the Prime Minister and the Treasurer questions concerning any representations made on behalf of John Grant Motors to assist with accessing finance through the SPV. On 15 June 2009, further questions were asked of the Prime Minister and Treasurer during

²⁶ See, for example, evidence to the Senate Economics Committee on 19 June 2009 by FCA Holdings, known as Ford Credit, (*Hansard*, Senate Economics Legislation Committee, 19 June 2009, p. E2) as well as by Motor Trades Association of Australia (*Hansard*, Senate Economics Legislation Committee, 19 June 2009, p. E14).

²⁷ *Hansard*, Senate Economics Legislation Committee, 4 June 2009, pp. E34–E41.

Question Time in the House of Representatives.²⁸ The issue of representations relating to motor dealer financing was further addressed in the House of Representatives on 22 June 2009. Table 1.1 sets out the key statements made by the Prime Minister and the Treasurer in the House of Representatives on these dates.

1.8 On 16 June 2009, the Senate referred the *Car Dealership Financing Guarantee Appropriation Bill 2009*²⁹ to the Economics Legislation Committee for inquiry and report by Tuesday, 23 June 2009. A public hearing was held in Canberra on Friday 19 June 2009. At this hearing, Treasury gave further evidence regarding representations made by the Treasurer's and Prime Minister's Offices. During the testimony, the more senior Treasury official attending indicated that Treasury had been unable to locate any relevant correspondence, email or otherwise, from the Prime Minister's Office to Treasury concerning Mr John Grant. However, another Treasury official, Mr Godwin Grech,³⁰ stated that, to his recollection, he had seen a short email from the Prime Minister's Office which alerted him to the case of John Grant Motors.³¹ It was further stated that the relevant Treasury official had developed the 'the impression that he [Mr Grant] was not your average constituent' because of 'a general understanding that Mr Grant had some relationship of some type with at least the Treasurer.'

1.9 Some of the Treasury testimony given by Mr Grech during these proceedings was inconsistent with statements made by the Treasurer and Prime Minister in the House of Representatives (see Table 1.1), particularly the statements with respect to the involvement of the Prime Minister or his Office in making representations on behalf of John Grant Motors, whether any such representation resulted in more favourable treatment for Ipswich Central Motors/ John Grant Motors than other dealers and whether the Treasurer had

²⁸ The SPV was also mentioned briefly by the Treasurer in the House of Representatives on 16 June 2009. In addition, on 17 June 2009, the Treasurer was asked to reaffirm to the House that there would be no attempt to prevent any official appearing before the Senate Economics Legislation Committee inquiry and would he provide promptly to senators any and all documentation casting light on the nature of the representations made by ministers or their officers on behalf of Mr John Grant.

²⁹ The Commonwealth Government is making no monetary contribution to the SPV but has provided a guarantee to securities issued by the scheme which hold less than an AAA credit rating. The *Car Dealership Financing Guarantee Appropriation Act 2009* provides an appropriation to fund any claims made on this guarantee.

³⁰ Mr Grech, an experienced Senior Executive Service Band 1 Treasury official, was primarily responsible for the implementation of the policy response to motor dealer industry liquidity issues.

³¹ *Hansard*, Senate Economics Legislation Committee, 19 June 2009, p. E38.

taken a greater interest in the issue due to Mr Grant's association with the Prime Minister. This led to questions in the Parliament as to whether the Prime Minister and/or Treasurer may have misled the Parliament.

Table 1.1

Key statements made by the Prime Minister and the Treasurer in the Parliament concerning motor dealer financing representations

Date	Prime Minister	Treasurer
4 June '09	<p>'I am unaware of any representations being made on behalf of [Mr John Grant] concerning the [OzCar SPV] program.'</p> <p>'...the one recollection I have of a member of the public approaching me about their possible access to the car dealership finance arrangement was in fact a car dealership in the seat of Bennelong. It was at a small business function that I attended with the member for Bennelong. ...This representative said to me that they were experiencing difficulties in their car dealership and asked if the program was up and running. Upon my return to my office I mentioned that fact to my office. What subsequently occurred in relation to that individual car dealer I have no idea, but I actually said that this is what representation had been made to me. My recollection is that this is the only car dealer who has made such a representation to me; that is the occasion that I recall. If representations were subsequently made by my office concerning that particular dealership, it would be consistent with the representations that were made to me at that time. That is the sum total of my knowledge of it.'</p>	<p>'It is true that the government established a special purpose vehicle to deal with problems in the financing of car dealerships. As a consequence of that, there have been numerous representations made to members of parliament from car dealers right around the country—numerous representations which have been forwarded on to my office and in turn forwarded on to the responsible officials in the Treasury for consideration. ...It is the case that Mr Grant made representations to my office, and he was referred on to the SPV, just like everybody else. I have no idea what the outcome of that was.'</p> <p>'I can say I have had no discussions with the Prime Minister about this matter whatsoever—none whatsoever. I am happy to look at what communications have taken place between my office and other offices. I am happy to do that, and I am sure there were a number of communications between my office and many over there and many over there. But, in the case of the Prime Minister and me, there were none.'</p> <p>'There would have been many, many representations to my office from members of parliament, and they would have been dealt with in a variety of ways.'</p>

Date	Prime Minister	Treasurer
15 June '09	<p>'...in terms of representations that have been made by various members in this place, I am also advised that in addition to the car dealer from Sydney who spoke to me, Mr Kaplan, from Hunter Holden in Sydney, which I referred to the other day in answer to the honourable member's question, there have also been representations to the government from the member for Riverina, the member for Dunkley, the member for Murray and, of course, the member for Dawson as well.'</p>	<p>'Mr Grant approached my office. He was referred to a departmental liaison officer who then referred him on to the relevant section of the department. Mr Grant would have received the same assistance as any other car dealer who was referred through that process received.'</p>
22 June '09	<p>'Mr Grant has denied ever having made representations to me on the matter. Second, I know for a fact that I have received no representations from him on this matter. Third, my staff have advised me that they have received no representations from him on this matter. Fourth, my staff have advised me they have made no representations to the Treasury on this matter...'</p>	<p>'Mr Grant received no benefit from OzCar and he received no assistance whatsoever from Ford Credit—no assistance at all—and that is the very basis of the allegation that has been made. We also were confronting a very serious situation where many car dealers were not able to access finance and we took the same steps to help other car dealers that we took in the case of Mr Grant—the same steps.'</p> <p>'I am advised that two dealers, in fact, had more communications made on their behalf to assist them to secure new financing than did John Grant. In one case a dealer had approximately double the number of communications made on their behalf.'</p> <p>'We had decided to set up OzCar, but it had not yet been fully established. And what Mr Grech was simply doing in the case of Mr Grant and others was working as a public servant to put those firms that were already out there with the capacity to fund dealers in contact with dealers who were going to lose their finance. ...I cannot vouch for everything that Mr Grech was doing but I do know what he was doing in this instance. He was referring dealers who thought that they would not have finance to finance companies that might have provided it. It was standard operating procedure.'</p>

Source: ANAO analysis of Hansard.

Audit objective and approach

1.10 In two letters dated 19 and 22 June 2009, the Prime Minister requested a performance audit of a range of matters relating to representations to the Treasury regarding automotive finance arrangements for car dealers. In response to these requests, the Auditor-General decided that the Australian National Audit Office (ANAO) would undertake a performance audit under section 18 of the *Auditor-General Act 1997* (Auditor-General Act). The audit objective, based on the matters raised in the Prime Minister's correspondence and in the Parliament, was to examine and report on:

- any representations to the Treasury since October 2008 from all sources regarding automotive finance arrangements for car dealers, including any made in relation to John Grant Motors;
- the nature of these representations;
- the manner in which the representations were responded to by officials, having regard to any relevant standards and procedures; and
- any related administrative matters that came to attention.

Other investigations and inquiries

1.11 Some issues raised by this report are subject to separate processes.

Australian Federal Police

1.12 In a press conference at Parliament House on the evening of 19 June 2009, the Prime Minister stated that searches by the Department of the Prime Minister and Cabinet (DPM&C) and Treasury had not located an email from the Prime Minister's Office to Treasury concerning a representation from Mr John Grant. Based on this evidence, the Prime Minister stated that he had concluded that the email mentioned in the hearing earlier that day of the Senate Economics Legislation Committee was 'false'.

1.13 Separate to the Prime Minister's request that the ANAO undertake a performance audit, on 20 June 2009 the Secretary of the Attorney-General's Department requested that the Australian Federal Police (AFP) investigate whether a false email, which purported to relate to the performance of functions by a Commonwealth public official, may have been created and

distributed.³² On 22 June 2009, having regard to the public interest in their investigation, the AFP released a statement that it:

can confirm in relation to the investigation of matters referred to it by the Attorney-General's Department on Saturday 20 June 2009, that a preliminary forensic investigation of computers located at a premises in Calwell and at the offices of the Department of Treasury has been undertaken.

Preliminary results of those forensic examinations indicate that the e-mail referred to at the centre of this investigation has been created by a person or persons other than the purported author of the e-mail.

A 42-year-old Calwell man has been interviewed by the AFP in relation to this matter and it will be alleged that the interview is consistent with preliminary forensic advice.

As the investigation is continuing the AFP does not intend to make any further comment at this stage.³³

1.14 The scope of the ANAO audit extended to all actual representations made to the Treasury. Accordingly, the matters being investigated by the AFP have a different focus to the work of the ANAO.

Senate Standing Committee of Privileges

1.15 The Senate Standing Committee of Privileges is also undertaking an inquiry into 'whether any adverse action was taken against Mr Godwin Grech in consequence of his evidence before the Economics Legislation Committee on 19 June 2009, and, if so, whether any contempt of the Senate was committed in that regard.'

Probity review

1.16 On 26 June 2009, Treasury advised the Treasurer that, in the light of recent departmental investigations in order to assist with the AFP investigation and this ANAO audit, the department had decided not to proceed to activate the SPV until such time as certain questions concerning the establishment of the SPV had been resolved. To this end, Treasury sought probity advice as to whether it would be improper, or there would be any legal risk, for the

³² McClelland, R (Attorney-General) 2009, Australian Federal Police Investigation, media release, Parliament House, Canberra, 20 June 2009.

³³ Australian Federal Police, Media Release, *Update regarding investigation*, 22 June 2009, at http://www.afp.gov.au/media_releases/national/2009/update_regarding_investigation [accessed 9 July 2009].

Commonwealth to proceed to implement the SPV. Treasury's formal comments on the proposed report of this audit (included at Appendix 1) outline the outcome of the department's probity review.

Audit approach

1.17 The audit was planned and undertaken to obtain reasonable assurance that the audit conclusion is based on sufficient and appropriate evidence. Audit fieldwork was conducted between 22 June 2009 and 16 July 2009. ANAO:

- with the assistance of specialist resources, identified and examined relevant electronic and other records held by the Treasury and DPM&C and met with relevant officials in those two departments;
- also with the assistance of specialist resources, identified and examined relevant electronic mail communications involving the Prime Minister's Office and the Treasurer's Office transacted through the computer systems provided by DPM&C, Treasury and the Department of Parliamentary Services. ANAO examined emails sent or received by all key officials and advisers, including emails that had been archived or held in deleted items folders; and
- through the powers provided by section 32 of the Auditor-General Act, interviewed various individuals so as to obtain information relevant to the audit objectives. These powers were used in relation to the Prime Minister and Treasurer as well as relevant staff in their respective offices,³⁴ senior Treasury officials involved in the development and implementation of the SPV including Mr Godwin Grech, the Managing Director of Ford Credit and two motor dealers, namely: Mr Adam Kaplan, the principal of Hunter Holden in Ryde, Sydney (the motor dealer who made a representation to the Prime Minister) and Mr John Grant (the principal of Ipswich Central Motors/John Grant Motors).

1.18 A proposed report was circulated to relevant departments and others who had a special interest in it (as defined in the Auditor-General Act) on

³⁴ Consistent with the focus of the audit objectives on representations to the Treasury and the handling of these representations, and having regard to the requirements of section 15 of the Auditor-General Act, the performance audit did not consider the actions of persons employed or engaged under the *Members of Parliament (Staff) Act 1984* other than the extent to which their actions related to the receipt and referral of representations to Treasury, and the way in which Treasury responded to those representations.

17 July 2009. The due process established by the Auditor-General Act provides up to 28 days for recipients of a proposed report, or an extract, to provide the ANAO with comments before the final report is prepared and tabled. Nevertheless, in the interests of meeting the requested reporting date of 31 July 2009, recipients of the proposed report were asked to respond in seven days if possible.

1.19 The ANAO appreciated the high level of cooperation of all parties interviewed during the course of the audit, and from respondents who provided timely comments on the proposed report or extracts from it.

1.20 Section 19(5) of the Auditor-General Act states that **the Auditor-General must, in the final report, include all written comments received** from recipients of the proposed report, or an extract of the proposed report. Formal comments were provided by Treasury, Credit Suisse (the Program Manager) and Mr Godwin Grech³⁵. These comments are included in full³⁶ in Appendix 1 of the report. Where considered appropriate, the report has been amended in the light of those comments. In addition, where relevant information had been provided by those people interviewed by ANAO, this has been taken into account in the preparation of the final report, including in response to formal comments made by recipients of the proposed report. In other areas where a response has raised a broader issue not central to the audit objectives, the matters have not been examined by the ANAO in the time available.

1.21 The audit was conducted in accordance with ANAO auditing standards at a cost to the ANAO of \$225 000.

³⁵ In providing comments to ANAO, Mr Grech's lawyer advised ANAO that: 'Mr Grech understands that, pursuant to sub-section 19(5) of the *Auditor-General Act 1997*, all of his comments will be taken into account in the ANAO publishing its final report and that they (his comments) will be published along with the final report.'

³⁶ Apart from two representations explicitly identified by the Treasurer or the Prime Minister in their statements in the Parliament, given commercial and other relevant considerations, ANAO has not specifically identified the other individual dealers who made representations for assistance. Some formal comments on the proposed report identified a third dealer by name, and ANAO has edited these comments so as to not identify the dealer concerned, without otherwise affecting the comments provided on the proposed report.

2. Representations for assistance to individual eligible motor dealers

This chapter addresses the first three elements of the audit objective as it examines and reports on all representations identified as being made to the Treasury, the nature of those representations and the manner in which the representations were responded to. It includes a detailed analysis of the two representations that were central to the debates in the Parliament concerning whether preferential treatment had been provided at the impetus of the Prime Minister or the Treasurer or their respective Offices.

Introduction

2.1 Australia's parliamentary system is based on the principles of representative and responsible government. Members of Parliament are elected by the people to govern Australia in the public interest and individuals are able to approach a Member of Parliament, including Ministers, for assistance.

2.2 Ministers are expected to discharge their responsibilities in accordance with wide considerations of public; where arrangements are put in place to provide assistance to particular industries, this includes equitable treatment of industry participants, often based on publicly announced criteria. Consistent with this principle, the December 2007 Standards of Ministerial Ethics outline a Minister's obligations in respect to integrity, fairness, accountability, responsibility and to act in the public interest.³⁷

2.3 On 5 December 2008, the Treasurer announced the establishment of a SPV for car dealership finance, and stated that 'Treasury would continue to work over the following three weeks with the major banks, Credit Suisse and its advisers to finalise the details of the SPV'. These details were released by the Treasurer on 19 December 2008 in the form of an *Information Guide for Car Dealers* on the SPV.³⁸ In addition, as recommended by Treasury, the Treasurer separately wrote to GE Money Motor Solutions and GMAC asking that they:

³⁷ Australian Government, *Standard of Ministerial Ethics*, December 2007, p. 2, from <http://www.pmc.gov.au/guidelines/docs/ministerial_ethics.pdf> [accessed 12 July 2009].

³⁸ The Hon Wayne Swan, Treasurer of the Commonwealth of Australia, *Treasurer Releases Update on Car Dealer Financing and the Special Purpose Vehicle*, Media Release of 19/12/2008, No. 145.

- support their dealer clients throughout January 2009 so as to allow an orderly transition to the SPV to take place; and
- write or issue a public statement reassuring their dealer clients as to their support over the transitional period.

2.4 The *Information Guide for Car Dealers* set out information on how the SPV would work, the eligibility criteria³⁹ and what eligible dealers should be doing in trying to secure wholesale floorplan financing. Of particular relevance to this audit, the Guide stated that:

- Eligible car dealers will not have to communicate or interact with the SPV directly.
- Car dealers will in the first instance apply for wholesale floorplan financing from a participating financier of their choice.
- The financier will make a commercial decision as to whether they have the willingness or the capacity to finance the dealership from their own resources.
- If a participating financier cannot accommodate the dealership, yet the dealership satisfies the overall eligibility criteria for SPV financing, the financier may arrange financing for the dealership through the SPV.

2.5 To assist dealers that would be seeking finance, the Guide included contact details for the financiers expected at that time to participate in the SPV.

Representations received by Treasury

2.6 Prior to the SPV being announced, financiers and representatives of the automotive industry raised concerns about the effects of reduced liquidity. The *Information Guide for Car Dealers* advised that, to be eligible, a dealer must amongst other things, be:

³⁹ Specifically, the Guide advised that, to be eligible for possible wholesale financing under the SPV, a dealer must satisfy the following basic conditions:

- must currently be financed by an existing financier, i.e. GE Money Motor Solutions or GMAC;
- is currently a new car dealer or a mixed dealership selling both new and used cars from the same business; or is currently a dealer in new motorbikes; boats; caravans; trucks and commercial vehicles with wholesale floorplan finance provided by GE Money Motor Solutions or GMAC;
- must demonstrate that the dealership is a viable business consistent with the usual commercial lending criteria of recognised finance providers; and
- must be able to present up to date, accurate and comprehensive information on all aspects of the business as may be required by recognised and participating finance providers.

currently a new car dealer or mixed dealership selling both new and used cars from the same business; or is currently a dealer in new motorbikes; boats; caravans; trucks and commercial vehicles...

2.7 The records examined by ANAO revealed that at least four dealers that only sold used motor vehicles had made representations that the SPV should be expanded to include them. However, the SPV was not expanded by the Government to include those types of motor vehicle dealers.

2.8 ANAO did not identify that any individual new motor vehicle dealers had made representations to the Prime Minister, the Treasurer, their Offices or departments prior to the announcement of the SPV on 5 December 2008, and the release on 19 December 2008 of the *Information Guide for Car Dealers*.

Representations from, or on behalf of, eligible dealers after the SPV was announced

2.9 In the course of this audit, ANAO identified a total of 12 representations made, either in writing or orally, between 1 October 2008 and 30 June 2009 by, or on behalf of, eligible motor dealers (see Table 2.1). No representations for assistance to eligible motor dealers were made until February 2009, after the publicly advised timetable for the SPV becoming operational had passed. These representations were made by, or on behalf of, 10 motor vehicle dealers (two dealers each made two representations after Treasury did not respond to the initial representation). Of these, nine had been referred to Treasury, with three received directly by Treasury.

Table 2.1**Representations identified from, or on behalf of, eligible individual dealers: 5 December 2008 to 30 June 2009**

Date	Dealer	Made by	Made to	Action taken
2 Feb '09	Dealer 1	Dealer	Treasurer's Office	No assistance: Representation referred the same day to Treasury. No record of any action being taken by Treasury to assist the dealer and no reporting back to the Treasurer's Office.
2 & 3 Feb '09 (Two emails regarding the same issue)	Dealer 2 (Hunter Holden)	Dealer	Treasurer	No assistance: Representation referred to Treasury 3 Feb '09. No record of any action being taken by Treasury to assist the dealer and no reporting back to the Treasurer's Office.
12 Feb '09	Dealer 3	Member for Grey	Treasurer	No assistance: Representation referred to Treasury 13 Feb '09 to prepare a 'substantive response' to Member. No response prepared for the Treasurer's Office and no contact made by Treasury with the dealer.
Before 19 Feb '09	Dealer 4	Dealer	Treasury	Moderate assistance: Representation referred by Treasury to Ford Credit – was an existing Ford Credit customer.
Before 19 Feb '09	Dealer 5	Dealer	Treasury	Moderate assistance: Representation referred by Treasury to Ford Credit – was a Ford dealership financed by GE Money Motor Solutions.
19 Feb '09	Dealer 6 (Ipswich Central Motors/John Grant Motors)	Member for Oxley	Treasurer	Moderate assistance: Representation referred to Treasury 20 Feb '09 for assistance and reporting back. Treasury attempted to assist the dealer obtain a new source of finance and reported action taken to the Treasurer and his Office. See paragraphs 2.12 to 2.40.

Date	Dealer	Made by	Made to	Action taken
23 Feb '09	Dealer 3 (in addition to 12 Feb '09 representation)	South Australian Department of Trade and Economic Development	Treasurer's Office	Moderate assistance: Representation referred to Treasury same day for advice. Treasury provided contact details for the SPV Program Manager which were forwarded to the State department. No contact made with the dealer.
After 10 Mar '09	Dealer 7	Dealer	Treasurer's Office	Extensive ongoing assistance and advice provided so as to assist the dealer arrange alternative finance for the dealer. Some reporting of actions and progress provided to Treasurer's Office and Prime Minister's Office. See paragraph 2.10.
20 Mar '09	Dealer 8	Member for Riverina	Treasurer's Office	Moderate assistance: Representation referred to Treasury same day for assistance and reporting back. Treasury contacted dealer and provided advice on the operation of the SPV and reported back to the Treasurer's Office.
31 Mar '09	Dealer 9	Member for Murray	Treasurer	No assistance: Representation received 7 Apr '09 and referred to Treasury the same day to prepare a 'substantive response' to the Member. No response prepared for the Treasurer's Office and no contact made by Treasury with the dealer.
3 Apr '09	Dealer 10	Member for Dunkley	Treasury	Very little assistance: Treasury spoke with the Member but did not contact the dealer.

Date	Dealer	Made by	Made to	Action taken
17 Apr '09	Dealer 2 (Hunter Holden—in addition to the 2 & 3 Feb '09 representations)	Dealer	Prime Minister	Moderate assistance: Representation referred to Treasury the same day. Treasury discussed the dealer's situation with an industry body. Actions and progress was reported to the Treasurer's and Prime Minister's Offices. Finance offer was made but not concluded. Subsequently, dealer arranged his own ongoing finance with Treasury unaware of and not involved with this process. See paragraphs 2.41 to 2.49.

Source: ANAO analysis of hardcopy and electronic records, and evidence given under oath/affirmation.

Nature of the representations and Treasury's response

2.10 Each of the representations was seeking, to varying extents, assistance to obtain ongoing wholesale floorplan finance, either through the SPV or otherwise. Treasury's response to these representations varied markedly, as follows:

- five of the representations received very little or no direct assistance from Treasury;
- in another six instances, Treasury provided directly or indirectly a moderate level of assistance (one instance related to the second representation on behalf of the particular dealer, after Treasury did not respond to the initial representation). Principally, this involved providing information on the operation of the SPV and/or referring the dealer to possible alternative financiers. The representations in this category included Dealer 6, Ipswich Central Motors/John Grant Motors; and
- one dealer (Dealer 7) was provided with significantly more assistance than any other dealer, over a longer period of time. Mr Grech, on behalf of Dealer 7, sought to negotiate new wholesale floorplan finance with a number of different financiers, and persisted when initial attempts were unsuccessful (which was different to its approach to a number of other dealers). He also assisted the dealer with advice on options for rearranging the dealer's finances to assist it obtain ongoing finance. Email correspondence originating from Mr Grech indicated that the

preferential treatment given to this representation was motivated by, amongst other things, the personal circumstances of the dealer principal and Mr Grech's understanding that the dealer principal was a supporter of, and donor to, the Liberal Party of Australia, with other records made by Mr Grech stating that 'I am Lib'.⁴⁰ Senior Treasury management were not made aware of the full extent of assistance provided to this dealer and there is no evidence that senior Treasury management were aware of the motivations indicated above.

2.11 Given the issues that were central to the request for this audit, the remainder of this chapter examines the Ipswich Central Motors/John Grant Motors representation. It also examines the only recorded representation that was made to the Prime Minister or his Office (in respect to Dealer 2).

Ipswich Central Motors/John Grant Motors representation

2.12 Ipswich Central Motors and a related business, John Grant Motors, was one of the dealers whose financing was affected by the GE Money Motor Solutions announcement of 24 October 2008 that it would cease offering motor finance in Australia and New Zealand. Following earlier oral advice, in late November 2008, the dealer received a formal notice from its financier advising that its floorplan finance and other facilities would be terminated on 31 December 2008.

2.13 As noted, on 19 December 2008, the Treasurer released the *Information Guide for Car Dealers* on the SPV. Also on this date, the Treasurer separately wrote to GE Money Motor Solutions and GMAC asking that they support their dealer clients throughout January 2009 so as to allow an orderly transition to the SPV to take place.

2.14 Similar to other dealers at that time financed by GE Money Motor Solutions, on 24 December 2008, five days after the Treasurer's announcement, GE Money Motor Solutions corresponded with the dealer advising that the termination of its bailment agreement was being delayed until 28 February

⁴⁰ Testimony to ANAO by Mr Grech was that his motivation in drawing attention to these factors was to try and secure support for the passage through the Parliament of the *Car Dealership Financing Guarantee Appropriation Bill 2009*.

2009.⁴¹ The dealer was informed that no further vehicles would be bailed under the agreement from 5:00pm on 28 February 2009, with GE Money Motor Solutions recommending that the dealer seek a new financing arrangement with another financier prior to that date.

2.15 The home address of the dealer principal, Mr John Grant, is located in the Federal electorate of Griffith, of which the Prime Minister is the local member. Accordingly, it would have been open for the dealer principal to approach his local Member, as other dealers had approached theirs, particularly given that the dealer principal personally knew the Prime Minister. There was, however, no documentary evidence to indicate that any such approach was made by Mr Grant in relation to this matter. Both the Prime Minister and Mr Grant testified to ANAO that no representations had been made to the Prime Minister by or on behalf of Mr Grant in relation to his motor dealer finance.

2.16 Ipswich Central Motors and John Grant Motors operate from premises located in Ipswich, Queensland that are within the Federal electorate of Blair. Prior to establishing these businesses in 2007, the dealer principal was employed for more than 10 years in a senior capacity by an Ipswich motor dealer business whose premises were located (up to November 2006) in the Federal electorate of Oxley.⁴² Mr Bernie Ripoll has been the Member for Oxley since 1998. The dealer principal testified to ANAO that through activities within the community in which the businesses were located, he knew both the Member for Oxley and the former Member for Blair.⁴³

⁴¹ To effectively manage the high capital cost of motor vehicles, it is common practice in the Australian automotive industry for a finance company to provide finance to motor dealers to assist them with the purchase of vehicles. Typically, the financing solution involves the finance company purchasing a vehicle from a distributor and placing it on bailment with a dealer. The finance company will complete the sale to the dealer at the point when an end user has agreed to buy the vehicle from the dealer. Until that time, the dealer will hold the car on bailment under a floorplan arrangement. The transfer of ownership of the vehicle by the finance company to the dealer, and the transfer of ownership of the vehicle by the dealer to the end user, occur virtually simultaneously. Source: Federal Chamber of Automotive Industries, *Review of the Legal Framework for the Administration of the GST—Submission to the Board of Taxation by the Federal Chamber of Automotive Industries*, undated, pp. 1–2, from <http://www.taxboard.gov.au/content/GST_administration_review/submissions/14_Federal_Chamber_of_Automotive_Industries.pdf> [accessed 9 July 2009].

⁴² As a result of the November 2006 redistribution, parts of central and eastern Ipswich formerly located in Oxley were moved to Blair.

⁴³ Between 1998 and 2007, Mr Cameron Thompson was the Federal Member for Blair. He was defeated at the 2007 Federal election by Mr Shane Neumann.

2.17 On Friday 19 February 2009, nine days before his bailment finance was due to be terminated, the dealer sent an email to the Member for Oxley in relation to whether his businesses would be able to secure ongoing finance under the SPV arrangements. Later that day, the office of the Member for Oxley forwarded the email representation to the Treasurer's Office, and the Treasurer had a brief telephone conversation with the dealer. The Treasurer has informed the ANAO that:

- the Member for Oxley was the only Parliamentarian to personally seek to speak with the Treasurer in relation to the case of a particular motor dealer and that, had other Parliamentarians spoken with him, he would have responded similarly to their representations;⁴⁴
- the Member for Oxley asked the Treasurer to call Mr Grant. After a brief conversation with Mr Grant,⁴⁵ the Treasurer referred his case to a Departmental Liaison Officer in the Treasurer's Office. The Treasurer informed ANAO that this approach is the same as that which he has employed in relation to other representations from constituents on other matters;
- the Treasurer was not aware of the exact nature of Mr Grant's relationship with the Prime Minister and, in any event, the Departmental Liaison Officer was not asked by the Treasurer to treat Mr Grant's representation in a different manner to any other representation; and
- in referring Mr Grant's case to the Departmental Liaison Officer, the Treasurer raised concerns that Mr Grant's representation potentially indicated that the delay in operationalising the SPV was having an

⁴⁴ As outlined in Table 2.1, there were a further three written representations made to the Treasurer. In each case, the contemporaneous records demonstrate that each of the written representations was referred by the Treasurer's Office to Treasury for action, without the Treasurer being made personally aware of them.

⁴⁵ The Treasurer testified to ANAO that he had been introduced to Mr Grant by the Member for Oxley when the Australian Labor Party was in Opposition, and had spoken with Mr Grant on a small number of occasions such that they were acquainted, but were not friends. The Treasurer further stated to ANAO that he had no information about the viability of Mr Grant's business.

adverse effect on some motor dealers who, with finance, may be viable.⁴⁶

2.18 The email representation was passed by the Treasurer's Office onto the Departmental Liaison Officer who, in turn, forwarded the representation onto Mr Grech and discussed it with him.

2.19 The Departmental Liaison Officer advised ANAO that he had had a telephone conversation with the dealer principal, but the dealer principal did not recall this conversation. The Departmental Liaison Officer's recollection was that, during the course of the conversation the Departmental Liaison Officer believed had taken place, the dealer principal had mentioned he knew the Prime Minister. The Departmental Liaison Officer testified to ANAO that he had passed this information onto Mr Grech. Mr Grech testified to ANAO that the Departmental Liaison Officer had advised him that the dealer principal was connected to the Prime Minister and the Treasurer, and that the dealer principal had also mentioned these relationships to him.

2.20 In response to the representation, Mr Grech advised senior Treasury management and the Treasurer's office that he proposed to contact the dealer to identify two possible sources of wholesale finance that Treasury could explore on behalf of the dealer:

- approaching one of the financiers that had been taking on new business and asking that the financier contact the dealer; and
- as a fall-back, raising this case with Ford Credit the following Monday (23 February 2009) during a pre-arranged meeting at which Ford Credit's participation in the SPV was being discussed.⁴⁷

2.21 However, the other financier that had been taking on new business was not approached. Mr Grech informed ANAO that this was because that financier had ceased taking on new business. In any event, Mr Grant testified that he had already discussed his financing needs with that financier, without success.

⁴⁶ Testimony to ANAO from the Departmental Liaison Officer was also that the Treasurer's overarching concern in relation to the Ipswich Central Motors/John Grant Motors representation was that the SPV was not operating and that Mr Grant's case may have been indicative of a broader problem. The Departmental Liaison Officer further testified that 'I did not get a sense that there was any special relationship or anything like that [*in relation to Mr Grant*]'.

⁴⁷ As outlined in Table 2.1, there had been two earlier instances where Treasury had referred a dealer to Ford Credit.

2.22 Ford Credit was approached, as outlined below, and the dealer has informed ANAO that he had had discussions with Ford Credit (which was unable to assist with providing finance as the dealer did not hold a Ford franchise).

Ford Credit

2.23 On 28 October 2008, Ford Credit commenced discussions with Treasury concerning liquidity issues. In light of these discussions, the early design of the SPV envisaged that the facility would be in the order of \$2 billion with this amount making allowance for those dealerships that were at the time financed by Ford Credit. This was because it was assumed at the time that Ford Credit would be exiting the Australian market, similar to GE Money Motor Solutions and GMAC.

2.24 Consistent with Treasury advice, the Government decision of 4 December 2008 included that the SPV was to meet the funding gap resulting from the departure of GE Money Motor Solutions, GMAC and (possibly) Ford Credit, but that those dealerships funded at that time by non-departing financiers would not be eligible for SPV financing. However, as Ford Credit had not yet announced whether it intended to continue to operate or withdraw from the Australian market, the Treasurer's Media Release of 5 December 2008 did not explicitly address the participation in the SPV of Ford Credit's existing dealerships.

2.25 On 10 December 2008, the Ford Motor Company of Australia Limited (Ford Australia) wrote to the Treasurer welcoming the decision to establish the SPV and advising that it was keen for Ford Credit to remain in Australia. The correspondence further advised the Treasurer that Ford Credit wished to participate in the SPV on a transitional basis until local market securitisation financing options could be developed and implemented, and sought an indication of the terms that would allow it to participate in the SPV and remain operating in Australia.

2.26 In response, on 12 December 2008, the Treasurer wrote to Ford Australia encouraging Ford Credit to participate in the proposed SPV as a transitional arrangement in order to provide wholesale floorplan finance to its existing dealer network. The Treasurer's proposal was accepted by Ford Australia. This was reflected in the Treasurer's Media Release of 19 December 2008 which, amongst other things, announced that the Government:

- had received assurances from Ford in the United States and Ford Australia that Ford Credit intended to remain in Australia and would continue to provide financing support to its dealer network; and
- would be working closely with Ford Australia and Ford Credit in the New Year on possible arrangements.

2.27 In the week beginning 16 February 2009, Treasury arranged to meet with Ford Credit in Melbourne on Monday 23 February 2009 to further discuss its involvement in the SPV. It was on the Friday of that week (20 February 2009) that the representation in respect to Ipswich Central Motors/John Grant Motors was received by the Treasurer from the Member for Oxley, and passed through to Treasury.

2.28 Ford Credit has informed ANAO that, prior to the case of Ipswich Central Motors/John Grant Motors being raised with it, Mr Grech had referred to Ford Credit two instances where a Ford dealership had made representations to Treasury in relation to ongoing wholesale floorplan finance. On one occasion, the dealer was an existing Ford Credit customer. In respect to the second, the dealer was financed by one of the major financiers that had announced its withdrawal from Australia—discussions with this financier about Ford Credit providing finance were ongoing at the time of audit fieldwork (early July 2009).

2.29 The available evidence, based on contemporaneous records and testimony to ANAO, is that neither the Prime Minister⁴⁸ nor the Treasurer, or their Offices, encouraged Treasury to raise finance for Ipswich Central Motors/John Grant Motors with Ford Credit when the Treasury met with the financier at the pre-arranged meeting the following Monday, 23 February 2009. Rather, Treasury proposed to raise the John Grant Motors representation with (firstly) one of the financiers that had been actively involved in taking on former GE Motors and GMAC customers and, as a fall-back, with Ford Credit.

2.30 Ford Credit has testified to ANAO that, during the 23 February 2009 meeting, Mr Grech informed Ford Credit that the principal of Ipswich Central Motors/John Grant Motors had a relationship with both the Prime Minister

⁴⁸ In this respect, the Prime Minister testified to ANAO that he had no recollection of either himself or his Office making any representations to the Treasurer, the Treasurer's Office or the Treasury about Mr Grant's motor dealer finance needs. Similarly, there was no documentary evidence of any such representations being made by the Prime Minister or his Office.

and the Treasurer. Specifically, in relation to the conversation with Mr Grech on the matter of John Grant, Ford Credit stated:

... he said to me that the Treasurer's office had asked him to raise John Grant with us. He was a Kia and recreational vehicle dealer in Ipswich and that he was a neighbour of the Prime Minister or had known the Prime Minister very well and that he knew the Treasurer very well. And he had asked us to—GE Capital had—or GE Money was withdrawing from them. And he didn't have a lot of places to go to and would we be able to help him. And he also told me—told us at the time that, which we felt a bit strange, that the Treasurer and the Prime Minister particularly listened to John Grant about matters of what is happening. They referred to John Grant in matters that were happening in the automotive industry. And to understand—if they wanted to know what was going on in the market, they would talk to John Grant.

2.31 However, Ford Credit testified to the ANAO that there was no direct connection drawn between the likelihood of Ford Credit obtaining assistance, and whether John Grant was to receive any assistance. In relation to whether Ford Credit felt that a direct connection was implied or suggested, Ford Credit stated:

I didn't feel that it was pressured. I felt it was unusual that he was raising it. But I didn't feel—he didn't say, 'If you don't do this, it will look bad', or anything like that. But he said that they would appreciate a call and see what we could do to help. And I guess at the time I didn't think too much of it apart from, 'Well, let's see what I can do.' But we all felt—it was an awkward situation because he wasn't a Ford dealer, to start with. I said, 'Look, I'll see what I can do', and that's basically it. But it was an unusual situation where I didn't quite know what to say, you know, in response. But I just made sure I toed the company line on it.

2.32 In any event, Ford Credit advised Mr Grech during the 23 February 2009 meeting that, if Ipswich Central Motors/John Grant Motors was not a Ford dealership, Ford Credit would be unable to provide wholesale floorplan finance to the dealership. In the following days, Ford Credit confirmed with the dealer that it did not hold a Ford franchise with the result that Ford Credit was unable to provide the dealer with wholesale floorplan finance. The dealer had expected that this would be the case and did not further pursue with Ford Credit the obtaining of finance, and did not make any further representations to Treasury, the Treasurer or the Treasurer's Office. No representations were made in relation to this matter to the Prime Minister, his Office or DPM&C. The dealer has made arrangements for ongoing wholesale floorplan finance

(with the pre-existing financier which had not, at the time of audit fieldwork, withdrawn from Australia).

2.33 Nevertheless, as the commercial arrangements with Ford Credit and other financiers who were expected to participate in the SPV had not been settled, it was inadvisable for Treasury to do more than either refer dealers to potential financiers known to be active in the market, or ask the contracted Program Manager to provide assistance.⁴⁹ In addition, it was not prudent for Mr Grech to indicate to Ford Credit that Mr Grant knew the Prime Minister and Treasurer, notwithstanding that Ford Credit has testified to ANAO that it felt in no way pressured to offer finance to Ipswich Central Motors/John Grant Motors.

Government decision concerning Ford Credit's participation as an SPV financier

2.34 On 9 January 2009, Treasury advised the four major banks that Ford Credit was remaining in Australia pending the development of an SPV or similar mechanism that would provide financing to support the Ford Credit wholesale floorplan loan book. However, following discussions with Ford Credit and the major banks in January 2009, Treasury concluded that it would be preferable for Ford Credit to participate in the existing SPV as an eligible financier rather than Ford Credit's dealerships obtaining finance through other financiers participating in the SPV.

2.35 Updates on the Ipswich Central Motors/John Grant Motors representation were provided by Treasury to the Treasurer and his Office on 23 February 2009 and 27 February 2009 (see further below). No further action was taken by Treasury in respect to the Ipswich Central Motors/John Grant Motors representation until 16 March 2009. This followed Ford Credit writing to the Prime Minister and Treasurer on 13 March 2009 seeking the Government's formal decision authorising Ford Credit to join the SPV and to be able to access funding. On 16 March 2009, at the same time as seeking further information from Ford Credit so as to inform the Government decision-making process, Mr Grech requested an update on the Ipswich Central Motors/John Grant Motors representation. Ford Credit confirmed that its policy restricted it from directly financing non-Ford dealers.

⁴⁹ On 11 June 2009, Treasury amended the contact details published on its website to indicate that inquiries should be directed to the Program Manager.

2.36 Decisions in respect to the nature of Ford Credit's participation were made by the Government on 25 March 2009. Of particular importance, the Government decided that:

- Ford Credit would receive support so that it can access the liquidity necessary for it to continue to provide wholesale floor plan finance to its Australian dealership network; and
- the Ford Credit wholesale floor plan loan book of around \$550 million was to be rolled into the SPV for 12 months from 1 April 2009 or as soon as possible thereafter.

2.37 On 25 March 2009, Ford Credit was advised of the Government's decision. This decision was announced by the Treasurer on 13 May 2009.

Reporting to the Treasurer

2.38 The Government's 4 December 2008 decision included that the SPV be developed in time for implementation from 2 January 2009. Although legally established on 2 January 2009, the SPV was not expected to be fully operational until later in January 2009.⁵⁰ The delay was because:

- it would take some time for the SPV to build up its capital—the SPV relies on the four major banks buying the SPV's securitised notes and the Treasurer was advised that the banks would need time in January to finalise the purchasing program based on an agreed 'cut-off' for subordinated and unsubordinated paper; and
- the major financiers expected to participate would need time to have their systems and additional resources for processing dealership applications in place.

2.39 Treasury has advised ANAO that the policy environment and problems the SPV was seeking to address were evolving, which affected the need for and timing of implementation. The Treasurer's Office was provided with briefings on these developments. Nevertheless, the Treasurer receiving a representation on behalf of one particular motor dealer (Ipswich Central Motors/John Grant Motors) led him to raise concerns about slippage with the timing of the SPV implementation. It was in this context that, on the evening of

⁵⁰ The Hon Wayne Swan, Treasurer of the Commonwealth of Australia, *Treasurer Releases Update on Car Dealer Financing and the Special Purpose Vehicle*, Media Release of 19/12/2008, No. 145.

20 February 2009, the Departmental Liaison Officer in the Treasurer's Office who had passed the representation onto Treasury sent an update to the Treasurer as to how the dealer may be able to obtain alternative wholesale floorplan finance notwithstanding that the SPV was not yet operational. The update was focused on this particular representation but also briefly outlined the expected timeframe for operationalising the SPV. Testimony to ANAO from both the Treasurer and his Office was that this update was not specifically requested by the Treasurer, and there was no documentary evidence that indicated the Treasurer had requested it.

2.40 Two subsequent updates were sent on 23 and 27 February 2009 by Mr Grech to the Treasurer's home facsimile. The available evidence is that these email updates were sent by Mr Grech using the 'Reply to All' function⁵¹, rather than the Treasurer asking for a further update to be sent to his home facsimile. This is further supported by advice to ANAO from the Treasurer's Office that the Treasurer was not in Brisbane on 23 February 2009. Following the second update, the Departmental Liaison Officer sought to indicate to Mr Grech that the updates should not be provided to the Treasurer's home facsimile (as the Treasurer was not seeking ongoing updates on the status of this particular representation), and no further updates were provided to the Treasurer in respect to the Ipswich Central Motors/John Grant Motors representation.

Representation made to the Prime Minister

2.41 As outlined in Table 1.1, the Prime Minister has informed the Parliament that he has received one representation from a motor dealer in relation to wholesale floorplan finance assistance. Similarly, the Prime Minister testified to ANAO that he had absolutely no recollection of Mr Grant making any representations to him, or of discussing Mr Grant's representation with the Treasurer. The only representation the Prime Minister recalled having been made to him or his Office was that in respect to Hunter Holden (Dealer 2 in Table 2.1).

2.42 Table 2.1 outlined that Dealer 2 had first sought assistance from the Treasurer on 2 and 3 February 2009, with the Treasurer's electorate office forwarding the representation to Treasury for action. No advice was provided

⁵¹ The Treasurer's home facsimile number is set up as an email address within the Treasury email system.

by Treasury to the Treasurer or his Office on the concerns raised by the dealer, and there is no record of Treasury making contact with the dealer at that time.

2.43 Some two and a half months later, the dealer approached the Prime Minister at a function concerning difficulties the dealer was experiencing and seeking advice in respect to whether the SPV was operating. ANAO examination of relevant records and evidence obtained through interviews confirmed that this is the only representation by a motor dealer made personally to either the Prime Minister or his Office. The Prime Minister testified to ANAO that the focus of his concern with this representation was his surprise that, some months after the SPV had been announced, a motor dealer in metropolitan Sydney would be experiencing difficulties accessing the SPV.

2.44 On the same day as the function (17 April 2009), at the Prime Minister's request, his Office:

- drew the representation to the attention of the Motor Trades Association of Australia (MTAA); and
- advised the Treasury and the Treasurer's Departmental Liaison Officer of the representation, and asked Treasury for an update on the operation of the SPV so as to assess whether the concerns expressed by the dealer may have been widespread.

2.45 Later on 17 April 2009, Treasury provided the Prime Minister's Office with a brief update on the SPV and advised that Treasury was aware of this dealer and his difficulties, and that another financier was assessing whether to offer him finance. However, Treasury systems did not include any earlier record of Treasury having interacted with the dealer or, on behalf of the dealer, the named financier.

2.46 Between 19 and 27 April 2009, the Prime Minister's Office received, or was copied into, further correspondence from the dealer and the MTAA as well as advice from Treasury concerning the operation of the SPV and progress with securing ongoing finance for this particular dealer. The Treasurer's Office also received, or was copied into, much of this correspondence. Of particular importance, was a brief addressed to the Prime Minister, the Treasurer and senior officials in their respective departments on 21 April 2009 providing an update on the progress with implementing the SPV. This brief also stated that two dealers had secured finance, including the dealer that had made representations direct to the Prime Minister. Evidence to the ANAO is that the Prime Minister never saw this brief.

2.47 Treasury continued to keep the Treasurer's Office informed about this particular representation up to 30 April 2009. The only documented instructions issued by the Treasurer's Office to Treasury was on 29 April 2009 when, in response to a further update from Treasury on the SPV generally and three particular representations (none of which was the Ipswich Central Motors/John Grant Motors representation), the Treasurer's Office advised that it:

agree[d] with making the maximum possible effort with the (by my count) three viable dealers you mentioned. Please keep us posted.

2.48 However, whilst there were further updates in a documented form from Treasury to the Treasurer's Office in respect to two of the three dealers, no further update was provided by email or otherwise documented in relation to this particular representation that had been received through the Prime Minister's Office.

2.49 The latest record held in Treasury systems concerning the Dealer 2 representation was dated 1 May 2009. It stated that a financier had advised Treasury that the dealer was going to receive an offer of finance.

2.50 On 4 May 2009, the dealer advised the Member for Bennelong that, notwithstanding earlier advice that an offer of finance was going to be made to the dealer, negotiations with that financier had not been concluded. There are no records of Treasury being aware of this situation, and the dealer has testified to ANAO that Treasury did not provide it with any direct assistance. Treasury was also unaware of, and was not involved with, further work undertaken by the dealer to secure ongoing finance. The dealer informed ANAO that finance was secured on 18 May 2009.

3. Administrative matters

This chapter addresses the final element of the audit objective as it examines administrative matters that came to ANAO's attention concerning the development and implementation of the SPV, and the handling of representations for assistance to individual motor dealers.

Introduction

3.1 The Commonwealth Treasury began operations in Melbourne in January 1901.⁵² The original five members of the department were bookkeepers.⁵³ Over time, the department was required to establish policy in areas such as public service pay and conditions, bank notes, the taxation system including land and income tax, pensions and other welfare payments, postage stamps and the collection of statistics.⁵⁴ Today, the department focuses primarily on economic policy,⁵⁵ and is well regarded for its policy advice.

Values and behaviours framework

3.2 The Australian Public Service (APS) values are set out in section 10(1) of the *Public Service Act 1999* (PS Act), and are a set of core values that underpin relationships and behaviours for all APS employees.⁵⁶ As expressed by the Australian Public Service Commission, the APS values provide the basis and integrating element of the Service, its professionalism, its integrity and its impartial and responsive service to the government of the day.⁵⁷

3.3 The APS Code of Conduct is set out in section 13 of the PS Act. APS employees are required, under the Code of Conduct, to behave at all times in a way which upholds the APS Values. Amongst other things, the Code of Conduct also requires that an employee must:

⁵² <http://www.treasury.gov.au/content/about_treasury.asp?ContentID=316&titl=About%20Treasury> [accessed 11 July 2009].

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ ANAO Audit Report No.31 2007–08, *Managing Recruitment in the Australian Public Service*, Canberra, 29 April 2008, p. 8.

⁵⁷ <<http://www.apsc.gov.au/values/index.html>> [accessed 11 July 2009].

- behave honestly and with integrity in the course of APS employment;
- maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff;
- disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment;
- use Commonwealth resources in a proper manner;
- not make improper use of inside information, or the employee's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person; and
- at all times behave in a way that upholds APS Values and the integrity and good reputation of the APS.

3.4 All APS agencies have a responsibility to publicise and reinforce the APS Code of Conduct. In this respect, Treasury supplements the APS-wide documentation on values with its own material. Treasury advised ANAO that the values underpin the Treasury Management Model and are explicitly referred to in both the Management Model and its Performance Management System. Treasury has training programs for fraud, ethics and APS accountability and, in early 2009, introduced a formal Personal Accountability Framework. More broadly, Treasury advised ANAO that:

Although Treasury has grown a lot over past decades we still retain substantial elements of a 'small business' culture and a deep historical connection to our predecessors—the Treasury has a very strong identity with public service values part of the core. Professional service to successive governments, at the policy sensitive centre, is a tradition going back to Federation. We are proud of that heritage.

Some relevant cultural elements include: a high level of trust between Treasury officers; an open and relatively non-hierarchical policy debate internal to the department; much care in what is said externally regarding Government policy; our efforts in internal communication, alignment and training; and our relatively resource intensive performance management system that is essentially behaviour based.

3.5 ANAO's examination of the implementation phase of the policy raised serious questions as to whether the Code of Conduct has been breached by Mr Grech. Specifically, ANAO's audit work included examination of evidence that indicated:

- confidentiality about dealings with Ministers and their staff was not maintained in relation to important elements of the development and implementation of the SPV, and the handling of some representations referred to Treasury by Ministers or their Offices;
- some of the email communications and interactions with third parties were inappropriate;
- improper use was made of confidential information in order to assist various outside parties; and
- preferential treatment given to one representation was motivated by, amongst other things, the personal circumstances of the dealer principal and Mr Grech's understanding that the dealer principal was a supporter of, and donor to, the Liberal Party of Australia with other records made by the Mr Grech stated that he was 'Lib'.⁵⁸

3.6 Treasury advised ANAO that these matters are under consideration.

Policy development process and outcome

3.7 Liquidity issues for the motor dealer industry were one of a number of significant policy issues being worked on by the Treasury in the latter part of 2008 and into 2009. Other matters in this vein included the:

- guarantee of deposit and wholesale funding for authorised deposit-taking institutions incorporated in Australia which, as a group, are of systemic importance to the functioning of the financial system and the broader economy, and which are subject to prudential regulation by the Australian Prudential Regulation Authority. This measure was announced in October 2008; and
- establishment of a \$4 billion Australian Business Investment Partnership as a temporary contingency measure to provide liquidity support to viable major commercial property projects in Australia. This measure was announced in January 2009 and was to be operational by March 2009.

⁵⁸ Testimony to ANAO by Mr Grech was that his motivation in drawing attention to these factors was to try and secure support for the passage through the Parliament of the *Car Dealership Financing Guarantee Appropriation Bill 2009*. See also the third dot point of paragraph 2.10.

3.8 Commencing on 31 October 2008,⁵⁹ Mr David Murray was contracted by Treasury to provide independent expert advice on various issues relating to the global financial crisis and its impact on the Australian financial services sector. On 10 November 2008, Treasury commenced discussions with Mr Murray about motor dealer financing.

3.9 In exploring options, Mr Murray held discussions with representatives from the Federal Chamber of Automotive Industries, certain providers of car financing and the major banks. A report from Mr Murray was provided to the Treasury on 13 November 2008. On 18 November 2008, Treasury recommended to the Prime Minister and Treasurer that they agree to the proposal from Mr Murray that a trust be established to securitise the assets of car dealer financiers for sale to investors, with the resulting funds used to provide wholesale car financing to motor dealers. Mr Murray's report had noted that:

The establishment of such a trust will first require the process of design and risk measurement by a group including an investment bank, lead bank, representatives of the car dealer financing industry, and Treasury representatives.

3.10 In late November 2008, following a meeting involving the Prime Minister, the Treasurer, the four major banks and Treasury, Treasury established a Taskforce to develop a workable proposal for an SPV that would provide liquidity support to the car dealer network. The Taskforce comprised representatives from each of the four major banks and was led by Mr Murray. The Taskforce was to be assisted by a small team of Treasury officials as well as other private sector experts. The proposal was to be developed within two weeks.

3.11 On 4 December 2008, the Government was provided with further advice by Treasury on the development of a SPV—effectively a trust facility—to provide participating financiers with access to sufficient liquidity to enable them to lend to viable car dealerships so that the dealerships could continue to purchase stock. The SPV was announced on 5 December 2008, with further work to be undertaken to finalise the details.

⁵⁹ On 3 April 2009, a contract was signed between Treasury and Lyndcote Pty Ltd for the provision of independent expert advice to the Treasury on various issues relating to the Global Financial Crisis and its impact on the Australian financial services sector. The commencement date of the contract was 31 October 2008.

3.12 Over the Christmas/New Year period, Treasury held discussions with representatives of the four major banks to agree on the key outstanding structural and pricing issues relating to the SPV. The SPV was legally established on 2 January 2009. Copies of the transaction documents have been published on the Treasury web site.

3.13 Although legally established on 2 January 2009, the SPV was not expected to be fully operational until later in January 2009.⁶⁰ The delay was because:

- it would take some time for the SPV to build up its capital—the SPV relies on the four major banks buying the SPV’s securitised notes and the Treasurer was advised that the banks would need time in January to finalise the purchasing program based on an agreed ‘cut-off’ for subordinated and unsubordinated paper; and
- the major financiers expected to participate would need time to have their systems and additional resources for processing dealership applications in place.

3.14 Treasury has informed ANAO that the policy environment and problems the SPV was seeking to address were evolving, which affected the need for and timing of implementation (including the timing of the Appropriation Bill). Treasury further advised that these issues continued into the first few months of 2009.

3.15 Nevertheless, there was an extended delay in the SPV being activated. Treasury records indicate that causes for the delay included that some of the key contractual documents for the SPV had to be re-negotiated in light of the Government’s decision in March 2009 to allow Ford Credit to participate in the SPV as a financier (rather than dealers who were previously financed by Ford Credit contracting with eligible financiers), and the need to include a different party as an eligible financier following the withdrawal in April 2009 of one of the original parties that was to perform this role.

3.16 The available evidence is that the immediate need for the SPV to be operationalised was reduced as a result of:

⁶⁰ The Hon Wayne Swan, Treasurer of the Commonwealth of Australia, *Treasurer Releases Update on Car Dealer Financing and the Special Purpose Vehicle*, Media Release of 19/12/2008, No. 145.

- GE Money Motor Solutions and GMAC adopting a more orderly approach to the wind down of their loan books than had originally been expected; and
- a number of the dealerships that were previously financed by GE Money Motor Solutions and GMAC obtained ongoing finance from other sources.

3.17 Nevertheless, acting on Treasury advice, in April 2009 the Treasurer advised the Prime Minister that the SPV would soon need to be activated as the departing financiers (GE Money Motor Solutions and GMAC) had issued final notices to 23 dealerships. On 13 May 2009, the Treasurer announced that, the 'imminent departure' of GMAC and the decision to use the SPV to help secure the immediate future of Ford Credit in Australia meant it was necessary to activate the SPV facility.⁶¹ The next day, the *Car Dealership Financing Guarantee Appropriation Bill 2009* was introduced into the House of Representatives (it was passed by the Senate on 25 June 2009).⁶² This Act appropriates the Consolidated Revenue Fund for the purposes of paying claims under the Commonwealth Deed of Guarantee.⁶³

3.18 The process of implementing the SPV was further progressed on 18 June 2009, when the Subscription Agreements (which set out the terms on which the four major banks will subscribe for the notes issued by the Trustee) were signed. Nevertheless, certain conditions precedent remained that needed to be satisfied before the SPV could operate.⁶⁴ However, on 26 June 2009, Treasury advised the Treasurer that recent departmental investigations in order to assist with the Australian Federal Police investigation (see further

⁶¹ The Hon Wayne Swan, Treasurer of the Commonwealth of Australia, *Car Dealer Financing Special Purpose Vehicle: Supporting Legislation and Ford Credit*, Media Release of 13/05/2009, No. 071.

⁶² The Deed of Guarantee to support the SPV was signed by the Treasurer on 23 December 2008 but the Deed provided that no claims under the guarantee could be made before 28 February 2009. This was to provide sufficient time for an Appropriation Bill to be enacted to support the guarantee. However, it was not until 25 March 2009 that the Government decided that an Appropriation Bill should be prepared to give effect to the Commonwealth Guarantee arrangements.

⁶³ The Deed of Commonwealth Guarantee was signed by the Treasurer on 23 December 2008. Although the Australian Government was not providing direct funding support to the SPV, it supported the SPV by providing a guarantee on those securities issued by the SPV that are risk rated below 'AAA' (which is the highest possible rating) by the appointed ratings agency. This approach was intended to ensure that all securities issued by the SPV would be 'AAA' rated given that the Subscription agreement negotiated by Treasury with the four funding banks involved the banks providing the loan funds to the SPV through the banks subscribing for 'AAA' rated securities issued by the SPV Trustee.

⁶⁴ These included the Commonwealth's approval of approved transferees for securities and issuing of an opinion by the Australian Government Solicitor regarding the validity of the Commonwealth guarantee.

below) and this ANAO audit had brought to light some correspondence that raised questions concerning the probity of certain aspects of the development, nature and scope of the structuring of the SPV financing arrangements. Accordingly, Treasury decided not to proceed to activate the SPV until such time as these questions had been resolved.

Policy implementation

Project planning

3.19 On 15 December 2008, Treasury provided the Treasurer's Office with a proposed Communication Strategy for the SPV with the objective of 'informing dealers how the SPV works and what they should be doing'. The development of a communication strategy was sound.⁶⁵ The proposed strategy covered the objective of the SPV; the key components of the message to be communicated; listed the two December 2008 press releases and a SPV Fact Sheet Map as key communication materials and documents; and set out the communication channels to be used for the policy and its implementation.

3.20 The accompanying email providing the proposed Communication Strategy to the Treasurer's Office explained that the risk of 'slippage' with implementation of the SPV and resulting concern from stakeholders was 'real'. However, Treasury did not develop any explicit project plans or contingency arrangements for how it would address the identified market failure in the event that there was a substantial delay in the SPV commencing operations. In this respect, it is worth noting that representations from eligible motor dealers only started being made in early February 2009, after the publicly advised timetable for the SPV becoming operational had passed.

3.21 Better planning for how the department intended to respond to a delay with implementing the SPV may have aided Treasury to adopt a more consistent response to motor dealer representations (see paragraph 2.10).

Resource allocation

3.22 There are challenges involved in turning a policy measure into effective outcomes, and the skills and effort required to do so may not always be fully

⁶⁵ ANAO and Department of the Prime Minister and Cabinet, *Implementation of Programme and Policy Initiatives: Making implementation matter*, October 2006, p. 47.

appreciated.⁶⁶ Further, in situations where timing imperatives have curtailed the consideration of implementation issues, the risks to successful implementation increase markedly.⁶⁷

3.23 In respect to the policy response to liquidity issues in the motor dealer industry, implementation risks were heightened given that aspects of policy implementation, such as the engagement of key advisers and service providers, was proceeding at the same time as the policy was being developed. In these circumstances, a disciplined approach to the management of implementation issues was always going to be required if the risks were to be managed successfully.

3.24 Senior Treasury officials, including the Secretary to the Treasury, were involved in the policy development process. There was less management attention given to the implementation of the policy measure. At one level, there was evidence that senior Treasury officials monitored progress with the implementation of the SPV. However, Mr Grech did not always provide them with full visibility over the response being provided to representations for assistance to individual motor dealers, or important aspects of the implementation of the SPV (including the engagement terms for advisers and service providers). At another level, more support could have been given to the implementation in terms of providing the right quantity and type of resources to deliver the program under time pressure.⁶⁸ However, Treasury advised ANAO that, at that time (and with the onset of the global financial crisis), Treasury resources were stretched dealing with a range of financial market issues.

3.25 Mr Grech, an experienced Senior Executive Service Band 1 Treasury official, was primarily responsible for the implementation of the policy response to motor dealer industry liquidity issues. This officer was assisted for short periods of time by two other officials but otherwise operated largely on his own. Treasury advised ANAO that, as an experienced SES officer, Mr Grech was encouraged to raise any resourcing issues with senior management.

⁶⁶ ANAO and Department of the Prime Minister and Cabinet, *Implementation of Programme and Policy Initiatives: Making implementation matter*, October 2006, Foreword.

⁶⁷ ANAO and Department of the Prime Minister and Cabinet, *Implementation of Programme and Policy Initiatives: Making implementation matter*, October 2006, p. 9.

⁶⁸ ANAO and Department of the Prime Minister and Cabinet, *Implementation of Programme and Policy Initiatives: Making implementation matter*, October 2006, p. 26.

Senior Treasury management testified to ANAO that Mr Grech was offered extra support as required, but always gave the impression that implementation was on track. In addition, Treasury informed ANAO that, as the policy and implementation phases evolved during 2009, Mr Grech's other responsibilities were reduced in February 2009 to concentrate on the motor dealer financing SPV.

3.26 The advantages of a team-based approach to policy implementation include that a mix of skills and experience can be brought to bear, and the interactions between team members can provide the basis for oversight and coordination arrangements. However, Treasury did not recognise that different skill-sets were required to implement the SPV compared to those required for developing the policy measure, there was an absence of any division of responsibility (an accepted internal-control measure) for activities that included private sector parties being contracted through direct sourcing arrangements, and departmental liaison with a range of stakeholders and other parties. There were no indications that these matters, or Mr Grech's medical condition, were given due weight in the implementation planning and delivery.

Recording representations received and action taken

3.27 ANAO has previously observed that, the greater the pressure on an agency to progress initiatives over a short time period, the greater the demand for discipline in record keeping and accountability as part of a sound control environment.⁶⁹

3.28 In February 2009, Treasury advised the Treasurer and his Office that many dealers had obtained alternative ongoing wholesale floorplan finance as a result of the increased market confidence that had followed the announcement of Government intervention, combined with GE Money Motor Solutions and GMAC delaying their withdrawal. Nevertheless, the Motor Trades Association of Australia (MTAA) was raising concerns with Treasury that there were viable dealers that had been unable to secure alternative finance and pressing Treasury to assist them.

⁶⁹ ANAO and Department of the Prime Minister and Cabinet, *Implementation of Programme and Policy Initiatives: Making implementation matter*, October 2006, p. 10.

3.29 Against this background, to assess the extent to which the delay with implementing the SPV was having an adverse effect on otherwise viable dealers, it was important that Treasury maintain accurate records of all representations received, and whether the dealers concerned (presuming they were viable) had been able to secure finance with or without Treasury's assistance. In addition, keeping effective and timely management of the various interactions between agencies and the responsible Minister (including Ministerial correspondence such as emails) is a key factor in the quality of public administration.⁷⁰

3.30 Treasury did not maintain good records of all representations made by, or on behalf of, motor vehicle dealers. This shortcoming was reflected in the difficulties experienced by Treasury and the Treasurer's Office in identifying all representations referred to Treasury (in light of questions asked in the Parliament in June 2009 as well as the evidence received by the Senate Economics Legislation Committee during its 19 June 2009 hearing). The Treasurer's Office identified seven representations that it had referred to Treasury, but did not identify any other representations that were made direct to the department.⁷¹ However, as outlined in Table 2.1, eight representations had been made to the Treasurer's Office, one to the Prime Minister's Office and three were received direct by Treasury.

Responding to the Treasurer's Office

3.31 There is a documented procedure in place between Treasury and the Treasurer's Office that sets performance standards for the department in responding to representations and referrals from its Minister. Specifically, a deadline of two weeks applies to personal representations/referrals from a Member of Parliament with a deadline of four weeks for representations/referrals from the general public. Table 2.1 outlines that, when representations from or on behalf of motor dealers to the Treasurer's Office were referred to Treasury to prepare a response on behalf of the Treasurer, the department consistently failed to prepare a response in a reasonable timeframe.

⁷⁰ ANAO Better Practice Guide, *Agency Management of Parliamentary Workflow*, May 2008, pp. 2 and 31.

⁷¹ On 16 June 2009, Treasury advised the Treasurer's Office that four dealers and three members of Parliament had made representations.

Procurement practices

3.32 ANAO has previously commented that:

Agencies have tended to find procurement and contract management among the more challenging aspects of public administration. The challenge inevitably increases when implementing a high-risk project, or one with a limited timeframe. In all circumstances, where procurement and contract management are involved, they should be recognised as a source of implementation risk. External sourcing requires robust procurement and contract management processes, and the right balance of skills to make the formal processes work well.⁷²

3.33 Regulation 7 of the *Financial Management and Accountability Regulations 1997* (FMA Regulations) empowers the Finance Minister to issue Commonwealth Procurement Guidelines (CPGs) which officials undertaking procurement must have regard to (and record any reasons for acting other than in accordance with the CPGs). The CPGs establish the core procurement policy framework and articulate the Government's expectations for all departments and agencies subject to the FMA Act and their officials when performing duties in relation to procurement.

3.34 The current CPGs took effect on 1 December 2008. Both this version, and the predecessor that commenced operation on 1 January 2005, classify procurements over a specified value as 'covered procurements'⁷³, to which Mandatory Procurement Procedures apply. The Mandatory Procurement Procedures include a general presumption of open tendering with direct sourcing⁷⁴ available only in specific circumstances. In respect to accountability for direct sourcing decisions, both the January 2005 and December 2008 versions of the CPGs have stated that:

In accordance with the general accountability requirements set out in these CPGs, for each contract awarded through direct sourcing, agencies must

⁷² ANAO and Department of the Prime Minister and Cabinet, *Implementation of Programme and Policy Initiatives: Making implementation matter*, October 2006, p. 29.

⁷³ Covered procurements are procurements, other than those which the Government has decided are exempt, which exceed specified procurement thresholds. For procurements in FMA agencies, other than procurements of construction services, the procurement threshold is \$80 000.

⁷⁴ Direct sourcing refers to a procurement process in which an agency invites a potential supplier or suppliers of its choice to make submissions. Direct sourcing may include a competitive process, for example obtaining quotes.

prepare and appropriately file within the agency's central filing system, a written report that includes:

- a. the value and kind of property or services procured; and
- b. a statement indicating the circumstances and conditions that justify the use of a procedure other than an open or select tender process.

3.35 In response to questions taken on notice at the February 2009 Additional Estimates hearings of the Senate Economics Committee, Treasury advised that six service providers had been engaged by Treasury in relation to the SPV, as follows:

- Perpetual Trustee—to perform the role of trustee for the SPV;
- Liberty Financial—to undertake the role of master originator and servicer, which will include servicing the loans made through the SPV, collection of payments, reposessions and security enforcement;
- Credit Suisse—General Adviser and Program Manager;
- Allens Arthur Robinson—Legal Adviser and Program Manager;
- Deloitte—Trust auditor; and
- Standard and Poor's—ratings and credit analyst for the SPV.

3.36 Based on a May 2009 estimated facility size of \$350 million,⁷⁵ the estimated upfront and ongoing costs relating to these appointments totalled \$14.03 million, with funding costs estimated to be \$18.38 million. Under the terms of the Commonwealth Deed of Guarantee, the Australian Government will meet any shortfall between revenue to the SPV and total SPV costs. As at May 2009, the net shortfall was estimated at \$3.08 million. Treasury advised ANAO that, to the extent that there is increased usage of the facility, the financial performance of the SPV will improve, which will increase the buffer to any call on the guarantee.

3.37 The procurements and approval of third party service providers made by Treasury in respect to the SPV were undertaken through a direct sourcing process with a single supplier approached and contracted.⁷⁶ There were no

⁷⁵ In this respect, Treasury advised ANAO that Ford Credit is able to access up to \$550 million within the facility.

⁷⁶ Treasury has advised ANAO that 'the OzCar program is structured so that Credit Suisse is responsible for appointing third party service providers on behalf of the Trust, subject to the Commonwealth's approval.

statements recorded in the department's hardcopy or electronic central filing systems that outlined the circumstances and conditions that Treasury considered justified the use of a procedure other than a tender process. In this respect, the department did not act in accordance with the CPGs and, in breach of FMA Regulation 8(2), a record was not made of the reasons for the departures.

3.38 In the circumstances, Treasury may have been able to rely on the provision in the CPGs that permits direct sourcing:

where, for reasons of extreme urgency brought about by events unforeseen by the agency, the property or services could not be obtained in time under open tendering procedures.

3.39 While the deadline for putting arrangements in place may have satisfied the urgency exemption, it would have been prudent for Treasury to have approached more than one possible provider for the key appointments, so as to provide a more informed basis for any value for money assessments.

3.40 In early December 2008, Treasury advised Ministers that:

The establishment of a viable SPV or Trust, especially in such a compressed timeframe involving multiple players, is challenging and complex. The Australian Government will need to rely on specialised market expertise to set up the facility and take it to market.

Treasury has engaged Credit Suisse as Project Manager and, on the advice of Credit Suisse, is in the process of engaging the necessary third party service providers that are critical to both the development of the SPV, its implementation and subsequent operation.

We are confident that Credit Suisse and the third party service providers, i.e. the legal team, ratings agencies, auditors, trust manager, master originator, trust manager etc—are leading experts in their field and are committed to delivering a viable SPV in the limited time available.

Treasury has also secured written assurances about possible conflicts of interests and has agreed a funding model that will involve no fee for service being met by the Australian Government. The fees of Credit Suisse and the service providers will be met from the SPV.

3.41 Irrespective of the expected cost of a procurement, agencies have a responsibility under the CPG's to assure themselves that they obtain value for money. This is commonly achieved by comparing proposals from a number of potential service providers. In respect to the SPV, not only did Treasury direct source each of the appointments, in a number of cases it agreed to the

engagement before it had obtained a quote or estimate from the contractor. This approach seriously weakens the Commonwealth's negotiating position and provides little comfort that the Commonwealth is receiving value for money in agreeing to the contractual arrangements. In addition:

- there was inadequate record-keeping as to how the contracted parties were identified and no documented attention given to any ethical or probity issues in relation to the procurement activities;
- the basis on which Treasury satisfied itself that the engagement terms represented value for money was not documented (a breach of the FMA Regulations);
- there were extended delays in contracts being prepared and signed; and
- only one of the procurements was published on AusTender.

Program Manager engagement

3.42 The Program Manager engagement was the most financially material engagement in respect to the development and implementation of the SPV. Ford Credit has informed ANAO that it had advised the Treasury that it was aware that Credit Suisse had previously undertaken work in respect to motor dealer financing securitisation arrangements with Treasury officials informing ANAO that similar advice had been provided to them by the expert adviser engaged to lead the policy development.

3.43 On 21 November 2008, Treasury approached Credit Suisse regarding its possible engagement by Treasury to:

provide specific expertise on the auto securitisation market and the development of a workable SPV for providing critical liquidity support to the car finance dealer market.

3.44 Treasury records stated that Credit Suisse advised that it did not have any conflicts of interest that would make its engagement unacceptable, and that it had the relevant staff and expertise to advise on and construct a workable SPV for the securitisation of automotive assets for financing. In respect to remuneration, Treasury records state that:

As for fees—I said that we will pay a fair market rate that will be negotiated later.

3.45 Treasury records include a document dated 23 November 2008 from Credit Suisse titled 'Credit Suisse Credentials'. It provided an introduction to a

core team of four individuals, outlined that the core team would be supported by other teams as well as the global resources of Credit Suisse, outlined Credit Suisse's Government advisory credentials, its auto lease credentials and financial advisory credentials, provided a summary of its Australian business and included team biographies and case studies of work it had undertaken for governments in relation to the impact of the global financial crisis on the banking systems in the United Kingdom and Kazakhstan.

3.46 Treasury records also include a document dated 24 November 2008 prepared by Credit Suisse titled 'Discussion Issues'. The document addressed policy issues, securitisation and operation issues and flagged the need to discuss its role/appointment and a fee structure arrangement. Treasury records also included an undated one page document from Credit Suisse titled 'Our proposed role and fee proposal' (see Table 3.1).

Table 3.1**Proposed role and fee proposal**

Role	Fee Proposal
<p>Project Management, including formulating of detailed action plan and implementation of objectives and timetable and assisting in coordinating other participants (as directed by government).</p> <p>Develop options (in consultation with the government) for the structure of the dealer floor plan financing program.</p> <p>Advise on roles and functions to be performed by third party service providers and the key selection criteria associated with their appointment.</p> <p>Provide financial modelling assistance to assess the risk based pricing associated with the structure including subordination levels and government guarantee impacts.</p> <p>Provide capital market expertise and solutions including origination, structuring, syndication and execution of dealer floor plan financing.</p> <p>Present as required to the sponsor, other governmental authorities, regulators, third party service providers, banks and industry participants.</p>	<p>For acting on this Project as exclusive financial advisor, lead arranger and manager, Credit Suisse proposes to charge the following scale based fees based on the size of the underlying facility:</p> <ul style="list-style-type: none"> • For the first two billion: 25 basis points upfront • Incremental cost for greater than two billion: 20 basis points • Reimburse Credit Suisse for all of its out-of pocket expenses related to this engagement • Fees envisaged to be borne by SPV issuer <p>The dealer floor plan financing SPV is anticipated to be established and functional by 31 December 2008, with our role to be completed by mid to late January. All fees and expenses will be payable by 31 January 2009 on a success basis.</p> <p>Credit Suisse has taken the following factors into consideration in calculating the fee structure:</p> <ul style="list-style-type: none"> • Market based rates for similar assignments • The full use of Credit Suisse's domestic and international resources across advisory and capital market roles • The relatively short and pressing timetable and high degree of visibility of the project <p>In addition, Credit Suisse would be happy to act as Trust Manager for the SPV, for which we would charge a fee of 6 basis points for the term of the facilities.</p>

Source: Treasury records.

3.47 On 28 November 2008, the four major banks were advised that Treasury had engaged Credit Suisse as Project Managers 'to ensure we have the technical and practical expertise necessary to develop the SPV.' Also on that date, Credit Suisse provided Treasury with a letter outlining its proposed fees, the key terms of which were the same as those outlined in Table 3.1.

Under this proposal, it was expected that Credit Suisse's fees would most likely be approximately \$5 million.

3.48 A second letter relating to the proposed fee arrangement for the SPV was provided by Credit Suisse to Treasury on 30 January 2009. It proposed that, in light of the size of the program being expected to fall from \$2 billion to around \$1.3 billion, and the inclusion of Ford Credit as an eligible financier rather than its dealer clients participating through other financiers (had Ford Credit exited the market) that a fixed fee of \$5 million be paid as follows:

- Establishment Fee of \$3.25 million (calculated as 25 basis points on a program of \$1.3 billion);
- Ford Credit Inclusion Fee of \$1.75 million (associated with structuring and advisory work in relation to the Ford Credit situation, not contingent on Ford Credit's ultimate participation); and
- each of the two Fees would be payable 20 per cent on initial funding or end of the first quarter if earlier, and 20 per cent at the end of each quarter of 2009.

3.49 Credit Suisse proposed that funds for its Fees be sourced either:

- by the SPV and Treasury sharing the costs, with the SPV to meet the Establishment Fee and Treasury to meet the Ford Credit Inclusion Fee; or
- the SPV to pay for the full amount of the Credit Suisse Fees using funds available to it from its assets or facilities.

3.50 The greater the fixed costs of the SPV, the greater the risk the Commonwealth Guarantee would be called. Accordingly, the second fee proposal letter recognised that the second approach increased the likelihood of the Commonwealth Guarantee being called. The second approach was ultimately agreed, and the contracted amount for Credit Suisse to undertake the development work to establish the SPV was fixed at \$5 million.

3.51 A contract was signed on 25 May 2009, by which time the second reading had been moved. Included as an attachment to the contract was a further fee letter, dated 20 May 2009. This letter included Fixed Fees identical to those included in the 30 January 2009 proposed fee letter, with the same instalment payment arrangements. The 20 May 2009 fee letter incorporated into the contract stated that payment of all fees would be made through the SPV commencing from the date of the first funding of the SPV.

3.52 On 15 May 2009, Treasury released a Request for Tender (RFT) to establish a Financial Advisory Services Panel to assist it in policy design and implementation, and to provide independent technical assistance, as and when required. At that time, the expectation was that the panel would be operational by August 2009. The Specifications and Statement of Requirements acknowledges that Treasury does not have sufficient internal skills and expertise in the more complex areas around financial markets. Accordingly, the panel is being put in place to provide Treasury with access to independent technical expertise in areas such as structured financing, institutional structures and credit risk/assessment (including the establishment of SPVs).

3.53 The published evaluation criteria and methodology state that tenders will be evaluated on the basis of overall best value for money. At the time of ANAO audit fieldwork, the procurement process for this panel had not been completed. Based on the information examined by ANAO, the establishment of this panel can reasonably be expected to provide a more robust and transparent approach to obtaining financial advisory expertise than the approach adopted in relation to the motor dealer financing SPV.

Security risk management

3.54 As outlined in ANAO Audit Report No. 44 2008–09 *Security Risk Management*, all Australian Government organisations face a range of security risks, including those that may affect their reputation and/or that of the Australian Government and the integrity of their information and physical resources.⁷⁷ Treasury was one of the three organisations included in that audit. Overall ANAO concluded that Treasury had established and implemented effective arrangements for managing security risks⁷⁸ but that there:

- was scope to improve the documentation of the work undertaken;
- was no written record of senior management's acceptance or otherwise of the security risks that had been identified; and
- would be benefit from better integration of the consideration of security risks in corporate risk management and business planning activities.

⁷⁷ ANAO Audit Report No.44 2008–09, *Security Risk Management*, Canberra, 23 June 2009, p. 11.

⁷⁸ *Ibid.*, p. 14.

3.55 Treasury agreed with the three applicable recommendations and advised ANAO that it broadly agreed with the audit findings.⁷⁹

Security clearances

3.56 Treasury requires its employees and other persons, such as contractors, who require access to security classified information to be security cleared to an appropriate level. Its June 2008 Departmental Security Instructions state that:

When processing security clearances for officers for either Designated Security Assessment Positions or Positions of Trust positions, and in accordance with government endorsed guidelines and departmental requirements, Treasury needs to be satisfied that the person is suitable for access to classified and or sensitive material on a number of grounds. These grounds are listed in the government endorsed guidelines contained in the Protective Security Manual (PSM) and may include:

- a suitability assessment interview;
- seeking a check of police records;
- verification of personal particulars and identity; and
- consideration of personal characteristics which may affect loyalty, reliability and trustworthiness.

3.57 Mr Grech, the senior officer predominantly responsible for the implementation of the SPV, held a clearance to the level of Secret at the time he commenced work on the development of the policy response. This level of clearance had been held since January 2003. It was sufficient given the nature of material associated with developing and implementing the policy response to liquidity issues for motor dealers.

3.58 Consistent with the Protective Security Manual, Treasury's Departmental Security Instructions:

- recognise that a person's circumstances, values, attitudes and other personal traits may change, in which case it becomes necessary for the department to be aware of, and evaluate, those changes which may potentially affect a person's continued suitability and/or possible need for a security clearance; and

⁷⁹ *Ibid.*, pp. 44, 48, 58 and 63.

- in any event, requires that existing clearances (below the level of Top Secret) be reviewed at five yearly interviews.

3.59 Re-evaluation of the security clearance for Mr Grech was due in January 2008. In July 2008, one month before the officer rejoined Treasury from DPM&C, Treasury's security team provided him with a security vetting pack for completion in order that the re-evaluation process could commence. A further copy of the vetting pack was sent in August 2008. However, this pack had not been completed and returned to Treasury before the clearance expired in January 2009.

3.60 A further four reminders about the need to complete the security vetting pack were sent in January 2009, February 2009, March 2009 and May 2009. A completed security vetting pack was received by Treasury's Security Team on 2 June 2009. The security assessment had not been completed at the time of ANAO audit fieldwork.

Records management

3.61 Within the series of audits ANAO has undertaken on recordkeeping, ANAO Audit Report No. 7 2003–04 *Recordkeeping in Large Commonwealth Organisations* observed that:

Recordkeeping is a key component of any organisation's corporate governance and critical to its accountability and performance. A sound appreciation of recordkeeping assists an organisation to satisfy its clients' needs and also helps it to deal positively with legal and other risks.

...In addition to it being good business practice for organisations to have sound recordkeeping practices, the statutory support for accountability within the Commonwealth places significant responsibility for recordkeeping practices on the heads of organisations.⁸⁰

3.62 Treasury has developed a record-keeping framework. Its Recordkeeping Policy, issued in June 2004 and reviewed in May 2009, states that:

- TRIM is the department's primary recordkeeping system for the management of electronic and paper records which are produced as a result of Treasury business activities; and

⁸⁰ ANAO Audit Report No.7 2003–04, *Recordkeeping in Large Commonwealth Organisations*, Canberra, 24 September 2003, p. 11.

- all of the Treasury's records should be created and maintained within the primary recordkeeping system (TRIM) unless captured into an approved business system that meets the requirements of a recordkeeping system. As such, records should not be maintained in shared folders or email archive folders as these electronic storage facilities do not contain the recordkeeping functionality needed to ensure that records will be captured and maintained and preserved for as long as required.

3.63 However, in respect to the process applied in developing and implementing the SPV, this framework was not adhered to.

Physical records

3.64 In accordance with Treasury's Chief Executive's Instructions, the hardcopy material associated with the development and implementation of the SPV was, at the time of ANAO audit fieldwork, locked in a C Class container. However, many of the records had not been captured into TRIM or on an official hardcopy file. For example, this was the case in respect to key hardcopy documents such as:

- the Commonwealth Deed of Guarantee;
- the Program Manager contract;
- original correspondence; and
- original signed copies of Ministerial briefings.

3.65 There were also various Cabinet-in-Confidence documents that were not being held in accordance with the required procedures. In addition, various important documents relating to Treasury activities going back some years were also held in the C Class container and had not been captured into the official recordkeeping system.

Electronic records

3.66 Much of the correspondence in relation to the policy development and implementation processes for the SPV occurred via email. Treasury has issued an email policy, as a companion document to its recordkeeping policy. The email policy reinforces the importance of corporate information being stored in TRIM.

3.67 In respect to the development and implementation of the SPV, important electronic records remained within shared folders or, most often, in

individuals' email folders rather than being captured in TRIM. Accordingly, a significant amount of audit effort was directed at examining and/or searching shared folders, relevant individuals' individual folders and email accounts for Treasury officials and Ministerial advisers.



Ian McPhee

Auditor-General

Canberra ACT

4 August 2009

Appendices

Appendix 1: Formal comments received on the Proposed Report

A proposed report was circulated on 17 July 2009 to relevant departments and others who had a special interest in it (as defined in the Auditor-General Act).

Section 19(5) of the Auditor-General Act states that **the Auditor-General must, in the final report, include all written comments received** from recipients of the proposed report, or an extract of the proposed report. Formal comments were provided by Treasury, Credit Suisse (the Program Manager) and Mr Godwin Grech⁸¹. These comments are included in full⁸² below. Where considered appropriate, the report has been amended in the light of those comments. In addition, where relevant information had been provided by those people interviewed by ANAO, this has been taken into account in the preparation of the final report, including in response to formal comments made by recipients of the proposed report. In other areas where a response has raised a broader issue not central to the audit objectives, the matters have not been examined by the ANAO in the time available.

Department of the Treasury

The Department of the Treasury (the Treasury) notes the key findings of the Audit Report titled *Representations to the Department of the Treasury in relation to motor dealer financing assistance*, and in response will undertake a broader review of its internal processes and practices in regard to policy implementation.

The Treasury also notes the findings that there is no evidence that either the Prime Minister or his Office made representations to the Treasury in relation to Ipswich Central Motors/John Grant Motors, or that the Treasurer or his Office applied any pressure on the Treasury to give this dealer more or better

⁸¹ In providing comments to ANAO, Mr Grech's lawyer advised ANAO that: 'Mr Grech understands that, pursuant to sub-section 19(5) of the *Auditor-General Act 1997*, all of his comments will be taken into account in the ANAO publishing its final report and that they (his comments) will be published along with the final report.'

⁸² Apart from two representations explicitly identified by the Treasurer or the Prime Minister in their statements in the Parliament, given commercial and other relevant considerations, ANAO has not specifically identified the other individual dealers who made representations for assistance. Some formal comments on the proposed report identified a third dealer by name, and ANAO has edited these comments so as to not identify the dealer concerned, without otherwise affecting the comments provided on the proposed report.

assistance than other dealers. These findings accord with the Treasury's understanding of the representations.

The conclusions of the Audit Report support the testimony given by the senior Treasury officer at the Senate Economics Legislation Committee hearing on 19 June 2009 that no evidence could be found that correspondence, email or otherwise, had been sent from the Prime Minister's Office (PMO) to the Treasury concerning Ipswich Central Motors/John Grant Motors.

On 20 June 2009, the Secretary of the Attorney-General's Department requested that the Australian Federal Police (AFP) investigate whether a false email may have been created and distributed. The AFP issued a statement on 22 June 2009, indicating that preliminary results confirm that the alleged email referred to it for investigation was not created by the purported author of that email.

The Senate Privileges Committee is also undertaking an investigation into matters arising from the 19 June 2009 Senate hearing, and the Treasury will be making a detailed submission to that Committee.

The Treasury notes that the investigations undertaken by the ANAO have raised serious questions as to whether the APS Code of Conduct has been breached by Mr Grech. These issues relate to indications of inappropriate dealings with third parties, improper use of confidential information, and politically motivated actions.

These and other related conduct matters are presently under investigation in the Treasury. The Treasury also notes and agrees with the ANAO finding that there is evidence that Mr Grech withheld information on key issues from senior Treasury management, including aspects of his handling of representations from car dealerships and critical elements of his dealings with service providers and other external parties. Senior Treasury management were not aware of any political motivations on the part of Mr Grech in assisting Dealer 7.

The Treasury accepts the conclusion by the ANAO that there were significant weaknesses in implementation of the OzCar facility, and notes that this conclusion needs to be considered in the context of the issues which have been raised concerning Mr Grech's conduct.

One key question is whether the serious issues which have emerged in respect of the implementation of the OzCar facility are fundamentally due to:

- the actions of an individual officer; or

- a failure of the Treasury conformance framework itself.

While the conduct matters noted above remain under investigation, it would be inappropriate to express a determined view on them. However, as things presently stand (and subject to further investigation and any input from Mr Grech) it does appear that weaknesses outlined in the Audit Report regarding the implementation of the OzCar facility were substantially contributed to by actions of an individual officer.

While acknowledging the benefits of adequate resourcing for policy implementation and adherence to proper processes, the Treasury observes that the more serious issues identified by the ANAO, including the delay in implementation, may not have been substantively prevented through the provision of additional resources and improved internal processes.

The timing of the implementation of the OzCar facility was affected by the evolving policy environment. Given the initial urgency required to respond to the imminent withdrawal of a substantial part of the car dealer finance market, it was necessary to develop a policy and pursue implementation in parallel. Intensive work was undertaken during December 2008 and January 2009 to establish the SPV, after which the immediate urgency of activation of the SPV declined. Beyond this, some policy issues continued to evolve until March and April 2009.

The Treasury contends that the SPV could have been activated at the end of January 2009 if a critical need arose, even though not all arrangements were finalised at that stage. In the end, activation was not as urgent as originally envisaged, as the vast majority of dealerships were accommodated by existing financiers. Of the 400 former GE and GMAC car dealerships originally at risk, only around 30 will need to access OzCar, of which representations for only 10 were received by the Treasury.

The Treasury acknowledges the benefits of adequate resourcing for policy implementation. While additional resources may have addressed some of the system issues identified by the ANAO, the Treasury observes that the more serious issues identified may not have been substantively prevented through the provision of additional resources. Mr Grech is an experienced Senior Executive Service Band 1 Officer, and the quantum and complexity of his work was appropriate for someone at his level of experience and seniority. Assessments regarding resourcing requirements are managed by the Treasury on a case-by-case basis and regularly reviewed to ensure their continued appropriateness. This was the case for the OzCar implementation. Mr Grech

was offered extra support as required, and was provided with some additional staff for short periods.

With respect to the procurement issues raised in the Audit Report, the Treasury notes that the intention of the OzCar service arrangements is for the Treasury to engage only one service provider (Credit Suisse as program manager). The OzCar program is structured so that Credit Suisse is responsible for appointing third party service providers on behalf of the Trust, subject to the Commonwealth's approval. The costs for service providers are to be met by the SPV itself.

On 2 July 2009, the Treasury engaged a probity adviser to examine, in part, issues concerning the procurement of service providers with respect to the OzCar facility. That advice acknowledges deficiencies in the recording of decisions, but that '... it appears to us that Treasury gave appropriate consideration to its obligations under the Commonwealth Procurement Guidelines with respect to engaging a Program Manager for the OzCar Program, and that the decision by Treasury to engage a Program Manager by way of direct sourcing was consistent with those obligations'. Further, the probity adviser is 'of the opinion that, on balance, the selection of Credit Suisse as Program Manager for the OzCar Program was defensible from a probity perspective.'

The reasons for the direct sourcing of Credit Suisse were noted in briefing prepared by the Treasury in November 2008, shortly after engagement, although the Treasury accepts that a more detailed record of engagement should have been prepared at the time. A draft contract with Credit Suisse was prepared in December 2008, although it was not ultimately signed until May 2009 as amendments were made to reflect the inclusion of Ford Credit in the OzCar facility.

With respect to third party service providers, while they have all been appointed under the terms of the OzCar transaction documents, the Treasury accepts that it would appear that at least one of these parties was also engaged directly by the Treasury in December 2008 as part of the third party approval process, even though their fees would be paid for by the SPV.

The size of the OzCar facility is now estimated to be significantly less than the original estimate of \$2 billion. This is a positive outcome, as a large number of car dealerships were accommodated by existing car financiers without the need for any Government support. Whether the Government guarantee on securities issued by the SPV will be called upon will depend on the final size of

the facility, but the probability increases as more dealerships are accommodated by existing financiers outside of the OzCar facility.

In addition to the response to this Audit Report as noted above, the Treasury will also:

- ensure that the matters raised in respect of Mr Grech's conduct are dealt with appropriately; and
- address any consequential issues concerning the activation of the OzCar facility.

Credit Suisse (Australia) Limited

Paragraph 3.50

One of the objectives of the OzCar SPV was to provide a private sector solution to the issues facing the automotive dealer financing industry. As part of that objective, it was envisaged that fees payable for the setup of OzCar, would be financed by OzCar (and therefore indirectly the private sector).

In our construction of the economics of the SPV, Credit Suisse had taken into account that under our base case scenario there would be sufficient reserves in the OzCar SPV to absorb credit losses (base case losses) and all fixed and variable costs for the administration/management of the SPV.

Generally

The work conducted post establishment of the OzCar SPV (in early January) involved extensive interaction with the financiers and the banks. This work continued with the eligible financiers, banks and Ford Credit up until Credit Suisse were asked to cease progressing OzCar in late June (some 5 months beyond what was originally envisaged).

In summary therefore, the OzCar project has taken considerably longer and been considerably more complex than was originally proposed or contemplated.

Mr Godwin Grech

GENERAL FORMAL COMMENTS ON THE ANAO REPORT BY MR GODWIN GRECH

While the proposed Report relating to the representations made to the Department of the Treasury in relation to motor dealer financing assistance ('the proposed draft Report') clearly sets out the policy basis for the

Government's response to the critical issues that emerged in wholesale floorplan finance for motor dealers in the latter part of 2008, and presents a reasonable overview of the complexity and challenges presented in adequately responding to those issues in the very short time available, the proposed Report does not provide a complete and balanced analysis of the critical role that I played as the principal policy officer responsible for putting together the Government's "OzCar" initiative.

The proposed Report also does not provide a full and balanced account of what I was expected to do, the environment in which I was expected to do it in, and why I took the actions that I did.

This statement seeks to correct that account.

SCOPE OF REPORT

With respect to the scope and objectives of the audit, it appears that only limited investigation has been made into the conduct, actions and performance of the key political staff employed or engaged under the *Members of Parliament (Staff) Act 1984*.

This is despite the essential role that some key political staff employed or engaged under that Act, such as Mr Chris Barrett and Ms Amanda Robbins from the Treasurer's Office, and Mr Andrew Charlton from the Prime Minister's Office, and perhaps others, played in relation to the broader issues relating to the development and progress of the OzCar initiative.⁸³

HANDLING OF REPRESENTATIONS

Although there was significant variation in the amount of effort devoted to the various representations made to Treasury for car dealer assistance, this was simply because each representation was different, requiring varying degrees of effort in managing the response.⁸⁴

⁸³ As outlined at footnote 34, section 15 of the Auditor-General Act provides that the Auditor-General may at any time conduct a performance audit of an agency but that an agency is taken not to include any persons who are employed or engaged under the *Members of Parliament (Staff) Act 1984* and who are allocated to the agency by regulations for the purposes of the definition of agency in section 5 of the FMA Act.

⁸⁴ As outlined in Table 2.1, five of the representations received very little or no direct assistance from Treasury. For some of these representations, the available evidence is that Treasury did not respond to the representation.

Some representations required little more than a basic update on how OzCar would work and who would be eligible, while others, particularly in the case of Ipswich Central Motors / John Grant Motors and [Dealer 7], required much more effort as a result of either their political sensitivity or, in the case of [Dealer 7], as I detail below, repeated threats of suicide and self harm made by the dealer principal in [the dealer principal's] frequent conversations with me – all of which I reported to my superior officers, including Mr David Martine and Deputy Secretary Mr Jim Murphy.

In the case of Hunter Holden, some of the initial representations to the Treasurer's Office (which I only became aware of during the course of my interview under oath on Tuesday 14 July 2009) were never previously sighted by me and quite possibly by anyone else in Treasury.⁸⁵

It is important to note that some of the representations referred to in the proposed Report, not just those relating to Hunter Holden, were made in the first week of February 2009.

I was admitted to the Canberra Hospital on Sunday 1 February 2009 suffering from my seventh small bowel obstruction since March 2005 and was off work until the third week of February.

The Case Of John Grant Motors

I first contacted Mr John Grant late on the afternoon of Friday 20 February 2009. I did so at the express prior request of Mr Andrew Thomas of the Treasurer's Office. It remains my recollection that the first time that I heard of Mr Grant was in a short e mail from Andrew Charlton of the Prime Minister's

⁸⁵ In accordance with standard procedures, the original representations in respect to Hunter Holden (dated 2 and 3 February 2009) were forwarded to a 'Ministerial Emails' inbox within Treasury in order for the department to respond. No response was made either to the Treasurer's Office or to the dealer (the dealer confirmed this in his testimony to ANAO).

Office on or around 19 February 2009.⁸⁶ I did not follow up on that request simply because Mr Thomas from the Treasurer's Office took up the case of Mr Grant so soon afterwards.

Mr Thomas made it clear to me in conversation that Mr Grant had to be attended to in light of his relationship with both the Treasurer and the Prime Minister.⁸⁷ From subsequent emails sent to me by Mr Thomas, which I believe are now on the public record, it also became very obvious that other Government MPs, primarily Mr Bernie Ripol and his wife, who, I understand, is employed by Mr Ripol at taxpayer expense, were actively lobbying on behalf of Mr Grant.

Having spoken to Mr Grant, as requested by Mr Thomas, I quickly came to the conclusion that Mr Grant had to be handled carefully given that he was claiming a personal relationship with both the Prime Minister and the Treasurer – referring to both by their first names – and that their relationship went back many years.

Although I found Mr Grant pleasant and polite to speak to, he made it clear to me that it was expected that his problem will be fixed.

⁸⁶ Email records within Treasury systems examined by ANAO included an email on the morning of 19 June 2009 from Mr Grech in which he advised the Treasurer's Office and senior Treasury officials that he had informed a journalist that there was no communication between the Prime Minister's Office and Treasury on Mr John Grant. This email was forwarded shortly thereafter by Mr Grech to a third party. In his testimony to ANAO, Mr David Martine stated that, in addition to receiving this email, he 'had a brief chat to him [Mr Grech] on that Friday morning. [Mr Grech] just reinforced the view that he was mistaken'. Mr Martine also drew ANAO's attention to a briefing prepared by Mr Grech dated 21 April 2009 on the SPV which also briefly updated the Prime Minister on the Hunter Holden representation but made no reference to any other representations referred to Treasury by the Prime Minister or the Prime Minister's Office. Mr Martine commented to ANAO that: 'And what I found interesting in this one is that Godwin makes reference—this is on the 21st of April—to a couple of New South Wales dealers, including Hunter Holden, "Who I understand made direct representations with you as recently as Friday, the 17th." That is the dealer that the Prime Minister, I think, confirmed in Parliament. The reason I raise it is I found that quite interesting in helping Ken [Henry] piece together some of this stuff. Two months after allegedly an email came from the Prime Minister's Office on John Grant, you would think if you were writing a brief just for the Prime Minister—and one had come from the Prime Minister's Office on John Grant—that you would actually make some reference to it, some mention of it.'

⁸⁷ In his testimony to ANAO, Mr Thomas stated that: 'During the phone conversation with John Grant, he referred to that he knew the Prime Minister. And my recollection of the conversation with Godwin—and, again, I may have had more than one conversation with Godwin on that night—was that I made some comment that this guy said he knew the Prime Minister. And it was more dismissive, offhand. It definitely was not—and I don't believe that Godwin took it as anything other than this guy's talking himself up rather than any politician has conveyed that this guy should get special treatment. That was definitely how it was intended.'

It would be misleading and wrong if the proposed Report could be read as implying that it was me who initiated action to assist Mr Grant (including the proposal to raise the case of Mr Grant with Ford Credit).⁸⁸

The fact is that I discussed the limited options available in relation to Mr Grant – which included raising his case with Ford Credit and Capital Finance – with both Mr Grant and Mr Thomas from the Treasurer’s Office late in the afternoon of Friday 20 February 2009. On those occasions I specifically referred to the fact that I would be attending a meeting with Ford Credit in Melbourne on the following Monday 23 February 2009, and stated that that was an occasion during which I could raise Mr Grant’s case with that entity.

There was **no objection whatsoever** on the part of either Mr Grant or Mr Thomas - either at that time or at any later time - about me pursuing any of these options. Indeed, the proposed approach, including the idea to discuss Mr Grant’s case with Ford Credit in Melbourne on the morning of Monday 23 February 2009, was expressly welcomed by Mr Thomas, who was acting on behalf of the Treasurer’s Office.

It was the Treasurer’s Office – not me – who then proceeded to provide the Treasurer with a report on what Mr Thomas and I were doing to help Mr Grant.⁸⁹

It was really at this stage that I formed the view that Mr Grant was not your average constituent. I copied the relevant reports to my superiors in Treasury, including the Secretary, Dr Ken Henry.

In discussion with Ford Credit on Monday 23 February 2009, Ford Credit **did not** rule out the possibility of financing John Grant. The Managing Director of Ford Credit, Mr Greg Cohen, did, however, make it clear to me that it would be difficult for Ford Credit to take on an ‘independent’, i.e. a non Ford dealer (which Mr Grant was), but not impossible as Ford Credit had a small number of independents on their books. Mr Cohen also pointed to the liquidity issues confronting Ford Credit.

I made it very clear to Mr Cohen and Ford Credit that this was a matter for them but that it would be appreciated if Ford Credit could at least call Mr

⁸⁸ Paragraphs 2.17 to 2.20 of the report make it clear that the action to assist Mr Grant was in response to a representation made by the Member for Oxley to the Treasurer.

⁸⁹ See paragraph 2.39 for the explanation provided to ANAO as to why the Treasurer’s Office sent a report to the Treasurer.

Grant and explore the possible options with him. Mr Cohen agreed. I gave him Mr Grant's mobile number and I believe that Ford Credit followed Mr Grant up that same day. I believe that it did so because Mr Grant called me later that same afternoon and told me that Ford Credit had contacted him and that more talks were scheduled between him and Ford Credit for Thursday 27 February, including with Mr Grant's accountants.

I reported all this to the Treasurer's Office on the evening of Monday 23 February 2009 – including to the Treasurer himself personally⁹⁰ - and to my superiors in Treasury.

As I said that I would during our telephone conversation with him on the afternoon of 23 February 2009, I called Mr Grant on Thursday 27 February to check on progress. Mr Grant seemed pleased with progress, and said that discussions between his accountants and Ford Credit were continuing. He thanked me for my efforts.

I told Mr Grant that I was not proposing to do anything more in relation to his case unless he or others called me to say that there were problems.

I reported all this to Mr Thomas, the Treasurer himself and others in the Treasurer's Office, and to my colleagues in Treasury on 27 or 28 February 2009. Again e mail records will show that the Treasurer's Office appreciated my efforts.

Although Mr Thomas alerted me through an e mail comment that the e mail reports about Mr John Grant were being sent to the Treasurer's home fax – *at no stage was I told by anyone not to include the Treasurer in my reporting of updates on the John Grant case.*⁹¹ That fact, coupled with the fact that it was the Treasurer's Office who initiated the direct reports to the Treasurer about Mr John Grant – not me – led me to assume that the Treasurer's Office and the Treasurer expected me to keep them fully informed on what was taking place regarding Mr Grant.

⁹⁰ See paragraph 2.40 in relation to the two email updates sent by Mr Grech using the 'Reply to All' function together with advice to ANAO from the Treasurer's Office that the Treasurer was not in Brisbane on 23 February 2009 to 'personally' receive the update.

⁹¹ In his testimony to ANAO, Mr Thomas stated that his 'email was intended to say, "I want you to be aware this is going to the Treasurer's fax. It would be advisable if you don't.'" Mr Thomas further testified that: 'I recall after I sent it—and I don't think I made this phone call thinking I'd written it too politely—and I was going to follow up with a phone call to Godwin. And my recollection is I didn't make that phone call.' Paragraphs 16 and 2.40 of the report reflect these matters.

The Case of Hunter Holden – Bennelong

The proposed Report states that dealer principal of Hunter Holden first raised concerns with the Treasurer on 2 and 3 February 2009, that he received no assistance, whereupon he then raised his concerns with the Prime Minister on 17 April 2009.

The first time that I ever heard of Hunter Holden was on 17 April 2009. If the initial representations of the dealer principal of Hunter Holden of 2 and 3 February to the Treasurer were, in fact, passed onto Treasury at or around the time that they were made, I did not see, hear or otherwise learn of them at the time. To the best of my recollection, the first time that I ever heard of Hunter Holden was on 17 April 2009 (see below). This is because I was admitted to the Canberra Hospital on Sunday 1 February with a small bowel obstruction and was continuously off work from then until at least the week beginning 16 February 2009.

As I was the only officer in Treasury allocated to the OzCar initiative, it should come as no surprise that some of the representations in relation to Hunter Holden were not dealt with given (a) my periods of absence (I was re-admitted to the Canberra Hospital in March 2009 for a bone infusion and was off work for another week), and (b) the fact that I had to attend to higher priority OzCar SPV issues.

When I did become aware of the problems facing Hunter Holden, following an e mail to me from Mr Andrew Charlton of the PMO on 17 April 2009, I immediately followed up on it.

What I did was to contact the Managing Director of Capital Finance, Mr Bernie Campbell, who confirmed that Capital Finance were both well aware of Hunter Holden and were going to sign him up.

I reported this directly to the PMO, the Treasurer's Office and my superiors in Treasury, and I reported on it again formally to the Prime Minister himself in a briefing note to him updating him on OzCar that Mr Charlton from the PMO had requested.

I sent up the briefing note – which Dr Henry complimented me on – on or around 21 April 2009.⁹²

⁹² See footnote 86.

It is also important to note that *I personally expressly alerted the Prime Minister to this briefing note in a face to face meeting that I had with him on Thursday 7 May 2009 in the Explorers Room at Parliament House at approximately 2.00pm. Others present at the meeting included my Deputy Secretary, Mr Jim Murphy, Andrew Thomas, Andrew Charlton and a few others.*⁹³

In light of the Prime Minister's comments to the House of Representatives on 4 June 2009 about the Hunter Holden representation, including the possible inference that he (the Prime Minister) had not been aware of what had happened with the Hunter Holden representation, I suggested to Dr Henry on or around that day that, although perhaps only a minor technicality, it may be prudent for the Prime Minister to correct the Hansard or at least for someone to look at it so as to ensure that the House had not been misled.⁹⁴

I raised this again with Dr Henry in a discussion that I had with him on the evening of Monday 22 June 2009.

The Case Of [Dealer 7]

The most intensive and by far the most difficult representation that I had to deal with was that relating to *[Dealer 7]* – a large *[motor vehicle]* dealership *[location removed]* that was being financed by GMAC.

⁹³ The Prime Minister testified to ANAO that he did not recall discussing Dealer 7 with Mr Grech. In addition, in their testimony to ANAO, none of the officials or advisers named by Mr Grech advised ANAO that such a discussion had taken place concerning Dealer 7.

⁹⁴ On 17 April 2009, following the representation made to the Prime Minister by the principal of Hunter Holden, Mr Andrew Charlton in the Prime Minister's Office sent an email to Mr Grech, copying in the Departmental Liaison Office in the Treasurer's Office, asking for a 'quick 1-2 pager' updating progress with the SPV. A detailed 6 page brief was signed by Mr Grech on 21 April 2009. The brief was addressed to the Prime Minister with copies to the Treasurer, and senior officials in Treasury and DPM&C. In his testimony to ANAO, Mr Charlton stated that: 'And simultaneously, you know, part of my job is to brief the Prime Minister about how things are going and also, you know, write speeches for him. So I wanted some further information from Godwin about how things were going. And I wanted information that we could use when the Prime Minister next encountered that kind of meeting or if he was giving a speech, as he was often at the time, about our financial market interventions. So I asked for—sent him an email which asked him for that general brief. It had three or four purposes. One, give the Prime Minister a sense of how it's going and myself, for that matter. Two, kind of useful for when we're writing about the financial crisis or the Prime Minister is speaking about the financial crisis and our response to it. And he did send me back a brief. And I remember looking at it thinking it wasn't particularly useful for the purposes that I had in mind. And I didn't pass it to the Prime Minister. ...It was a bit too detailed and technical to give to the PM for the purpose of his general understanding and not particularly useful from the point of view of the speeches that I would regularly write for the PM. So I don't think I read it carefully and, having scanned it, decided it wasn't particularly useful for the purpose I had in mind. And then I neither used it myself nor handed it over.' ANAO confirmed this evidence by showing the particular brief to the Prime Minister, who did not recall having seen it.

It is unfair and misleading for the proposed Report to conclude, as I read it that it does, that I went out of my way to assist this dealer because [the dealer principal] was a supporter of and donor to the Liberal Party.

As I testified to the ANAO on 14 July 2009, the true story is very different from what e mails before the ANAO may infer or suggest.

The case of [Dealer 7] was first referred to me by the Treasurer's Office sometime in March or early April 2009.

I know that the dealer principal of [Dealer 7] had been having discussions with the Treasurer's Chief of Staff, Mr Chris Barrett, before the Treasurer's Office referred [the dealer principal] to me.

From my very first conversation with the [Dealer 7] dealer principal, it became very clear that I was dealing with a difficult situation. The dealer would call me 3, 4 or more times each day. This went on for weeks. Treasury telephone records as well as my personal assistant, Ms Rose Moulis, and my immediate supervisor, Mr David Martine, should be able to verify this.

The dealer would often become highly emotional during such calls, and would plead for my help in arranging floorplan finance because, [the dealer principal] said, GMAC was placing real pressure on [the dealer principal] to cut [the dealer principal] lines thereby destroying the business and the jobs of the 45 or so people that worked at [Dealer 7].

The situation became very difficult for me when the dealer principal stated to me on several occasions during such calls words to the effect of, 'I am going to commit suicide. You are my last hope'.

I reported these statements to my supervisors – including Mr Murphy and Mr Martine at the time.

Whilst Mr Martine was sympathetic, I was offered no assistance in dealing with what I apprehended to be shaping up to be a real human tragedy. I also reported the delicate nature of the case to the Treasurer's Office (primarily Ms Amanda Robbins).

From my conversations with the dealer principal, I came to form the view that the key problem facing [Dealer 7] was that it was carrying a high level of debt and the capital value of its assets had fallen in light of market conditions. It was, in my understanding, otherwise a good business with the dealer principal having many years of experience and who was very highly regarded by [the vehicle manufacturer] as [the dealer principal] could turn over stock.

[Dealer 7] just needed some bridging finance until at least OzCar could be activated given the pressure GMAC was under from its US parent to close its Australian book.

I contacted various finance companies who stated that the tighter lending standards following the Global Financial Crisis had meant that [Dealer 7's] debt levels were too high to make it an attractive proposition.

I then contacted Credit Suisse as the OzCar Program Manager to explore possible options for [Dealer 7]. They said that they would see what could be done.

The calls from the [Dealer 7] dealer principal continued and became more desperate as GMAC became more desperate. The dealer principal would almost always be crying when [the dealer principal] called me, and would often say words to the effect of, 'My life is no longer worth living'.

As a general policy officer, I lacked the training and the skills to deal with the human dimensions of this case – which, again, my supervisors were well aware of from my reports to them about the contents of those conversations and the nature of my above-mentioned contacts with Credit Suisse and other finance companies in relation to [Dealer 7]. Notwithstanding those disclosures, at no stage did anybody amongst my supervisors or within the Treasurer's office suggest to me, let alone instruct or direct me, to not continue to assist [Dealer 7] in the manner that I had been doing.⁹⁵

None of my supervisors made any suggestion to me as to how I should handle the situation with respect to these telephone calls. Nor did they direct me to do or not do anything in relation to them.

One evening, I had a telephone conversation with the elderly [parent] of the [Dealer 7] dealer principal.

In an emotional state, this elderly [parent], [description deleted], said to me words to the effect of, 'The lives of my [child], my grandchildren and the future of my family are in your hands! I am pleading with you for help'.

'What do I do?', I thought to myself.

⁹⁵ A feature of the assistance provided to this dealer was that many of the email communications from Mr Grech concerning his actions were not copied into more senior Treasury officials. By way of comparison, for the other dealers who received assistance, it was common for Mr Grech to copy in more senior officials.

I could, I thought, hang up the phone and just walk away and switch off – perhaps most would.

Alternatively, I thought, I could try to use whatever leverage I could think of to respond in the name of compassion and humanity. I did the latter.

Given that I had already discussed the case with prospective finance companies I knew that the options for [Dealer 7] were limited to say the least.

In earlier discussions with the [Dealer 7] principal, [the dealer principal] had told me that [the dealer principal] was a supporter and donor to the Liberal Party, especially in the seat of [electorate name removed]. [The dealer principal] stated that [the dealer principal] was fearful that the Government would use this against [the dealer principal] in seeking to gain assistance.

I reassured the dealer that [the dealer principal's] political affiliations were not relevant.

I knew that one of the senior team members at Credit Suisse was active in the Liberal Party – he had told me this himself on his own accord a few months earlier.

Keeping in mind the hopeless situation that I found myself to be in – again with no support from my supervisors – I decided to send the relevant team leader at Credit Suisse a short e mail just to say that the dealer in question was active in the Liberal Party and was a donor and it would be good if they could help.

The reasoning at the time was to use what I perceived to be the only bit of leverage that I believed I had left to try to encourage the experts at Credit Suisse not to drop the ball on [Dealer 7] and to do what they could to come up with something, noting the repeated threats of self harm that the dealer was making and the conversation that I had with [the dealer principal's] [parent].

It is critical to note – as I testified to the ANAO on Tuesday 14 July 2009⁹⁶ – that I personally informed the Prime Minister about the [Dealer 7] case and what I was doing to help the dealer in a face to face meeting with him on Thursday 7 May 2009 in the Explorers Room at Parliament House. Others present included my Deputy Secretary, Mr Jim Murphy, Andrew Thomas, Andrew Charlton and a few others.

I explicitly stated to the Prime Minister – in front of the witnesses that I have listed – ‘This dealer bats for the other side’ – which I then immediately clarified by saying, ‘The dealer is in [electorate name removed] and [the dealer principal] is a Liberal Party supporter but if I can arrange finance for [the dealer principal] it would present you, Prime Minister, with a good public relations opportunity as it would help you appear impartial’.

The Prime Minister noted this, raised absolutely no objections and said ‘Please keep my office informed’.

I then worked with Credit Suisse, Liberty Financial, GMAC and [Dealer 7] to try to sort out some arrangement. Liberty Financial, as an OzCar partner, was prepared to finance [Dealer 7], but set some tough conditions. These were still being worked through by the time that I appeared before the Senate hearing on 19 June 2009 and in what turned out to be my last working day in Treasury to date.

It is therefore unfair, misleading and wrong to suggest that my motives in seeking to avoid what was potentially a real human tragedy was because the [Dealer 7] dealer principal was linked with the Liberal Party. I simply used [the dealer principal’s] Liberal Party links as a last desperate lever to try to secure an

⁹⁶ In the context of Mr Grech’s testimony to ANAO that he had informed the Prime Minister that the principal of Dealer 7 was a Liberal Party supporter, ANAO drew Mr Grech’s attention to contradictory emails sent by Mr Grech afterwards to two different third parties. In one instance, Mr Grech informed the third party that the principal of Dealer 7 was a ‘strong financial donor’ to the Liberal Party but that he had told the Prime Minister the principal of Dealer 7 ‘supports Labor’. The second of the two third parties was informed by Mr Grech that that the principal of Dealer 7 and the principal’s family were ‘significant donors’ to the Liberal Party. In respect to the contradictory emails, Mr Grech testified to ANAO that: ‘I did not want to make them think that I’m playing people off different sides, so I sent that email to [the first party] to basically make sure that there was no rear guard action against me from [the second party]. Because if [the second party] knew that I had told Rudd that, ‘Hey, there’s actually a good PR opportunity in this for you, Prime Minister, if you get this [person] over the line’, my only ploy to help would have backfired.’ As noted at footnote 93, the Prime Minister testified to ANAO that he did not recall discussing Dealer 7 with Mr Grech. In addition, in their testimony to ANAO, none of the officials or advisers named by Mr Grech advised ANAO that such a discussion between Mr Grech and the Prime Minister had taken place concerning Dealer 7.

outcome designed to avoid a possible loss of life. As dramatic as that may seem, that is what happened.

Having the full facts, and presenting them in their proper context as well as appreciating the highly intense operating environment, is critical to understanding the true situation.

Forming a conclusion on the basis of a couple of short e mails that had an underlying motive that was very different from the actual content of those e mails, does not allow the true position to emerge or to be understood.⁹⁷

ROLE OF THE PMO: THE CASE OF JOHN GRANT

The proposed Report finds that the Prime Minister had no recollection of Mr Grant making any representations to him.

When I appeared before the Senate Committee on Friday 19 June 2009, there were **FIVE** key reasons why I could not give the Senate a definitive response ruling out the possibility that the PMO had first raised the case of John Grant with me. Those reasons are as follows:

(1) It was⁹⁸ and remains my genuine recollection that I had received an e mail from Andrew Charlton of the PMO regarding John Grant on or around 19 February 2009.

(2) I had stated this directly to the Treasurer's Chief of Staff, Mr Chris Barrett, at a meeting that I attended with him at his request on Thursday 4 June 2009. I told Mr Barrett – in the company of Andrew Thomas and Amanda Robbins from the Treasurer's Office that it was my belief that I had received an email from Andrew Charlton raising Mr Grant's case on or around 19 February 2009. Mr Barrett said that he would check and get back to me. He did not get back to me. Rather, what happened was that two weeks later on the evening of 18 June 2009 I called Mr Barrett. During the course of our conversation Mr Barrett said words to the effect of, 'You must have confused Grant with someone else in referring to a possible email from Andrew Charlton'.

⁹⁷ ANAO examined all hardcopy and electronic records within Treasury systems concerning the Dealer 7 representation, including various correspondence not referred to by Mr Grech in his formal comments. In addition, as noted in footnote 95, Mr Grech did not provide more senior Treasury officials with full visibility over the response being provided to Dealer 7.

⁹⁸ See footnote 86.

(3) The Treasury IT team undertook a search of the Treasury e mail system, including back up servers, on 18 June 2009 and on the morning of 19 June 2009. Although they could not find any e mails from Andrew Charlton to me for the months of February and March 2009, the SES Band 2 officer with responsibility for IT, Ms Deidre Gerathy, informed Mr David Martine and me on the morning of 19 June 2009 – just a couple of hours before we were due to appear before the Senate – **that for some unexplained reason the Treasury back up servers failed to work on 3 critical days in February 2009 – one of which was Friday 20 February 2009.**

Mr Martine and I were told clearly and without qualification by Ms Gerathy and her IT team that this meant that if I had received an e mail from Andrew Charlton on Friday 20 February 2009 and it had been deleted that same day – Treasury IT would not be able to trace it.

Given that Andrew Thomas from the Treasurer’s Office initiated contact with me about Mr Grant later that same day, i.e. 20 February 2009, it then occurred to me that, rather than the explanation for me not being able to locate an email from Mr Charlton about Mr Grant being that (as I had hitherto been surmising) it had been received by me on 19 February 2009 and then deleted by me because Mr Thomas’s approach on the same subject on that day had overtaken the matter, the reason that I had not been able to locate the Charlton email was that it was, in fact, sent on 20 February 2009.

(4) At around 11.30am on the morning of Friday 19 June 2009, I received a message from the personal assistant to the Deputy Secretary of Treasury, Mr Jim Murphy, to call Mr Murphy in Sydney urgently.

I called Mr Murphy and he said, ‘If you are asked any questions in the Senate this afternoon about John Grant and the Prime Minister or the PMO you

should simply say that you've confused the Grant case with some other case'. Mr Murphy also said, 'It is very important that you do not make any trouble'.⁹⁹

(5) Just prior to my and Mr Martine's appearance before the Senate Committee, the Treasurer's Office, presumably with the authority of the PMO, agreed to release most of the e mails relating to John Grant, the Treasurer's Office, the Treasurer and me to the Committee. Both Mr Martine and I were surprised by this move, and I saw it as an attempt by the PMO to seek to divert attention away from any possible involvement of the PMO in the John Grant case.

In themselves, these factors did not mean that there was a Charlton e mail on John Grant buried somewhere in the system, but they did mean that I could not responsibly go into the Committee that afternoon and hold my hand on my heart and say that there was definitely no e mail from Charlton.

RESOURCING OF THE OZCAR SPV PROJECT

The proposed Report is accurate in its description and general assessment of the process that was adopted by Treasury to develop the policy response relating to the crisis confronting motor dealer floor plan financing in the latter part of 2008.

While the ANAO correctly points out that senior Treasury management should have been more active in allocating adequate resources to the policy implementation phase, the proposed Report fails to provide a complete picture of how serious the resource allocation deficiency was and the efforts that I made to address that deficiency.

⁹⁹ ANAO explicitly asked Mr Murphy about the lead-up to evidence given to the Senate Committee on 19 June 2009. In this respect, Mr Murphy testified to ANAO that:

- he, Mr Martine and Mr Grech met on the evening before the hearing at which Mr Murphy said to Mr Grech that: 'Look, there's obviously a discrepancy here. You said you thought you saw an email. No-one can find the email. We know it's not in the Treasury. We checked the systems. Look, are you sure you're not confused? You know, there's lots of traffic. Are you sure you're not confused?'; and 'You say what you want to say. You're the one who has to give the evidence. But are you sure you have not confused yourself? So just take that on board because if you are saying one thing and we can't find a record of it, well, something's awry. We can keep checking, but something is awry.'; and
- Mr Grech 'was never told by us to say anything other than what he thought because he is the only one who really knew'.

It is unfair for senior Treasury management to accuse me – which I read the proposed Report to be saying it (Treasury management) has – of not providing full visibility or not being proactive enough in seeking assistance.

The fact is that I was working very long hours during both the policy development and implementation phase on what was a highly complex and politically sensitive issue. Although there were some senior people involved during the policy development stage – this fell away significantly almost as soon as the Prime Minister and the Treasurer launched the OzCar initiative in Sydney on Friday 5 December 2008.

My hours were very long and intense – both before and after the Christmas-New Year period. The subject matter – establishing a financial trust arrangement – was also foreign to me and highly complex. I am not a lawyer.

I told my Deputy Secretary, Mr Jim Murphy, on at least 3 occasions from mid December 2008 to early January 2009 that the task was far too big for me to handle on my own and that there was much more to it than either he or Dr Ken Henry appeared to appreciate.

Although Mr Murphy undertook to me to look at options, nothing happened. I was allocated an EL1 for a short period in January 2007 but he soon left Treasury for Melbourne. The only practical help I got was in April 2009 when I was allocated an experienced EL1 officer on a part time basis to help me with the OzCar Guarantee Bill.

It is unfair for senior Treasury management to seek to absolve their responsibilities – including their duty of care to me – by simply saying that as an experienced SES Band 1 officer I could have asked for more help. The fact is that when the heat was on, I did – and management failed to deliver.

The failure of senior Treasury management is perhaps best illustrated by the events of February 2009. On Sunday 1 February 2009, I developed my 7th small bowel obstruction since March 2005. This resulted in me being off work for almost three weeks – and, in fact, I returned to work prematurely.

While I was away, nothing happened on OzCar – the project came to a complete stop. Yet the deadlines were that much closer and the situation facing Ford Credit in particular was becoming increasingly urgent.

Also while I was away, senior Treasury management somehow found the resources – including an experienced SES Band 1 officer – to deal with the Australian Business Investment Partnership (ABIP) project. A team of around 5 people appeared to deal with this.

By contrast, I got no resources – despite the fact that OzCar was quite a high profile initiative of the Government and an important part of its overall policy response to the Global Financial Crisis.

I also take issue with what I understand to be the claim of senior Treasury management that they reduced my workload in February 2009 when my core task for almost my entire period in Treasury since October 2008 was OzCar – which did not change - and given the fact that I spent a large part of February 2009 either in hospital or recovering from my bowel obstruction.

I was hospitalised again in March 2009 to receive a bone infusion to deal with my metabolic bone disease. My adverse reaction to a drug prescribed to me in the course of that treatment kept me off work for another week. Again OzCar stopped entirely in my absence.

It was very well known to senior Treasury management – from Ken Henry down – that I was in very poor physical health and that I was prone to developing small bowel obstructions which are not only very painful, but can be very dangerous.

Senior Treasury management were well aware that I had had about 11 hospital admissions since I had my colon removed in September 2003. They knew that I suffer from an incurable and degenerative disease of the small bowel that has resulted in the frequent obstructions that strike without warning. Often it is no more than 4 hours from initial abdominal pain to severe pain requiring morphine treatment and the vomiting of bile.

Senior Treasury management were well aware that in late 2006, one of these obstructions resulted in an intestinal haemorrhage, septicaemia and acute renal failure. I was off work for four months after spending a month in The Canberra Hospital.

Unfortunately, I never fully recovered from this near fatal episode as I went on to develop both stage 3 chronic kidney disease and metabolic bone disease, including osteoporosis. I have had a further 3 obstructions since the 2006 episode and have been told by my doctors that I have exhausted my 'insurance'. There is, I am advised, a significant risk that the next major episode will prove fatal. I live with this fear every day.

What senior Treasury management did not know – as I have only very recently discovered – was that I have also been suffering from chronic clinical depression for some years, dating back to at least 2003. This had not been treated.

My point is that senior Treasury management – knowing my fragility of health and having been reminded of it starkly both in February and March this year, made no effort to support me in any real practical sense.

Essentially, they expected me, largely on my own in both a physically and mentally impaired state – to land a major public policy initiative as well as to deal with some sensitive and challenging dealer representations – such as those relating to John Grant and [Dealer 7].

It is unfair for senior Treasury management, as I read the position attributed to them in the proposed Report, to simply seek to wash their hands of their responsibilities.

The fact is that I worked as hard and as intensely as I could as I always had tried to do in my 20 year APS career, but the reality is that in 2008 and 2009 I lacked the energy, strength, stamina and overall capacity to function as I had prior to late 2006.

I had also often asked the Treasury procurement team for help in arranging the relevant contractual arrangements for service providers. Other than sending me blank pro-forma of the relevant procurement material, they offered no practical assistance.

I therefore had no option but to devote my energy to the core priority of settling some arrangement for Ford Credit; developing and securing passage of the enabling OzCar legislation and dealing with the most sensitive of the dealer representations, including John Grant Motors and [Dealer 7].

I am advised as to the following applicable legislative provisions:

- The *Occupational Health and Safety Act 1991* makes it a non-delegable duty that Treasury ‘take all reasonably practicable steps to protect the health and safety at work of [its] employees’: s. 16(1).
- The *Workplace Relations Act 1996* (which applied at material times) provides that an employee must not be required or requested by an employer to work more than 38 hours per week plus ‘reasonable additional hours’.

My work on the Oz Car program required me to work between 75-85 hours per week including on weekends from late October 2008 until the onset of my bowel obstruction in early February 2009. My hours varied from 60-70 hours per week from late February to June 2009.

SYSTEM AND MANAGEMENT FAILURES: A BROADER ISSUE

Although the proposed Report touches on it in an indirect way, the fact is that when I returned to Treasury in September 2008 it soon became clear that the 'normal' rules of direction, reporting and accountability had changed significantly and were oftentimes confused and chaotic.

I would often receive requests for briefing and information for the Prime Minister from the PMO, with often my superiors in Treasury or even the Treasurer's Office not being aware of it. I would then get a similar request for briefing from the Treasurer's Office for the Treasurer a day or so later. Not only did this add significantly to the workload, but it was not clear to me who I was really accountable to.

I was also approached directly by offices of various Ministers to provide their Minister with private briefings on issues that I was working on that directly impacted on their portfolios. This was because the relevant Cabinet Ministers were claiming that they were not being adequately briefed on issues relating to the car industry that I was working on.

On one occasion in late 2008, I was called up directly to see the Secretary of the Department of Prime Minister & Cabinet, Mr Moran. I am not sure whether Dr Henry was made aware of this by Mr Moran. Mr Moran told me which motoring organisations I was expected to deal with in developing OzCar and

which to avoid. For example, I was to deal with the MTAA, but had to avoid the FCAI. It was never made clear to me why.¹⁰⁰

I found this perplexing and not consistent with what I had experienced working in the Treasury that I had left in mid 2003 after a 15 year career.

My essential point is that the environment I found myself in from late 2008, involved confused lines of accountability, poor overall management and frankly an almost anything goes attitude as long as the relevant policy initiative was delivered on time and the Prime Minister kept satisfied.

POLICY ON THE RUN: MYTH OF 'EVIDENCE BASED' POLICY DEVELOPMENT

Although the proposed Report generally finds that the policy development process regarding the Government's response to the crisis facing car dealer financing was sound, what it does not adequately address or appreciate is that this in part was due to various initiatives I took to test the options so as to minimise the exposure risk for the Government and the Australian taxpayer.

When I returned to Treasury in September 2008, just as the Global Financial Crisis got into full swing, it soon became clear that Treasury officers were

¹⁰⁰ Treasury records examined by ANAO suggest that Mr Grech was aware of concerns about involving the Federal Chamber of Automotive Industries (FCAI) in the policy development process. Specifically, as part of this audit ANAO examined the following email correspondence from Mr Grech:

- 7 November 2008 to senior Treasury officials advising them that Mr Grech had spoken with the FCAI about that body's possible involvement in developing a solution to the liquidity crisis for car dealers. Mr Grech advised the senior Treasury officials that he had suggested to the FCAI that it would be helpful if any comments in the press were constructive and not provocative but that Mr Grech's assessment was that the FCAI may see the issue as an opportunity to criticize the luxury car tax initiative that was included in the 2009 Budget;
- 18 November 2008 to senior Treasury officials documenting that Mr Grech had responded to telephone enquiries from the FCAI concerning the Government's response to liquidity issues confronting the automotive industry. Mr Grech's record of his discussion was that he had advised the FCAI that it was 'not helpful to have the options *[for a Government response]* canvassed in the newspapers and putting the government in a pressured situation would not necessarily deliver the outcome the industry is seeking';
- 21 November 2008 to Mr Moran, copying in senior Treasury officials, advising that he (Mr Grech) had again spoken with the FCAI encouraging the FCAI to cease applying pressure through the media so as to allow time for the Government to develop a workable solution; and
- later on 21 November 2008, to senior Treasury officials reporting on a discussion Mr Grech had with Mr Moran. Mr Grech advised the senior Treasury officials that: 'The bottom line is that it is strategically important for the Prime Minister/Prime Minister's Office that the MTAA is on side given that we are not that keen to directly engage the FCAI. I will explain further orally if necessary.'

being asked to prepare policy option papers on highly complex and economically significant issues at a speed that was, in my view, dangerous.

Policy papers would be commissioned in the morning, usually after a meeting or discussion between the Prime Minister, Treasurer, Dr Henry and a few others, and would then be considered by much the same group either later that day or the following day, with decisions often being taken on measures involving billions in actual expenditure or in contingent liabilities.

There was little, if any testing of alternative options, with often only rubbery estimates or forecasts prepared to support possible approaches.

The normal policy development disciplines had broken down, with many policy options, certainly those that I had exposure to, being developed without any real opportunity by the Department of Finance and Deregulation to undertake proper costings, if at all. Relevant portfolio departments were either not involved in the policy development process or were given very limited information or opportunity to contribute.

The OzCar SPV was developed in this environment. As I was very uncomfortable preparing policy papers which contained options that had not been properly costed and which I could not be sure would even be viable, I began to rely on a small network of 2 or 3 highly experienced former Treasury officers who I had known for the best part of 20 years and who had genuine policy expertise in the areas that I lacked. This was especially in costings and fiscal implications of options, as well as to the political viability of possible approaches.

I saw little point in putting up a policy option to the Prime Minister and the Treasurer if it could not 'fly' politically – even if the numbers seemed broadly accurate. I would therefore 'roadtest' a few ideas and options with my small trusted network so that the risks of developing half baked policy options involving contingent liabilities of \$2 billion or more was reduced.

Although this may not have been consistent with normal practice, the operating environment was hardly normal. It was in many respects chaotic and dysfunctional and suffering from the stress of overload.

Risks were being taken that would never need to be contemplated in a normal working environment that was adequately resourced with sensible deadlines and expectations.

ENGAGEMENT OF KEY SERVICE PROVIDERS: MR DAVID MURRAY AND THE PROGRAM MANAGER

In order to develop both the policy response to the car dealer financing issue and to facilitate the implementation of the policy response, it was necessary for Treasury as the proposed Report points out, to engage various service providers.

The key engagements included Mr David Murray, the highly respected former CEO of the Commonwealth Bank of Australia and the Chair of the Future Fund, as well as Credit Suisse as Program Manager.

A number of additional third party service providers also had to be engaged with specific expertise in the complex and highly specialised field of automotive debt securitisation.

I was instructed by Dr Henry and Mr Murphy to engage David Murray. It is my understanding that the Secretary had discussed this with the Prime Minister and/or the Treasurer in the first instance. I was simply told to get David Murray on board and to do it quickly. I was given Mr Murray's phone number from either the Office of Dr Henry or Jim Murphy, and I called him.

He did not seem surprised by my call and I recall him saying that the Prime Minister had raised the possibility of him helping out on this and other Global Financial Crisis issues.

I raised the issue of fees with Mr Murray. He quoted what he said was 'the standard director's fee'. I asked him whether there was scope for him to charge a lower rate as a public service. Mr Murray was flexible, but the fees still seemed high (to me at least). I ran these past the Secretary and Mr Murphy via an e mail and Dr Henry authorised the engagement and the fee arrangements.

It was Mr Murray who recommended the team at Credit Suisse. I had never had dealings with anyone at Credit Suisse in the past, including with Mr John O'Sullivan (although Mr Murphy and Mr O'Sullivan apparently knew each other).

Mr Murray said that given the very short time that we had available, it was critical that not only did I move quickly to engage the Program Manager, but the relevant team of third party service providers – including the lawyers, auditors, a ratings agency, trustee and service originator.

In consultation with Mr Murphy, I approached Mr John O’Sullivan at Credit Suisse – who said he was expecting my call. Credit Suisse quickly declared an interest in the task and declared no conflicts of interest. They also supplied me with a list of relevant service providers that they felt had both the critical expertise and the immediate capacity to develop a complex SPV (trust) arrangement in the very short period of time available.

I was initially uncomfortable at the proposed fee schedule put to me by Credit Suisse (which also covered the other service providers). Although I was assured that these were the going market rates, they seemed high to me.

However, Mr Murphy and I were told that Credit Suisse – and as it turned out the other service providers – would agree to get paid only after the SPV had been activated. At that stage this was expected to take place sometime in January 2009.

I also discussed the proposed fee arrangements with Dr Henry briefly one evening in his office. It was Dr Henry who first pointed out to me that if the SPV was set up as a trust, the fees should all be met from the income generated by the trust and, on that basis, we should agree to the Credit Suisse fee arrangement and just get on with it.

Mr O’Sullivan confirmed to me that the fees for Credit Suisse as Program Manager – and all of the other service providers, with the exception of David Murray and the Australian Government Solicitor (AGS) would be met from the OzCar SPV income stream, meaning that as long as OzCar could at least break even, Treasury and the taxpayer would not have to pay a cent.

It was on this basis that Credit Suisse and the relevant service providers were engaged.

As the proposed Report points out, it took some months for the formal contracts – including that for Mr Murray – to be finalised. This was simply because I just did not have the time to deal with the paperwork associated with the contracts.

By late January 2009, it became apparent that there was much more work involved in putting together the SPV than first envisaged. This was not helped by the less than optimal co-operation of the banks and the finance companies who were not totally committed to the project for purely commercial reasons.

The decision to include Ford Credit as a complete entity in OzCar, which was made on 25 March 2009, meant that many of the original agreements that had been negotiated in January 2009 with the banks and some of the finance

companies had to be re-worked or at least carefully explained to the relevant parties – much of which was highly technical and legalistic. This imposed a significantly greater workload on Credit Suisse and the OzCar legal team from Allens Arthur Robinson.

Ford Credit, primarily through its Managing Director, Mr Greg Cohen, also started expressing concern to me that Credit Suisse were dragging their feet. By this stage, late March and into early April 2009, Credit Suisse and AAR especially had devoted around 5 months of solid work for no return and, as the size of the SPV kept diminishing, the return on their effort was not likely to be rewarded.

I had also sensed, as had Ford Credit, that Credit Suisse were starting to lose interest in the project and that they were no longer allocating the high quality staff that they had previously allocated to it. There was a serious risk of slippage.

Given the much greater workload for Credit Suisse and the legal team from AAR, and given the critical need to have all the negotiations and agreements with the relevant parties settled by 30 June 2009 – as well as having the enabling legislation passed – to save Ford Credit and its dealership network, I agreed¹⁰¹ to a revision of the original fee schedule with Credit Suisse so as to ensure that the project was delivered.

Given that the inclusion of the entire Ford Credit loan book gave OzCar the critical mass needed to at least allow it to break even – this actually increased the likelihood that all of the service fees would end up being met from the OzCar income stream as was always envisaged and not the taxpayer.

I saw no need¹⁰² to consult my superiors on this given that the overall funding principle – i.e. fees to be met from a more viable SPV, especially one that would now carry at least a pool of very strong and low risk dealerships, i.e. the best of the Ford Credit loan book that would otherwise have been ‘cherry

¹⁰¹ Email correspondence prepared by Mr Grech dated 11 May 2009 stated that revising the fee arrangements had been proposed by Mr Grech to the Program Manager rather than being sought by the Program Manager.

¹⁰² In his testimony to ANAO, Mr Grech stated that he did not consult his superiors on the revised fee arrangements discussed in May 2009 because there was insufficient time to do so. However, on 19 March 2009, Mr Grech had recorded that he did not intend to consult his superiors on any change to the fee arrangements.

picked' by the other finance providers had not only been maintained, but enhanced.

Dr Henry was also labouring under a very heavy workload and troubling him with this or at least trying to get a quick response was going to be difficult given that John Scala at AGS and Credit Suisse (as well as the OzCar lawyers AAR) – were very anxious to finalise the Credit Suisse / servicer provider contract.

PROPOSED FINANCIAL ADVISORY SERVICES PANEL

As the proposed Report points out, Treasury is in the process of establishing a Financial Advisory Services Panel to assist the Department in policy design and implementation issues relating to the financial services sector as well as with the provision of independent technical advice when needed. This is a welcome development.

During the early preparatory stages for the tender process, the relevant Treasury Deputy Secretary, Mr Richard Murray and my immediate supervisor, Mr David Martine, asked me if I could come up with a list of possible firms that may be interested in participating in any possible panel.

I provided Mr Murray and Mr Martine with a short list of companies that I was familiar with – primarily through my work on OzCar and others that I knew through personal contacts, especially through former Treasury colleagues who had taken up employment with firms that may be relevant to what we were looking for.

To the best of my recollection, prior to the ad for the tender being fully settled and the various selection criteria determined – which I had almost no involvement with – I contacted those firms that I had identified to Mr Murray

and Mr Martine to be sure that they would indeed be interested and willing to participate in a future selection process once the ad was placed.¹⁰³

Frankly, I saw this as basic prudent risk management to ensure that the skill sets that we were after – which seemed to be evolving – could actually be provided by any one or a combination of quality firms. Without road testing at least a sample of prospective applicants, Treasury was risking wasting a lot of time and money for no return.

I had no personal involvement in the selection process or the placing of the ad, and I had not been told by Mr Murray or anyone else that I would have any role to play in the selection or decision making process.

In early June 2009, Mr Murray became concerned at the poor response rate to the advertisement that Treasury had placed, as I recall, in the Australian Financial Review and asked me again to make contact with those firms that I had earlier approached to remind them of the ad and to encourage them to apply.

I understand that Mr Murray was also going to contact those firms that he himself had approached and was planning to extend the deadline for responses.

I again contacted those firms that I had earlier identified as requested and have had nothing more to do with this process.

SECURITY RISK MANAGEMENT

I concede that I might have been more proactive in having my security clearances updated. It is the case that a number of reminders were sent to me – but I did not give this sufficient priority as my SPV / OzCar work was my first

¹⁰³ Email records made by Mr Grech show that, on 13 May 2009, he had provided information to the Treasury Deputy Secretary responsible for the tender on some possible firms to include on the tender invite list. In providing these details to the relevant Deputy Secretary, Mr Grech had also copied in to his email one of the firms he had identified as worthy of being included on the tender invite list. Due to the security classification of the email, it appears that this information did not go to the firm at that time, with Mr Grech advising the Treasury recipients of his email that the firm had been 'copied in error'. Shortly thereafter, Mr Grech forwarded on these emails to this same firm, after changing the security classification of the email. Records examined by ANAO included another instance on 13 May 2009 where Mr Grech had released this information to a potential tenderer. At the time of ANAO audit fieldwork, Treasury was considering the early advice of the tender provided to these two firms in the context of the probity of the tender process.

priority. However, I did submit a completed security vetting pack to Treasury Security on 2 June 2009.

OTHER CODE OF CONDUCT ISSUES

The proposed Report raises various other questions about possible APS Code of Conduct breaches by me.

Although I may have made some errors of judgement and could perhaps have been more careful and professional in the handling of some material, all this must be seen in the context of the very significant pressure and real strain that I was under for such a long period of time not only to deliver on OzCar, but just physically to get through each day.

As noted, I was both physically and mentally impaired and was labouring to satisfy a large number of very high profile and demanding stakeholders with inadequate support.

The Prime Minister, the Treasurer, my supervisors in Treasury, the MTAA, Ford Credit and its network of dealers and employees, Ford Australia and the various individual dealers that I was expected to attend to with very few options to really assist – such as with John Grant and [Dealer 7] – were all relying on me to deliver.

It is in that context that errors, short cuts and less than optimal practices should be viewed.

I emphasise that I was determined to finalise this project and move on.

It was critical that the enabling legislation got through both the House of Representatives and the Senate before the conclusion of the Winter Sittings. This was critical especially for Ford Credit, its dealers and the ongoing stability of Ford Australia.

Had the Bill been deferred to the Spring Sittings it would likely prove fatal for Ford Credit and OzCar.

CONCLUSION

Despite the enormous stress, personal trauma, physical and mental ailments that I have endured and continue to suffer from, I still delivered on the Government's OzCar initiative with the enabling legislation passing through the Senate by the critical date of 30 June 2009.

It is largely as a result of my work and sacrifice over an 8 month period, that the economic future of more than 400 car dealers, their 2,000 employees and their families are much more secure.

It is largely as a result of my work that the Prime Minister and the Treasurer can rightly point to a successful public policy initiative that addressed a genuine market failure without distorting the market at almost no cost to taxpayers.

The future of Ford Credit and its dealer network, many of which are in regional Australia, is much more secure. Through Ford Credit, Ford Australia is more stable thereby helping a very large part of the Australian car industry.

The survival of Ford Credit will also allow for greater competition in what is a highly concentrated market for floorplan finance in Australia – potentially delivering longer term benefits not only for dealers but Australian consumers.

Mr Michael Delaney and Ms Sue Scanlon from the MTAA can rightly tell their members that they lobbied successfully on their behalf, while the John Grant's and [Dealer 7's] of this world have either secured finance or shortly will.

SPECIFIC COMMENTS BY GODWIN GRECH ON THE SUMMARY SECTION OF THE DRAFT REPORT

Paragraph 16: It is not the case that I was told by the Treasurer's Office to stop sending reports on John Grant to the home fax machine of the Treasurer. Mr Andrew Thomas from the Treasurer's Office did alert me to the fact that the e mail reports were being sent to the Treasurer's home fax – but no instruction was ever given to me orally, in writing, or by any other means not to include the Treasurer in the distribution of update reports on the John Grant case.¹⁰⁴

Given that it was Mr Thomas that sent the initial report to the Treasurer at his home fax on the actions taken by both him and me to assist Mr Grant, it was reasonable, I say, for me to assume that the Treasurer had both a personal interest in the matter relating to Mr Grant and that he wanted to be kept informed.

¹⁰⁴ See footnote 91.

Paragraph 17: Although the approach taken to assist Ipswich Central Motors / John Grant Motors was proposed by Treasury given the limited options available, this was only after I had discussed the proposed approach with Mr Thomas of the Treasurer's Office – which were then reported by Mr Thomas to the Treasurer and other senior Ministerial staff.

At no stage did the Treasurer's Office or any of my superiors in Treasury give any indication to me that there was any problem with the proposed approach. Indeed e mails now on the public record demonstrate that the Treasurer's Office welcomed the efforts that I was making to assist Mr Grant.

Paragraph 20: I did raise resourcing issues with Treasury Deputy Secretary, Mr Jim Murphy on a number of occasions – both in mid to late December 2008 and again in early January 2009. I was told that options would be explored – but nothing happened. Indeed, the overall resource effort diminished especially after the 5 December 2008 public launch of OzCar by the Prime Minister and Treasurer in Sydney.

I did receive some additional assistance for a period in January 2009, but the relevant officer soon left Treasury for Melbourne. He was not replaced. I received some assistance from an experienced EL1 officer on a part time basis in April 2009 to assist with the preparation of the OzCar Guarantee Bill.

I also approached the relevant areas of Treasury for assistance for the preparation of relevant service procurement documentation. Although I was sent various forms and documents that needed to be completed to facilitate the procurement – no practical support was provided to actually undertake the procurements. This directly contributed to the substantial slippage in the completion of the relevant contractual material.

Paragraph 21: In addition to the very significant work load pressures that were placed on me, it was well known to senior Treasury management, including Dr Ken Henry, the relevant Deputy Secretary, Mr Jim Murphy, and the relevant immediate supervisor, Mr David Martine, that I was physically impaired and suffered from a complex array of serious medical conditions.

This included the loss of my colon, advanced dysmotility and malrotation of my small bowel that resulted in 7 small bowel obstructions since March 2005.

Treasury management were aware that I had a near fatal episode in late 2006 when a blockage resulted in an intestinal haemorrhage which led to septicaemia and acute renal failure. I never fully recovered from this episode having since developed stage 3 chronic kidney disease and metabolic bone

disease including osteoporosis. I have suffered a further 3 small bowel obstructions since the near fatal 2006 episode – the most recent in February 2009. Treasury is aware of all of this and was at the time.

Unbeknown to Treasury management – or to me – I was also suffering from chronic clinical depression which doctors believe has been present and untreated for some years.

Given this complex medical condition, and the stark reminder of my vulnerability following my hospitalisation in both February and March 2009, senior Treasury management could – and I say should- have taken action to ensure that I got the support that I needed. This did not happen.

Paragraph 22: If I made some errors of judgement, it is nonetheless unfair that these are not put into their proper context and seen and assessed within the broader operating environment and expectations placed on me, given that I was both under great pressure and was a sick man.

It is a gross distortion to imply or suggest that I gave preferential treatment to one particular car dealer simply because that dealer was a supporter or donor to the Liberal Party.

As I testified in evidence before the ANAO, I was under great pressure¹⁰⁵ to assist this particular dealer who was referred by the Treasurer's Office. I had not previously had any contact with [Dealer 7].

The dealer would ring me, 3, 4 or more times a day as Treasury phone records and my personal assistant Ms Rose Moulis and my supervisor, Mr David Martine should confirm. The dealer would be highly emotional and threatened suicide on more than one occasion. I reported this to my supervisors and the Treasurer's Office, but got no help.

The dealer's [parent] also spoke with me pleading with me to save [their child], the grandchildren and the family. I also reported this to Mr Martine and Mr Murphy. Again, I received no assistance.

¹⁰⁵ Paragraph 2.10 outlines that email correspondence originating from Mr Grech indicated that the preferential treatment given to this representation was motivated by, amongst other things, the personal circumstances of the dealer principal (documented in detail by Mr Grech in his formal comments on the Dealer 7 representation) and Mr Grech's understanding that the dealer principal was a supporter of, and donor to, the Liberal Party of Australia, with other records made by Mr Grech stating that 'I am Lib'. Testimony to ANAO by Mr Grech was that his motivation in drawing attention to these factors was to try and secure support for the passage through the Parliament of the *Car Dealership Financing Guarantee Appropriation Bill 2009*.

I was in an impossible situation, and undertook to both the dealer and *[the dealer principal's] [parent]* that I would explore all options as long as they assured him of their safety.

I lacked any training in handling human crisis situations of this type. I used whatever leverage I could think of so as to avoid the possible loss of life. This was not normal Treasury policy work.

The dealer had earlier told me that *[the dealer principal]* was an active member and donor to the Liberal Party especially in the seat of *[electorate name removed]*. *[The dealer principal]* had raised this with me as *[the dealer principal]* was fearful that *[the dealer principal's]* political activities would work against *[the dealer principal]* in getting help. I tried to reassure the dealer that this was not relevant.

I knew that the relevant team leader at Credit Suisse working on OzCar was linked with the Liberal Party – this was brought to my attention by the team leader himself some weeks earlier (Mr Murphy was already aware of these links but had not mentioned them during negotiations for the engagement of Credit Suisse as Program Manager).

Facing what appeared to me to be a desperate situation with a dealer threatening self harm – and having contacted other prospective finance providers – I thought that it *may at least help* if the team leader was aware that the dealer was active in and a purported donor to the Liberal Party.

The motive was simple – in a desperate situation use whatever leverage you can to create as much incentive as possible for the experts to keep trying to come up with a solution.

It is critical to note that I personally informed the Prime Minister about this dealer in the seat of *[electorate name removed]* and what I was doing to help *[the dealer principal]*. This discussion took place on Thursday 7 May 2009 in the Explorers Room at Parliament House at around 2.00pm. Others present included Deputy Secretary Mr Jim Murphy; Andrew Thomas from the Treasurer's Office, Andrew Charlton from the PMO and a few others.¹⁰⁶

In evidence to the ANAO, I stated that I told the Prime Minister that the dealer "bats for the other side", clarifying this by saying that *[the dealer principal]* was a Liberal Party supporter and that if *[the dealer principal]* could get finance it

¹⁰⁶ See footnote 93.

would present the Prime Minister with a good PR opportunity in the seat of [electorate name removed]. The Prime Minister acknowledged this and raised no objections whatsoever.

With respect to the misuse of e mail communications or dealings with third parties, it needs to be kept in mind the great pressure that I was under to deliver an outcome from the Prime Minister, the Treasurer, my bosses in Treasury, the MTAA, individual car dealers, Ford Credit and others.

This was all taking place whilst I was both seriously physically, and now it appears, mentally unwell.

I had lost a further 10 per cent of my body weight as a result of my February 2009 bowel obstruction and was down to about 46 kilograms and was taking (and continue to take) very high doses of medication for my bowel disease.

Despite all this, I was still doing everything I could to deliver on an important and high profile public policy initiative for the Government and the Australian people. This actually was made possible with the critical enabling legislation passing through the Parliament by the critical date of 30 June 2009.

It was critical for the OzCar Guarantee Bill to get through the Senate by 30 June 2009 if Ford Credit was to hold on. The Managing Director of Ford Credit, Greg Cohen, was often reminding me that Detroit was placing real pressure on him to get this concluded and any further slippage would pose serious difficulties.

The long gap between the Winter and Spring Sittings of Parliament therefore meant that the Bill had to get through by 30 June 2009. It is in these extraordinary and difficult circumstances that I agreed to co-operate with third parties to ensure that OzCar got through thereby securing the economic future of over 400 car dealers, their employees and their families, as well as Ford Credit, thereby helping to stabilise Ford Australia and through that a large section of the Australian car industry.

It is also misleading to suggest that I made improper use of confidential information to assist various outside parties. I did approach selected financial institutions or service providers alerting them to an upcoming tender process relating to a proposed establishment by Treasury of a financial services panel.

However, this was after I was asked by Mr Richard Murray and Mr David Martine to identify possible participants. I approached a small number of prospective participants to be sure that they would be interested in such a panel and had the necessary skill sets. This was seen as basic prudent risk

management so as to avoid the possible placing of an ad for a tender that set requirements that could not be met – thereby potentially resulting in both wasted time and money. I was never instructed not to approach these firms.

It is also important to note that I was not responsible for the tender, the placing of the ad, the settling of the selection criteria, and had at no stage been told that I would have any involvement in the selection or candidate assessment process.

As a result of a poor response to the relevant advertisement, Mr Richard Murray asked me in early June 2009 to contact those firms that he had initially approached to remind them of the ad and to encourage them to apply. Mr Murray was also planning on contacting a list of firms and was planning to extend the deadline for responses. I am not aware as to what happened with that process.

Footnote 12: Paragraph 22: It is inaccurate to align footnote 12 with the issue relating to the assistance provided to the highly distressed car dealer who was a supporter of the Liberal Party. It is more appropriate for footnote 12 to apply to the point relating to the various communications with third parties.¹⁰⁷

Paragraph 27: At least one of the representations made by a dealer, Hunter Holden, was not referred to me in Treasury at the time it was received by the Treasurer's Office – or was not referred to Treasury at all until the dealer made a second approach, this time to the Prime Minister.

Evidence showed to me by the ANAO on Tuesday 14 July 2009 suggests that various representations were made, including for Hunter Holden in the first week of February and into the second week of February 2009. I was admitted to the Canberra Hospital with a bowel obstruction on Sunday 1 February 2009 and did not return to work at least until the week commencing 16 February 2009.

The Hunter Holden dealer was referred to me by Andrew Charlton of the PMO on 17 April 2009 – at which point I acted upon it.

Paragraph 28: It is correct that I provided significantly more assistance to one particular dealer over a longer period of time given the complexity of

¹⁰⁷ The communications with third parties by Mr Grech were in respect to assistance for Dealer 7. See further at footnote 96.

the case and the repeated threats of self harm that the dealer was making if [*the dealer principal*] was not assisted. My superiors, including Mr Martine and Mr Murphy were well aware of what was going on because I reported this to them on a number of occasions.¹⁰⁸

Paragraph 30: To the extent that it was not prudent or advisable for Treasury to do anything regarding possible new dealers to Ford Credit – including that of Mr Grant, any blame or error of judgement must be shared with the Treasurer’s Office which had very much agreed to me approaching Ford Credit on behalf of Mr Grant in both telephone and e mail communication on Friday 20 February 2009.

Footnote 14: If the representation had been referred to Treasury by the Treasurer’s Office in February 2009, it would have largely been impossible for me to deal with it because I was on sick leave and senior Treasury management made no attempt to cover for me during my absence. I testified to the ANAO that the first time I had heard of the dealer from Ryde was in mid April 2009 following an e mail from Andrew Charlton in the PMO.

Paragraph 35: It is the case that procurements made by Treasury in respect of the SPV were undertaken through a direct sourcing process. If there were deficiencies in either the recording or documenting of some of the engagements, it is important to note that the OzCar initiative was being developed at a time of genuine crisis and that I was largely working on my own and that relevant senior Treasury officials – including the Secretary, Dr Ken Henry and the Deputy Secretary Mr Jim Murphy were aware of what service providers were being engaged and for what purpose.

The engagement of Mr David Murray was at the specific instruction of the Secretary and the engagement of Credit Suisse as Program Manager and the associated service providers was on the strong recommendation of Mr Murray. These were approved by Dr Henry and Mr Murphy.

Paragraph 36: In assessing my behaviour and activities, it is critical that the context, general operational environment, enormous expectations, pressures and the serious physical and other illnesses that impacted not simply on my work, but entire life, are recognised and properly considered.

¹⁰⁸ See footnote 97.

Despite the odds and challenges facing me, I still managed to deliver a successful piece of public policy for the Government and for the thousands of Australian families that rely on the car industry for their livelihoods.

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