The Auditor-General
Audit Report No.42 1999–2000
Performance Audit

Magnetic Resonance Imaging Services —effectiveness and probity of the policy development processes and implementation

Australian National Audit Office

© Commonwealth
of Australia 2000

ISSN 1036-7632

ISBN 0 642 44278 9

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth, available from:

The Manager,
Legislative Services,
AusInfo
GPO Box 1920
Canberra ACT 2601

or by email:
Cwealthcopyright@dofa.gov.au

Australian National
Audit Office

Canberra ACT
10 May 2000

Dear Madam President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in accordance with the authority contained in the *Auditor-General Act 1997.* I present this report of this audit, and the accompanying brochure, to the Parliament. The report is titled *Magnetic Resonance Imaging Services—effectiveness and probity of the policy development processes and implementation.*

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

P. J. Barrett
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. 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 Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

Auditor-General reports are available from Government Info Shops. Recent titles are shown at the back of this report.

For further information contact:
The Publications Manager
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Telephone (02) 6203 7505
Fax (02) 6203 7798
Email webmaster@anao.gov.au

ANAO audit reports and information about the ANAO are available at our internet address:

http://www.anao.gov.au

Contents

Abbreviations/Glossary 7

Summary and Lessons Learned

Summary 11
- Background to the audit 11
- The audit 12
- Background to the development of the MRI proposal 14
- Report coverage 18

Audit conclusion 19

Key Findings 24
- Probity arrangements for the negotiations 24
- Accountability, transparency and continuity of program management 25
- The quality of the processes supporting advice to the Minister 27
- The issue of disclosure of Budget sensitive information 29
- There was a surge in orders before the Budget 31
- Addressing emerging problems in the development of implementation arrangements 32
- Relevance of limiting eligible equipment 34
- Implementation of the administrative arrangements 34
- Monitoring of the MRI measures 35
- Interim expected outcomes not achieved 36
- Investigation by the HIC 37
- Potential conflict of interest 39
- Key events 41

Responses to the audit 42
- Department of Health and Aged Care 42
- Health Insurance Commission 43

Lessons learned 45
- The importance of effective probity arrangements in negotiations 45
- Accountability and transparency of direct negotiation processes 48
- Effective processes support policy advice and outcomes 49
- Managing perceived conflicts of interest for bodies subject to the *Commonwealth Authorities and Companies Act* 1997 51
- Learning from the experience 53

Audit Findings and Conclusions

1. Policy Development 57
- Introduction 57
- Initial consideration of the MRI policy options 59
- The Budget processes for 1998–99 60
- Negotiation processes 61
- Development of policy advice 64
- Probity arrangements for the negotiations 67
- Accountability, transparency and continuity of program management 70
- The quality of the administrative processes supporting advice to the Minister 73

2. The Issue of Disclosure of Budget Sensitive Information 78
Negotiations between the Department and the College 78
Involvement of the Minister and his staff in negotiations 83
Suppliers' knowledge of the details of the MRI Budget proposal 86
Factors contributing to the large number of MRI machines claiming eligibility for MBS benefits 88

3. Developing Administrative Arrangements for the Implementation of the MRI Budget Measure 92
The Agreement 92
Developing the Regulations 95
Monitoring/auditing arrangements are part of agreed MRI arrangements 100
Relevance of limiting eligible equipment 102

4. Implementation of the Administrative Arrangements 103
Registration and eligibility of MRI equipment 103
Monitoring of the MRI measures 107
Administrative effectiveness—interim outcomes achieved 110

5. The Investigation by the HIC 114
HIC's investigative role 114
Management of the investigation 114
Results of the MRI investigation 120
Potential conflict of interest 121

Appendices
Appendix 1: Text of letter from the Minister for Health and Aged Care to the Auditor-General requesting this audit 131
Appendix 2: Text of Auditor-General's response to Minister's letter 133
Appendix 3: Summary of AHTAC report recommendations 136
Appendix 4: Timing of key events 138
Appendix 5: Blandford Review 142
Appendix 6: International Society of Magnetic Resonance in Medicine (ISMRM) 143
Appendix 7: Task Force Meetings with the Department and their purpose 144
Appendix 8: Text of a Memorandum from the Secretary of the Department of Health and Aged Care to the Minister for Health and Aged Care 21 October 1999 146
Appendix 9: *Commonwealth Authorities and Companies Act* 1997 147

Index 152
Series Titles 154
Better Practice Guides 157

Abbreviations/Glossary

AHTAC	Australian Health Technology Advisory Committee
ANAO	Australian National Audit Office
CEO	Chief Executive Officer
CCDI	Consultative Committee on Diagnostic Imaging
CMCs	Case Management Committees
CT	Computerised Tomography
DI	Diagnostic Imaging
DoFA	Department of Finance and Administration
ERC	Expenditure Review Committee
EST	Eastern Standard Time
FASAC	Fraud and Service Audit Committee
HIC/The Commission	Health Insurance Commission
HPG	Health Program Grants
ISMRM	International Society for Magnetic Resonance in Medicine
MBS	Medicare Benefits Schedule
MRI	Magnetic Resonance Imaging
MSAC	Medicare Services Advisory Committee
NHTAP	National Health Technology Advisory Panel
NSW	New South Wales
PM&C	Prime Minister and Cabinet
PMD	Program Management Division
PRB	Professional Review Branch
PRD	Professional Review Division
RACR/ The College	Royal Australian College of Radiologists
The Act	*Auditor-General Act* 1997
The Department	Department of Health and Aged Care
The Minister	Minister for Health and Aged Care
The Secretary	Secretary of the Department of Health and Aged Care

Summary and Lessons Learned

Summary

Background to the audit

1. On 12 May 1998, the Government announced, in the 1998–99 Budget context, a measure to constrain diagnostic imaging expenditure under the Medicare benefits arrangements and fund improved access to Magnetic Resonance Imaging (MRI) services. The announcement was underpinned by an agreement between the Government and the diagnostic imaging profession, following a period of intense discussion and negotiation with representatives of the Royal Australasian College of Radiologists—referred to throughout this report as 'the College'.[1]

2. The MRI measure provided for Medicare Benefits Schedule (MBS) benefits to be payable from 1 September 1998 for MRI services which met certain clinical and other eligibility criteria. Payment of benefits required registration by providers with the Health Insurance Commission (HIC), which established eligibility against criteria for both the provider of the service and the equipment on which the service was delivered. Applications for registration were made by way of statutory declaration which required the eligible provider to supply particulars of the MRI machines to be used by reference to location, the model and serial number, magnetic strength and its manufacturer. The pro forma statutory declaration required a copy of the contract or lease for the machine to be attached.

3. Questions were raised about the Budget measure in Parliament on 8 February 1999 at a Senate Estimates Hearing of the Senate Community Affairs Legislation Committee. The issues covered included the negotiation process and the number of eligible machines. Subsequently, there has been further parliamentary debate, and a number of accusations and suggestions of inappropriate behaviour by various parties involved in the negotiation process. The accusations include that some persons placing orders for machines in the period preceding the Budget had access to information to be announced in the Budget, specifically that the supply controls would permit eligibility of machines ordered by Budget night, thus providing those persons with a significant financial advantage.

---

[1] In July 1998, the College became the Royal Australian and New Zealand College of Radiologists.

4. On 18 October 1999, the Hon Dr Michael Wooldridge, Minister for Health and Aged Care (the Minister), wrote to the Auditor-General to request an audit inquiring into, and reporting on, the probity of the processes surrounding the negotiation of the Agreement between the Government and the diagnostic imaging profession (see Appendix 1). The Auditor-General was asked to focus especially on those aspects of the Agreement leading to the introduction of MRI to the MBS. The Minister noted that he would welcome any observations the Auditor-General may have about how similar processes might best be handled in the future.

5. The Auditor-General agreed to conduct a performance audit under section 18 of the *Auditor-General Act* 1997 (the Act) (see Appendix 2). The audit was extended by agreement with the Minister, pursuant to Section 20 of the Act, to put beyond doubt the Auditor-General's authority to cover the role of the Minister and that of his staff given their involvement in this matter.

The audit

6. The objective of the audit was to examine and report on the effectiveness and probity of the processes involved in:

(a) the development and announcement of the proposal to improve access to Magnetic Resonance Imaging (MRI) services announced in the 1998 Budget, including negotiation with the diagnostic imaging profession; and

(b) the registration of 'eligible providers' and 'eligible equipment' to enable the payment of claims for MRI services on the Medicare Benefits Schedule in relation to these services, and related administrative and monitoring arrangements.

7. The examination included an assessment of the:

(i.) adequacy and timeliness of advice provided to the Minister for Health and Aged Care by his Department and the Health Insurance Commission, including advice in respect of the identification and treatment of the risks involved;

(ii.) adequacy of the protection of sensitive budget information in the period leading to the Budget announcement, including steps taken to avoid conflict of interest;

(iii.) adequacy and timeliness of actions taken by the Department and the Health Insurance Commission in response to indications of unanticipated or inappropriate MRI submissions; and

(iv.) scope to improve administrative processes surrounding the Budget development and advice processes involving potentially commercially sensitive information of this kind.

8. The audit did not focus, or report on, individual cases of potential fraud. These are matters for the Health Insurance Commission, the Australian Federal Police and the Director of Public Prosecutions. Equally, investigations of any individual breaches of Budget confidentiality are, primarily, matters for the Australian Federal Police.

9. The audit encompassed:

(a) review of relevant documents in the Department of Health and Aged Care, the Health Insurance Commission and in the Minister's Office;

(b) interviews with officers from the above agencies, including from the Department of Finance and Administration (DoFA) and Prime Minister and Cabinet (PM&C) and with the Minister and the Minister's staff and ex-staff;

(c) interviews with, and acquisition of relevant documentary evidence from, representatives of professional medical organisations involved in the negotiation or consultation process, individual radiologists, and industry suppliers; and

(d) consideration of relevant Australian and overseas experience of issues relating to potential conflict of interest and/or negotiations with professional organisations on sensitive commercial or budget related matters.

10. The audit methodology has been significantly influenced by one of the findings in this audit report—that Commonwealth documentation and maintenance of documents in this instance have not been of a standard that adequately supports accountability for policy development and implementation. To address this issue, the ANAO has sought to reconstruct documentary evidence, wherever possible, by various means including reviewing archived email information and documentary evidence held by parties external to the Commonwealth. The ANAO has also taken extensive oral evidence from key parties involved in the Budget negotiation process and implementation of the Budget measure by undertaking some 75 personal interviews.

11. For the purposes of obtaining oral information and gaining access to relevant documents from the private sector and key Commonwealth officers, the Auditor-General exercised the powers available under section 32 of the Act. Section 32 authorises the Auditor-General (or his delegate), in certain circumstances, to require a person:

- to provide information required by the Auditor-General;
- to attend and give evidence before the Auditor-General or an authorised official; and
- to provide documents to the Auditor-General.

12. Critical aspects of evidence have been obtained under oath or affirmation. The Minister for Health and Aged Care provided evidence under oath. The cooperation of the Minister, organisations and other individuals involved during the course of the audit was appreciated, particularly in view of the circumstances of the audit.

13. The audit was conducted in accordance with ANAO auditing standards at a cost of $570 000.

Background to the development of the MRI proposal

MRI and its clinical application

14. A magnetic resonance machine is a superconducting magnet, cooled down with liquid helium, which exerts a powerful magnetic pull. A patient having an image taken of some part of his or her body is placed inside the magnet and subjected to radio waves. The patient's body takes in the energy of the waves, the machine is turned off, the body gives out the energy, and the machine captures this as an image. This results in extremely clear images of soft tissue and bone, which allow doctors to more accurately diagnose illnesses. MRI is not invasive and it has the potential to replace surgical testing procedures. [2]

15. MRI began to be employed as a diagnostic tool in radiology departments in Australia in the 1980s. Demand for MRI services has grown considerably since then. As with Computerised Tomography (CT)[3], which has been taken up more widely in Australia than in most developed countries, much of the dissemination of MRI has taken place prior to the production of scientifically adequate evidence of improved outcomes.[4]

---

2 Australian Health Technology Advisory Committee 1997, *Review of magnetic resonance imaging*, Commonwealth of Australia, Canberra, p.19

3 CT provides cross-sectional images of body organs. X-rays pass through the patient, these signals are processed by a computer which converts them into images which are then examined and advised on by a radiologist.

4 AHTAC, loc. cit., 35-6.

Illustration 1
MRI scan

Source: The Beth Israel Deaconess Hospital, USA, (http://radiology.bidmc.harvard.edu/Modalities/MRI/MR.html).

Historical development

16. Until the 1998 Budget measure, Commonwealth funding for MRI was restricted to 18 publicly owned MRI units under a Health Program Grants (HPG) arrangement paid under the *Health Insurance Act* 1973.[5] This funding program, which commenced in the 1991–92 financial year, provided grants to the States for the purchase of MRI units and for about 80 per cent of recurrent costs.

17. This approach was based on the results of a comprehensive national assessment program of MRI conducted over the period 1986–90 by the then National Health Technology Advisory Panel (NHTAP). A targeted grants program was considered at that time to be a better funding approach than the use of Medicare rebates, by providing clinically appropriate and quality MRI services that were affordable to patients and the community while constraining the proliferation of a complex and potentially expensive technology.

18. The total cost to the Commonwealth of the HPG arrangements was some $20 million per annum. State Governments were responsible for:

- locating the Medicare-funded units within major neurological centres;
- choosing the physical location of units; and
- providing the remaining 20 per cent of recurrent costs not provided by the Commonwealth.

---

[5] In the 1980s, MRI services qualified for MBS benefits in a limited manner for a short period.

19. States were also able to purchase services from privately owned units.

20. The funded MRI units provided scans free of charge to private (non-compensable) patients, hospital outpatients, and Medicare hospital in-patients on the basis of referral by a specialist.

21. By the second half of the 1990s there was also an increasingly large private market for MRI services. This development, accompanied by widespread concerns that the restricted public funding of MRI services was limiting access to an increasingly significant diagnostic tool, led to a review of MRI services by the Australian Health Technology Advisory Committee (AHTAC).

The AHTAC Report

22. The AHTAC report, *Review of Magnetic Resonance Imaging*, was released in October 1997, having taken two years to complete. Australia was found to have an intermediate level of MRI provision, but with a higher ratio of CT units to MRI units, in comparison with experience in other developed countries. The report noted that this could have resulted from restrictions on Commonwealth funding of MRI.

23. The report noted that, at the time, there were 54 MRI units in Australia in the public and private sectors. However, the concentration of publicly funded MRI units in 18 public hospitals was found to restrict access for both doctors and patients. Although there was no evidence that the treatment of urgent cases had been compromised, the report found that delays in diagnosis undoubtedly prolonged patient discomfort and/or uncertainty.

24. MRI was found to be an expanding area of diagnostic imaging with preferred application in spinal injury and disease cases. It was regarded as a cost effective replacement for some conditions where other diagnostic tools were being used.

25. The AHTAC report recommended, *inter alia*, that a modest increase in public funding be provided for MRI services; that consideration be given to access to MRI services in rural and remote areas and paediatric use; and that an examination be conducted of methods of promoting appropriate MRI substitution for other means of diagnosis. (Appendix 3 contains more information on the recommendations of the report).

Development of MRI Budget proposal

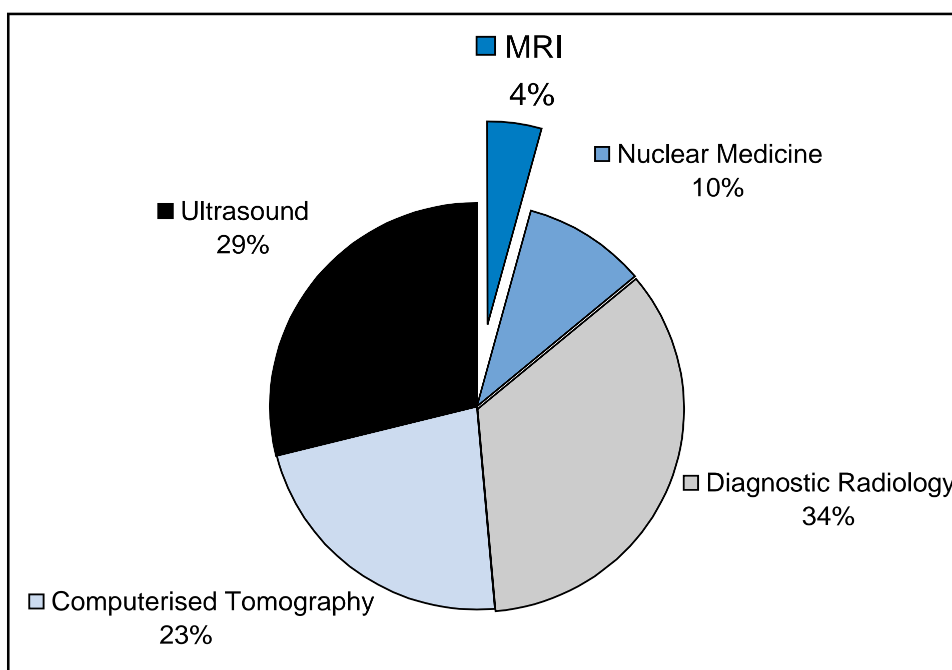
26. Following the AHTAC report, discussions commenced between the Commonwealth and the College with a view to reaching a three year agreement that would enable the controlled expansion of MRI services

within an overall savings envelope set by the Government for diagnostic imaging services. The negotiations with the profession were undertaken primarily with a Task Force on MRI, established within the College.

27. The primary aim of the Government was to achieve a diagnostic imaging agreement that would cap total public expenditure—as had been previously applied to pathology services—and also establish a process for engaging with the profession to control such expenditure. Diagnostic imaging expenditure was around $1 billion per annum and had largely been growing at over ten per cent per annum.[6] MRI is a small component of this expenditure, as illustrated in Figure 1. The improvement in access to MRI services as part of this package aimed to address the thrust of AHTAC recommendations.

Figure 1

Imaging Modalities as Proportion of Total DI Expenditure1998–99[7]



Source: Department of Health and Aged Care

---

6 MRI expenditure represented $45.4 million in 1998-99. This represented some 0.2 per cent of Portfolio expenses ($23 billion in 1998-99).

7 The new arrangements whereby MRI services qualified for MBS rebates came effective from September 1998. Accordingly, the above date for MRI expenditure does not represent a full year of the new arrangements; MRI expenditure to March 2000 represents some six per cent of total diagnostic imaging expenditure.

28. The outcome of the negotiations was the announcement on Budget night, 12 May 1998, of the measure to constrain diagnostic imaging expenditure under the Medicare benefits arrangements and to fund improved access to MRI services. The key stages of the negotiation which led to these outcomes, and subsequent events, are highlighted in Figure 2 (page 41). A more detailed outline of events is set out in Appendix 4.

29. The arrangements for MRI have been subject to review by a Committee chaired by Professor Blandford, whose report is due for release shortly (see Appendix 5).

Report coverage

30. This report concerns the administrative **processes** involved in the negotiation and development of the MRI policy measure, not the policy *per se*, and its implementation. It considers particular allegations of improper behaviour by various parties and whether there were deficiencies in administration and monitoring of the implementation of the policy. The report focuses in particular on the processes surrounding the decision to allow Medicare benefits to be paid for MRI services provided with equipment ordered or leased under an unconditional and enforceable contract at 7.30pm EST on Tuesday, 12 May 1998 but still to be delivered at that time. In considering these matters the report addresses:

- the administrative processes involved in the development of the policy, including the arrangements for negotiation by the Commonwealth with representatives of the College (Chapter 1);
- the issue of inappropriate disclosure of Budget sensitive information through these arrangements (Chapter 2);
- development of the Regulations and administrative arrangements for eligible MRI services in the light of emerging problems with respect to the number of MRI machines (Chapter 3); and
- implementation of the administrative arrangements (Chapter 4), including the special investigation by the Health Insurance Commission (Chapter 5).

Audit conclusion

31. An important policy objective for the Government in the lead up to the 1998–99 Budget was to obtain an Agreement with the radiology profession to constrain growth in Medicare outlays on diagnostic imaging, already about $1 billion per annum, and to improve access to MRI services through expanded Commonwealth funding. The Department's negotiations with the College were successful in achieving this Agreement.

32. Notwithstanding the successful conclusion of an Agreement, at the time this audit was being conducted the anticipated level of control over growth in diagnostic imaging outlays had not been achieved. Expenditure on diagnostic imaging in the first year of the Agreement was some $46 million over the target specified in that Agreement, that is, some five per cent higher than anticipated.[8] There was an additional $4 million in expenditure in excess of that anticipated for MRI, which was outside the Agreement. While growth in diagnostic imaging expenditure has since declined, it still remains higher than expected by the Government. As a consequence, the net savings expected to the Budget have not yet been achieved. Nevertheless, the Department believes that, given the underlying trends, the savings to Government have been significant; the Minister has supported the view that this is a substantial achievement.

33. Access to MRI services has improved overall, with 66 MRI units now eligible for MBS rebates, of which 17 are located in non-metropolitan areas. However, the desired equitable distribution of machines has not yet been fully realised.

34. The Department's approach to risk management in the development of the MRI policy measure was uneven. High level risks relating to the linkage of the proposed measure to the processes for the Commonwealth Budget, funding options and MRI cost containment were in the overall context identified and managed. However, insufficient consideration was given to risk identification and management for some aspects of the policy development process and the measure itself, particularly in regard to the decision to include machines ordered by Budget night. As a result there were exposures on both these fronts, which could have been better managed. This is not just a judgement made in hindsight but reflects the importance of risk identification and treatment as an integral part of management at all levels of an organisation.

---

8 The unanticipated expenditure is due to diagnostic imaging services other than MRI —in particular ultrasound and CT. MRI is a relatively small part of diagnostic imaging outlays, accounting for six per cent of the total in 1999–2000.

35. Negotiating new policy measures with professional and other organisations presents significant challenges in managing budget sensitive matters, particularly where those involved may gain knowledge or insights which could benefit them financially. The ANAO concluded that the Department's management of the probity arrangements surrounding the negotiations for the MRI measure was not adequate for the circumstances. The arrangements in place lacked structure and clarity. Specifically, the Department did not seek to agree with members of the Task Force what confidentiality arrangements would apply to certain information and procedures. Similarly, there were no agreed procedures or arrangements for declarations of any conflict of interest. As a result, the Department did not achieve a shared understanding of, and commitment to, what was to be treated in confidence and what could reasonably be discussed more openly. This was primarily the responsibility of the Department, rather than the Task Force, as part of its accountability for the process. Once established, both parties would then have been bound by the arrangements established.

36. There was a lack of adequate documentation by the Department of the negotiations with the College. There was also a lack of adequate documentation in relation to the development of some elements of the policy on MRI, specifically about the merits, risks and alternative options in relation to the inclusion of machines on order. Such documentation is generally accepted as a key element of sound administration and accountability. Official records were not taken or maintained of some significant briefings of, and decisions by, the Minister. As a consequence, there is limited departmental documentation on the development of the key elements of the MRI supply measure. Such documentation also would have assisted in better informing senior departmental management of the progress with the development of the policy proposal in view of their functional and operational responsibilities. Notwithstanding this inadequacy, it important to observe that the Department met the formal requirements of the Budget processes and acted with proper authority to progress development of the measure.

37. The policy measure itself provided for benefits to be paid for MRI services by registered providers on eligible machines in place, or ordered, before Budget night. The Department's processes for developing the proposal to include machines on order before Budget night in the Budget measure, and in providing advice to the Minister on this matter, could have usefully involved greater consideration and attention to all relevant options. As well, more consideration could have been given to attendant benefits and risks for delivering the key supply measure and to provision of information relevant to the Minister's assessment of

departmental advice. This conclusion applies both to advice at Budget time and to subsequent advice concerning emerging problems with respect to machines on order. Relevant considerations included the large numbers of orders placed in the lead up to the Budget, undermining one of the key supply controls, thereby placing at risk the Agreement target for MRI scans; and exposing the Commonwealth to potentially fraudulent claims. We recognise the Department was under considerable pressure with tight timetables, at this time, as well as the need to ensure the full cooperation and agreement of the profession.

38. There were 33 machines ordered in the four working days between 7 and 12 May (Budget night) 1998, according to statutory declarations provided to the HIC. This compares with a total of some 60 public and private machines operating at that time. Some of the contracts for these ordered machines were apparently backdated, as evidenced by the interim results of an investigation conducted by the HIC. However, the possibility of some prior knowledge of, or speculation about, the inclusion of machines on order in the MRI Budget measure cannot be ruled out, even for these cases.

39. Accordingly, one of the key concerns arising in relation to this audit was whether there was a leak of Budget information which led to this pre-Budget rush of orders. The most significant interactions between the Commonwealth and the profession in connection with this matter occurred in the final stages of negotiations. Statements have been provided that the Commonwealth's consideration of the option of including machines on order as at Budget night was discussed with the College Task Force on MRI prior to the Budget. However, the recollections of most participants do not support this view. In addition, there is no record of any such discussions.

40. It is noteworthy that five of the eleven radiologists involved in the negotiations were associated with practices that allegedly ordered nine machines prior to the Budget. Whatever the basis for this purchase activity, it would be reasonable to conclude that, if this fact were known in the profession, it would also have had some influence on other radiologists considering purchasing MRI machines.

41. There was a meeting on 6 May 1998 between the Minister and College representatives. This date is of some note in that it immediately precedes the large surge in machine orders between 7 and 12 May. The significance of the meeting is that it is likely to have given an indication to the wider radiology community of the successful conclusion of negotiations, including an indication of the likelihood of availability of MBS benefits for MRI services. Indeed, the Department has stated this was the intention.

42. Statements have also been made by College representatives who attended the meeting on 6 May 1998 with the Minister that, although the Minister did not reveal what measures would be in the Budget, there was discussion of the option to include machines on order as at Budget night. All but one have stated that this was initiated by the Minister (the other has indicated this was initiated by the Minister or the departmental official present) within the general context of College concerns about restrictions on sites. They have also indicated that the College expressed concerns regarding enforceability of such a measure. On the other hand, the Minister, the Minister's adviser and the departmental officer present, dispute the radiologists' recollection of the meeting. They do not recall the specific matter of machines on order being discussed. Against this background, including related developments over the preceding month, the meeting of 6 May 1998 seems to have had some influence on the following surge in orders for machines, either directly or indirectly.

43. No substantive conclusion about inappropriate disclosure of budget sensitive information could be expected on the basis of such contradictory evidence, all of which was collected using the Auditor-General's powers to direct under s 32 of the Act, and much under oath or affirmation. However, the ANAO considers that, on the balance of probabilities, the evidence does at least suggest that negotiation and consultation with the College representatives and open debate on supply control issues created an environment where some participants may have deduced, or actually become aware, that the Commonwealth was giving consideration to the inclusion of machines on order in the Budget measure. Nevertheless, the audit was not able to conclude whether, or to what extent, the actual surge in orders was based on reliable information, or informed or partly informed speculation.

44. Registration of MRI equipment generally resulted in applications being accepted as eligible. Monitoring and auditing arrangements undertaken by the Department and the HIC with respect to the registration of equipment did not effectively focus on the risks emerging in relation to unexpectedly large numbers of machines registered for eligibility. It was only as a result of an anonymous complaint to the HIC that MRI applications were examined in greater detail than simply the registration checks on the information in the statutory declaration and contract.

45. The monitoring of MRI services provided data indicating that, from about March 1999, the number of MRI scans receiving MBS rebates was occurring at a level that was higher than allowed for in the Agreement, with pressures for increasing numbers of scans in the future.

46. The investigation undertaken by the HIC in response to the complaint it received became a substantial task, taking just over 12 months to complete and involving, *inter alia*, interviewing 135 persons. Whilst recognising that the scope and complexity of the task had increased, the investigation could have been more effectively managed through more disciplined and systematic project management procedures.

47. One aspect of probity arrangements addressed in this audit was the HIC's procedures for managing perceived conflict of interest of Board members with regard to the investigation. The ANAO found that the HIC had arrangements in place to address such conflicts. However, they did not work appropriately on all occasions in relation to the potential conflict of interest of the Chairman. Notwithstanding this limitation, there is no evidence that the course of the investigation was influenced improperly.

48. In forming these conclusions the ANAO has had regard to the key findings set out hereunder.

Key findings

Probity arrangements for the negotiations

49. Negotiating new policy measures with professional and other organisations and third parties outside government can provide real benefits, for example, in generating better targeting and operational efficiency as well as acceptance of policy measures. However, it also presents challenges for Commonwealth officials and Ministers in managing budget sensitive matters, particularly where those involved may gain knowledge or insights into information which could benefit them financially. It follows that, in such situations, agencies should consider a suitable risk management strategy to preserve the integrity of sensitive information—in this way protecting the interests of all concerned. Such a strategy would be expected to at least address the need for clarity and shared understanding of what was to be treated in confidence and what could reasonably be discussed more openly and in what circumstances. In this way, there could be no equivocation or uncertainty for those affected and it would be reasonable to expect their full cooperation and conformity with budget imperatives.

50. The evidence shows that the arrangements in place lacked structure and clarity sufficient to generate the confidence of all participants. The Department did not seek to formally agree with members of the Task Force, and record what confidentiality arrangements would apply to certain information and procedures. Task Force members were not asked to sign confidentiality agreements. As a result, the Department did not achieve a shared understanding of what was to be treated in confidence and what could reasonably be discussed more openly and in what circumstances. This was primarily the responsibility of the Department, rather than the Task Force, as part of its accountability for the process. The Department did not formally document its requirements regarding confidentiality and probity arrangements to minimise any possible misunderstanding of those concerned. Significantly, discussions with the Task Force on this matter were not recorded in some way for accountability and review purposes, as well as to facilitate the shared understanding of the arrangements.

51. The Department has indicated that the negotiations with the Task Force were intended to be open; the only budget sensitive matter related to supply controls with respect to the eligibility of equipment. However, evidence shows that MRI Task Force members were given mixed messages by the Department during negotiations as to what was to be regarded as sensitive and what was not.

52. In practice, the Task Force exercised considerable restraint in giving details from the negotiations to College members, often reminding members that the matter was confidential. This resulted in dissatisfaction amongst some College members who felt they should have been better informed. As a result, the Department neither achieved an open process with Task Force members fully consulting with their College fellows, nor a sufficiently clear and agreed understanding of the confidentiality aspects of the negotiations. Discussion of clearly articulated processes and requirements, and suitable structures to support this, could have resulted in both aims being substantially achieved with mutual understanding and greater confidence of all parties.

53. There were no agreed procedures or arrangements for declarations of any conflict of interest, and members of the Task Force were not asked to declare any potential conflicts of interest. Some Task Force members did make declarations of their intentions to buy (or replace) machines during the negotiation process but these statements were not recorded by the Department, weakening their usefulness. Some of the confusion in this area is reflected in the fact that the Minister's office gained the impression that conflict of interest agreements had been signed by Task Force members.

54. Several Task Force members have pointed to the benefit of more structured procedures to establish confidentiality requirements and to provide for potential conflict of interest situations, both in the interests of the Commonwealth and of participants.

55. The Department has accepted that it should have requested formal statements of interest and identified process for handling conflict of interest. However, it has also pointed to the responsibilities of other parties to the negotiations, and emphasised the role of individual responsibility in the process.

Accountability, transparency and continuity of program management

56. A key element of sound public administration and accountability is adequate recording or documentation of the business of government. There was an absence of suitable recording by the Department of the negotiations with the College, which is not consistent with good administrative practice. No record was kept of meetings between the Commonwealth and the College and there is no record of what was agreed (other than drafts of the Agreement in the latter stages of negotiation).

57. The Department's documentation practices did not compare well with those of the Task Force, whose members were not subject to the same accountability disciplines as was the Department. Records retained by the Task Force provided for both accountability in relation to decision-making and facilitated the sharing of information.

58. While recognising that the policy was properly authorised and that the Department met the formal requirements of the Budget process, there was also a lack of adequate documentation in relation to the development of some parts of the policy on MRI, and specifically about the merits, risks and alternative options in relation to the inclusion of machines on order. Few records on some of the key matters have been retained on file. Informal notes, relating to the development of the Budget measure, have not been retained which, of course, means an inadequate audit trail. Let alone any other interest, this is not helpful to departmental management.

59. As indicated above, no records were taken or maintained of some significant briefings of, and decisions by, the Minister, particularly those relating to the inclusion of machines on order in the MRI measure. On key issues, and where sufficient time is available, it is good practice for departments to use written briefings to provide assurance that the issues and options are clearly presented to the Minister and that any decisions taken by the Minister are understood and recorded. Such documentation also would have assisted in better informing senior departmental management of the progress with the development of policy proposals, and identification and treatment of associated risks, in view of their departmental management responsibilities. In addition, it is also good practice for departments to maintain a record of oral briefing of significant issues and any resulting discussions and decisions. Briefings and records maintained need not be lengthy, but should be fit for their purpose. The Minister has supported the benefits of such practice. He has also indicated that the weaknesses in the Department's overall record keeping hampered his ability to answer requests by Parliament for information on some MRI matters.

60. The Department has accepted that some aspects of the MRI policy process could have been better documented and, in particular that it would have been desirable to have had formal minutes of the negotiation meetings and a record of outcomes of meetings with the Minister. However, it has stated that weaknesses in the documentation of policy advice to the Minister were limited to advice on the issue of machines on order prior to the Budget. Nevertheless, it is clearly advisable that the Department reviews its current documentation practices as an integral part of its governance framework.

61. In short, the absence of documentation on these matters was not consistent with good administrative practice. One challenge for the Department, as it is for all agencies, is to balance the major focus on results with appropriate accountability for those results, which is central to good risk management. In this situation, the pressure on the Department to progress sensitive consultations over a short time period actually demanded greater discipline in record keeping and accountability as part of a sound control environment which is integral to robust and successful corporate governance. The latter also provides management with some assurance that required actions will be undertaken particularly in periods of stress accentuated by, for example, time pressures and multiple demands being placed on the same people.

62. The ANAO notes that weaknesses in these matters extend to the Agreement, which is contained in a College letter and which has not been countersigned. There has since been some debate between the parties as to what constitutes the Agreement. It would have been prudent for an agreement as significant as this to be signed by both parties, to provide for greater transparency as part of demonstrated accountability, and ensuring a shared understanding of the final Agreement. The Department notes that, notwithstanding this limitation, the Agreement is clearly operative and has been adhered to by both the Government and the profession. Nevertheless, prudent management would have been enhanced by a more disciplined and risk-managed approach to the Agreement.

The quality of the processes supporting advice to the Minister

63. Early in the development of the MRI policy proposal, the Department considered the high level risks in relation to alternative policy options for increased funding of MRI and the need for cost containment. It was also conscious of the Budget timetable and the need for departmental policy development processes to dovetail with the overall Budget processes. However, in other aspects of the development of the MRI policy measure, there was insufficient consideration given to risk identification and systematic management, particularly in regard to the decision to include machines ordered by Budget night. Such corporate discipline is not an option in these circumstances.

64. The advice to include machines on order was given to the Minister on 5 May 1998 in the context of departmental advice on the whole of the diagnostic imaging package. This advice was given in an oral briefing. The Minister accepted the Department's advice. Following the briefing, the Minister wrote to the Prime Minister seeking approval for the negotiated package, which was given on 11 May 1998.

65. In the weeks immediately preceding the Budget, the Department considered the most significant issue to be addressed in developing the policy measure was the risk of not achieving an Agreement with the College. However, there were also other significant risks that needed to be managed within the details of the proposed package; one of the most significant has turned out to be the inclusion of machines on order in the policy measure. The latter should have been evident in any consideration of a supply-based measure.

66. It was only in late April 1998 that the Department gave serious consideration to including machines on order as part of the supply controls. The Department has indicated that the reasons for including machines on order were policy reasons, and not legal reasons. It was concerned not to disadvantage those who had ordered ahead of the Budget under normal business parameters and to prevent those with genuine orders pursuing the Government for redress.

67. There are precedents for including firm orders for equipment in Budget measures. However, in this instance there were considerable risks which the evidence indicated were not given sufficient attention in developing the policy. The Department has indicated it did give some consideration to risks of speculative orders as reflected in the reference to firm orders in the letter to the Prime Minister on 5 May. However, there was no written advice to the Minister on the options and attendant benefits and risks for delivering the key supply measures which would contribute to the control of the level of MRI services funded under the MBS. In the event of tight timetables where oral advice of this kind is sought, there should at least be some record of that advice both for internal and external accountability, as noted earlier.

68. The Minister was not advised, in the 5 May discussion, of the risks associated with the Department's preferred option of including machines on order in the Budget measure. The Minister was also not informed of other considerations that might have been pertinent to his decision, such as the level of speculation and likely resulting ordering, and the fact that some Task Force members had already declared their intention to purchase equipment. The Minister's office indicated that such considerations would have been relevant to the Minister's decision. It is not the object of this report to speculate on the outcome if such matters had been considered, but simply to point out the importance of adequate risk identification, mitigation options and conveyance of relevant considerations to decision makers.

The issue of disclosure of budget sensitive information

69. The Government's intention to improve access to MRI services through MBS funding was known from early 1998. This was not confidential information, but the details of the means by which the supply of MRI services might be restricted were confidential. These details were recognised by the Task Force as being the clear responsibility of the Commonwealth although they equally would have been bound by any stated confidentiality consensus.

70. Notwithstanding this latter understanding, discussion of supply controls did take place within the Task Force and in its negotiations with the Commonwealth. Some of these controls, such as accreditation and referral arrangements, were matters for legitimate discussion. Others, such as the eligibility of machines, were understood to be matters for decision solely by Government.

71. The discussions included the possibility of controlling supply of MRI machines through a site freeze for 18 months with review of the arrangements at the end of the period. This was a matter of intense debate and was raised with the College Council. Other information obtained from the Department gave a clear signal of the possibility of a freeze on numbers being effective from Budget night.

72. There seems to have been some recognition in discussions in the Task Force that there were a few machines that were known to be on order and this fact was identified by the Task Force for the Department in late April 1998. There have also been several statements by participants that there was some discussion of the specific option of including machines on order as at Budget night during exchanges on supply control issues in Task Force meetings with the Department, including two statements (one from a departmental officer) that this was initiated by the Department. Others present have not recalled these specific discussions (although one of these does recall the Department warning of the consequences of MRI equipment suppliers making false declarations to the Government during discussion of supply controls).

73. There is evidence that there was an expectation of site/installed restrictions by some participants. In spite of this apparent expectation, five of the eleven radiologists involved in the negotiations were associated with practices that allegedly ordered nine machines prior to the Budget. Two members had an interest in eight of these machines. Whatever the basis for this purchase activity, it would be reasonable to conclude that, if this were known in the profession, this factor would have had some influence on other radiologists considering purchasing MRI machines.

74. Thus, the available evidence is inconclusive on specific allegations regarding discussions in the Task Force making it difficult to be confident of any definite conclusion as a result.

75. The other discussions of significance in considering this matter occurred when the Minister met with the College on 6 May 1998 as well as in an informal meeting prior to this between a departmental officer and representatives of the College. The Minister's meeting with the College occurred on the advice of the Department in order to close the negotiation process and to explain to the profession why the Budget papers did not reflect the Agreement. The timing of the meetings of 6 May was important because, subject to approval by the Prime Minister, the decision to include machines on order had been made. They are also a prelude to the surge in orders experienced over the following few days. What was discussed has had to be elicited from interviews with those who attended, as there are no records of the meeting, as noted earlier.

76. Evidence relating to the matters discussed at the meeting between the Minister and the representatives of the College on 6 May is inconclusive about what was actually said. All participants agree that the Minister did not discuss what measures would be in the Budget. However, all College members who attended the meeting are of the view that concerns were expressed by the College about restrictions on sites, and within this context, there was discussion of machines on order as of Budget night, although the matter was only discussed as an option. All but one member consider that the issue was raised by the Minister (the other has stated that it was raised by the Commonwealth, but could not recall by whom).

77. The evidence of the College representatives indicates that the College expressed concerns regarding enforceability if the Government included machines on order as a supply control and one representative recalls assurance being given in this regard. This version of events is supported by the then incoming President of the College, who was briefed the next day about the meeting by the then President. The ANAO also notes that one of the College representatives (supported by one other present) gave evidence that he advised that he had recently placed orders for two machines.

78. On the other hand, the Minister stated that he discussed the supply measures in general terms only, in response to queries from College representatives present. The departmental officer present and the Minister's adviser dispute the radiologists' recollection of the meeting. They do not recall the specific matter of machines on order being discussed.

79. Neither do they recall the radiologist advising that he had placed orders. Indeed the Minister has indicated that he considers ordering of machines by someone involved in the negotiating process highly questionable. He also considers it would have been unwise to proceed with the meeting after such a disclosure and, therefore, would have terminated the discussions.

80. There is also no evidence that the Minister or his staff discussed the possibility of machines on order being in the Budget measure on any other occasion.

There was a surge in orders before the Budget

81. There was a surge of orders for MRI machines immediately before the Budget. Statutory declarations provided to the HIC indicated that there were 33 machines ordered in the four working days from 7 May to Budget night 12 May 1998. Prior to this, there had been six ordered in April, seven in March, none in February, and three in January. The surge in orders prior to the Budget compares with a total of some 60 public and private machines operating at that time.

82. Some of these contracts were apparently backdated, as evidenced by the interim results of an investigation conducted by the HIC. This has resulted in eleven cases being referred to the Director of Public Prosecutions (DPP). However, it is relevant to the matters being considered in this audit that the possibility of some prior knowledge of, or speculation about, the inclusion of machines on order in the MRI Budget measure cannot be ruled out, even for these cases. This is because purchase activity appears, at least in some instances, to have been well advanced before the Budget. The HIC report acknowledges that there are some unresolved questions arising from the fact that so many contracts were said to have been entered into prior to 12 May 1998.

83. The ANAO considers that, on the balance of probabilities, the findings in paragraphs 69–80 suggest that the process of negotiation and consultation with College representatives, including open debate on supply controls, created an environment where some participants may have deduced, or actually become aware, that the Commonwealth was giving consideration to the inclusion of machines on order in the Budget measure. In addition, other factors are likely to have contributed to the surge of orders against the background of:

- the public release of the AHTAC report in October 1997 provided a strong signal that the Government would review its policy on funding for MRI. Expectations were reinforced by the commencement of negotiations with the Commonwealth, which would have foreshadowed to College members the prospects of MBS rebates for MRI services;

- the Conference of the International Society for Magnetic Resonance In Medicine (ISMRM) was held in Sydney from 18–24 April 1998. It was attended by some 2 300 delegates and raised discussion and awareness of the work of the Task Force; encouraged greater professional interest in MRI; coincided with new MRI models being promoted; and increased speculation as to the nature of the anticipated Budget measure (see Appendix 6);
- College communications to members in the lead-up to the Budget on the progress of negotiations would have served to focus radiologists' minds on the likelihood of a measure to fund MRI in the Budget;
- there was recognition within the industry that investment in MRI facilities by many practices was inevitable at some stage in the near future if radiology practices wished to stay competitive and to offer comprehensive diagnostic imaging services; and
- there would have been little risk to radiologists in signing contracts before the Budget since MRI contracts often did not involve a deposit; there was no date by which machines had to be delivered; and penalties for breaking the contract either did not apply for a period or were small in relation to the cost of the capital investment. In any case, the nature of the commercial relationships was such that it seems unlikely that cancellation penalties would have been invoked. On the other hand, there would have been considerable commercial risk and a long-term strategic penalty in not taking the opportunity of being included in any MBS benefits available.

Addressing emerging problems in the development of implementation arrangements

84. During the early months following the Budget period, the Department began to receive indications that there were large numbers of MRI machines allegedly ordered before Budget day, and that contracts had possibly been backdated. The Department has advised that the type and number of complaints were not particularly significant compared with complaints that it receives elsewhere and that they were dealt with appropriately through its standard processes.

85. An example of one such indication was received on 1 June 1998 from a former Task Force member who passed on views of a colleague regarding numbers of orders being placed on the day before the Budget. The former member commented, according to departmental records, that the Department would *'have it tuff (sic) to keep this supply under control'.* On 5 June 1998, a departmental officer discussed emerging problems with the Minister's office. Advice on 'pulling back on MRI' was requested for

the Minister. This advice was provided on 7 August 1998, which the Department has advised was prior to the date (September 1998) set for the implementation of the new arrangements.

86. The advice of 7 August 1998 noted that problems had emerged on the orders-side of the control measure, identifying a total of 64 installed machines and 39 reported ordered machines. It commented, *inter alia*, that the extent of the problem had been difficult to quantify and that there appeared to have been some over-statement of the problem. The Department advised that statutory declarations and supporting documentation controls, which had been developed, were sufficient to proceed with the implementation of the MRI arrangements.

87. The briefing did not identify the risks of continuing with the machines on order policy, nor did it discuss alternative options available. The Department has advised that this was because it was felt that the measures proposed addressed the problem and that there were no additional risks to be considered. Further, the Department has commented that its advice at the time was focussed more on addressing fraudulent claims than on achieving a particular number of eligible MRI machines.

88. Nevertheless, the ANAO considers that it is at least implicit in this advice that the measure would reduce the number of machines claiming benefits to levels much closer to those expected at the time of the Budget announcement. This conclusion was also drawn by the Minister and his Office.

89. The implementation arrangements developed by the Department included an agreement with the HIC. Within these arrangements, which have regard to the *Health Insurance Commission Act* 1973, the HIC's responsibilities included conducting audits and monitoring the new items of the MBS. The agreement did not address risks in relation to excessive numbers of machines on order claiming eligibility, and what this might indicate about the effectiveness of the risk treatments put in place in the Regulations. Nor were there formal communications from the Department to the HIC addressing problems with respect to numbers of MRI orders for which eligibility was sought.

90. The Department has indicated that the agreement with the HIC related to additional services to be provided over and above the HIC's usual compliance and audit activities. The HIC has advised that the nature of the agreement explained the type of work to be done; it was not contemplated at the time that the investigators would be needed to deal with any part of the MRI arrangements.

91. The HIC has emphasised that it understood its role was to monitor the number of services and detect inappropriate ordering and over-servicing. It has indicated that it would not have undertaken an investigation of MRI contracts if it had not received an anonymous letter. On the other hand, the Department is of the view that discussions with the HIC should have been sufficient for the HIC to have regard to risks related to contracts in its monitoring and auditing program as part of its normal responsibilities.

92. Both organisations have been working, through strategic partnerships and memoranda of understanding towards improving liaison at both the strategic and at the operational level. However, it is apparent from the above observations that liaison at the operational level could have provided greater assurance that the risk treatments were being monitored and managed in a disciplined manner. With respect to machines on order, clearer communications on this might have led to the HIC being better informed of allegations received by the Department of relevance to risk monitoring and to better targeted audit approaches, with at least the potential to lead to earlier investigation by the HIC than did occur in this instance.

Relevance of limiting eligible equipment

93. In discussing some of the audit issues with the ANAO, the Department has emphasised that the number of machines eligible for MBS benefits, and specifically the number ordered in the period before the Budget, is only one among a number of factors that contribute to controlling the number of funded scans and of overall expenditure on MRI.

94. The ANAO recognises that controlling capacity, in terms of the number of machines able to claim MBS rebates, was one of several control mechanisms, with other mechanisms including provider eligibility requirements, specialist referral and use of clinical indications for MRI services. However, controlling the number of MRI machines on order was intended as a substantial contribution to the supply controls instituted following the 1998–99 Budget. The extent to which this action was likely to be successful warranted close consideration by departmental program management.

Implementation of the administrative arrangements

95. Registration of equipment commenced in August 1998. Seventy-one applications had been submitted by the end of September 1998. There was no cut-off date for the registration of eligible machines and applications continued to be received at the rate of about four per

month until April 1999, when the rate slowed. The total number of applications received reached 111 in October 1999, following amendments to the Regulations to impose a 'cut-off' for applications.

96. The Department continued to receive communications following implementation of the Regulations from members of the profession concerned about the processes surrounding the negotiation and management of the MRI Agreement. These allegations were not passed on to the HIC by the Department at the time, reinforcing the need for more effective communication on managing and treating key risks in monitoring and auditing arrangements.

97. As previously discussed, there was no cut-off date for the registration of eligible machines, and applications continued to be received. In August 1999, the Minister learned through informal discussions with a departmental officer that new machines were continuing to be registered. The Minister sought immediate advice on imposing a cut-off for registration. An amendment to the Regulations was submitted to the Minister on 13 September 1999 with a cut-off date for applications of 11 October 1999.

98. Following the 11 October 1999 cut-off date for applications for MRI eligibility a further 13 applications were lodged. The Minister was advised by the Department that it had become apparent that the number of MRI machines was in excess of the predicted level and in excess of what was required to meet the needs of the Australian population. Accordingly, a new Regulation was implemented changing the date by which providers were required to have MRI equipment installed or contracted for purchase back to 10 February 1998 from Budget night 12 May 1998. This resulted in the number of eligible machines falling to 66 from 1 November 1999.

99. The ANAO notes that there were already high numbers of machines submitted for eligibility before October 1999, with claims continuing to trickle in, suggesting that numbers were already at a level which was in excess of that predicted and required to meet the needs of the Australian population. Accordingly, earlier action offered favourable outcomes for the effective management of the supply controls.

Monitoring of the MRI measures

100. It was clear from about March 1999 onwards that the number of MRI scans receiving MBS rebates was occurring at a level that was higher than that set out in the Agreement (in the event the 1998–99 outcome was some $4 million, or ten per cent, over target). Under the Agreement, the Commonwealth assumed the financial risk for MRI volumes above a designated ceiling, that is, 403 000 scans over three years.

101. The pressures for even higher levels of scans in the future were considerable. For example, in April 1999 there were the 75 eligible machines on which MBS benefits were being claimed. However, at this time, the HIC had received applications for a further eighteen machines which were not yet resulting in claims. Moreover, while not known at the time, applications for an additional eighteen machines remained to be submitted to the HIC. The average number of scans per machine per working day was steady, suggesting that, as each additional machine became eligible and rendered MBS rebated services, the targets in the Agreement would be placed under further pressure.

102. Notwithstanding the reduction in eligible machines from November 1999 (see paragraph 98), the most recent data indicates that the number of rebatable MRI services remains at a level above that consistent with the ceiling in the Agreement. The Department has indicated that this level of services is commensurate with clinical need, since there is no evidence of people receiving services where there is no such need. Further, this level of services is consistent with the recommendations of the Blandford review.

103. At the time of this report there were 45 machines registered with the HIC that are no longer eligible for MBS rebated MRI services. The ANAO considers that, had the policy in respect of eligible machines not been revised, these machines would have generated additional claims on the MBS.

Interim expected outcomes not achieved

104. The achievement of the partnership Agreement with the profession met an important policy objective of the Government, providing a process for managing both quality and costs for diagnostic imaging services over the longer term.

105. At the time this audit was being conducted the anticipated level of control over growth in diagnostic imaging outlays had not been achieved. Expenditure on diagnostic imaging in the first year of the Agreement (1998–99) was some $46 million over the target specified in that Agreement. That is, some five per cent higher than the seven per cent growth provided for in the Agreement and as a consequence, the net savings to the Budget sought from the Agreement have not yet been achieved. The Department considers that the $46 million overspend is a small percentage in an annual program of some $1 billion. The Department also maintains that failure to achieve the growth target in the first year of the Agreement is not evidence of the Agreement not working, but evidence that the underlying demand pressures for DI were greater than the Forward Estimates suggested before the Agreement was negotiated.

106. Growth in diagnostic imaging expenditure has recently declined, with growth for 1999–2000 (to March) of some six per cent, largely as a consequence of regulatory adjustments to the MBS for ultrasound and CT services. The Department is working in consultation with the profession to implement further changes to achieve the diagnostic imaging targets in the Agreement in the longer term. The ANAO notes that, while growth in diagnostic imaging expenditure has declined for the current year, taken with the excess growth in 1998–99, there are substantial challenges to achieving the Agreement targets.

107. For MRI, expenditure has also exceeded anticipated levels by some $4 million for 1998–99, and a projected $6 million for 1999–2000. This excess is <u>outside</u> of the Agreement. The MRI measure has also resulted in the exposure of the Commonwealth to risks of fraud through the backdating of contracts or otherwise misrepresenting the nature of the contracts. The Department has advised that Commonwealth expenditure targets have not been placed at risk because of the adjustment and review mechanisms built into the Agreement. It considers that the original target of 403 000 scans over three years is still achievable but notes that the Blandford Review suggests an increase in MRI usage.

108. MRI services are now more widely available in the community, with 66 MRI units now eligible for MBS rebates compared with the eighteen MRI machines previously funded by the Commonwealth. Seventeen of the eligible MRI units are located in non-metropolitan areas. Notwithstanding these gains, an Adjustment and Relocation Scheme had not resulted in any grants being paid to relocate surplus machines to higher need regional areas, and it has been suspended pending consideration of the Blandford Review.

109. The Department considers that a full evaluation of the success or otherwise of the Agreement must await its conclusion. Nevertheless, the Department believes that, given the underlying trends, the savings to Government have been significant; the Minister has supported the view that this is a substantial achievement.

Investigation by the HIC

110. The HIC received an anonymous letter from an ex-employee of a MRI supply company, which was forwarded to the area responsible for managing investigations on 30 November 1998. The letter alleged that a number of orders lodged with the supply company had been backdated to enable them to qualify for eligibility under the MBS Regulations.

111. The HIC's initial response was to commence a preliminary review, which involved Head Office identifying relevant contracts for the company. The HIC indicated that they viewed the letter and response as significant but advised that it experienced difficulty extracting the relevant data because the Regulations did not require the applicant to state details of the contract such as names of the contracting parties and because the relevant documents were not filed by the HIC in a systematic way. At this time not all the relevant applications had been lodged with the HIC. The ANAO considers that communication of the apparent importance of the matter did not result in it being handled with particular urgency and it was not until March 1999 that the HIC's NSW office commenced interviews for the investigation.

112. Up to July 1999, the investigation was expected to be completed by end July. At that point, this was revised to 30 November 1999, and the investigation was completed end December 1999. This was, according to the HIC, for a number of reasons, including the growing number of applications to be investigated, delays in obtaining information, and the time required to prepare briefings to the DPP.

113. The ANAO recognises that, during this time, the scope and complexity of the investigation increased. However, the ANAO considers that the investigation could have been more effectively managed through more disciplined and systematic project management procedures:

- Investigation Guidelines require an investigation plan. No such investigation plan was prepared for the MRI investigation, and it is not the custom in the NSW office to prepare plans for any investigations;
- the widening scope of the investigation was not responded to promptly enough in terms of adequately matching resourcing to the task;
- there were no formal reviews of progress of the investigation which provided justification for additional resources; increases in Budget; change in milestones or in investigation methods; and
- the cost of the investigation could not be readily supplied to the ANAO.

114. The HIC advised that the investigation presented special risks to the HIC that required it to depart from normal procedures to ensure that the investigation was properly resourced and managed. The ANAO recognises the particular circumstances of the MRI investigation, but considers that the HIC's Investigation Guidelines requiring an investigation plan represent better practice and their application in this case would have assisted with the project management of the investigation.

Potential conflict of interest

115. A new Chairman of the HIC Board was appointed by the Government on 30 July 1998. He resigned on 28 October 1999. The Chairman was previously Managing Director of a major health care company and, at the time of his appointment, worked for the parent company. Because of this, the Chairman and the Board of the Commission set in place a number of arrangements to manage perceived conflict of interest.

116. It was relevant that contracts approved by the Chairman in his former role fell within the scope of the HIC's MRI investigation. The Chairman absented himself from discussions when the investigation was first discussed at a Board meeting. However, he was present at a number of later Board meetings at which the progress of the investigation was raised. The ANAO has been advised that these discussions related to overall management of the investigation rather than specific details of individual investigations.

117. The ANAO acknowledges that the Chairman and the Board were mindful of the need to manage perceived conflict of interest on this matter and did seek to make arrangements to do so. The significance attached by the Board to such matters is reflected in reviews of corporate governance for the Board. However, the arrangements adopted by the HIC did not prevent matters relevant to the MRI investigations being raised at a number of Board meetings at which the Chairman was present. The most significant lapse was the presentation of a report to the Board on the status of the investigation and a request by the Chairman at a Board meeting for an oral briefing on the progress of the investigation. More effective arrangements could have prevented this situation occurring.

118. The ANAO considers that the Chairman should have informed the Board that his employer was involved in ordering MRI machines over the relevant period. He should, at a minimum, have brought to the attention of the Board the potential conflict of interest, which would have allowed the Board to consider the most appropriate course to follow. In the particular circumstances that pertained, it would have been most appropriate for the Chairman to have absented himself when the matter was raised at Board meetings, including matters of resourcing and progress.

119. This does not imply that the Chairman's employer was engaged in any improper conduct in ordering MRI machines. Further, there is no audit evidence that the course of the investigation was influenced improperly. The ANAO also acknowledges that the ex-Chairman believes he did not have a conflict of duty and duty[9] and that, in his view, the reports given to the Board on the investigation were so general as to not even raise any perception of a conflict. However, if information of the kind referred to above is not disclosed and the Chairman does not absent himself from Board consideration of these matters, there is a risk that other Board members are deprived of the opportunity to consider whether it was proper to debate these matters in his presence. It is also a matter of transparency of probity arrangements. These are primarily issues for the Board to consider and resolve.

[9] The legal expression 'conflict of duty and duty' is used as a shorthand way of analysing the relationship, although it is also encompassed within the expression 'conflict of interest'.

Figure 2

Key events

September 1997

7 Policy options for increased funding of MRI completed

October 1997

AHTAC report is released

February 1998

10 First meeting of College Task Force with Department

April 1998

18–24 Meeting of the International Society for Magnetic Resonance in Medicine—speculation and rumours about changes to MRI funding

28 First documentary evidence of Department giving consideration to including machines on order

May 1998

5 Department advises Minister to include machines on order by Budget night

6 Minister meets with the College to conclude negotiations, on advice of Department

12 Budget measure is announced and Agreement is endorsed by the Minister

June 1998

1 First allegation of significant orders before Budget night received by Department

August 1998

7 Department advises Minister of problems with the new MRI arrangements and recommends the use of statutory declarations

September 1998

1 Benefits for MRI are payable from this date

November 1998

HIC receives anonymous letter, dated 12 November, alleging that MRI machine orders have been backdated

February 1999

8 Senate Estimates Committee raises questions on MRI

24 Formal report of the HIC's preliminary review completed. HIC Canberra formally requests NSW State Office to conduct an investigation

March 1999

8 HIC conducts first interview in its investigation

August 1999

12 Department recommends a cut-off date for applications for MRI eligibility. This is subsequently approved with an effective date of 11 October 1999

October 1999

18 Department recommends changing to 10 February 1998 the date by which providers are required to have equipment installed or ordered

28 HIC Chairman resigns

December 1999

23 HIC sends interim report on investigation to Minister

Responses to the audit

Department of Health and Aged Care

120. The Department accepts that it should have requested formal statements of interest and identified processes for handling conflict of interest and confidentiality in negotiations with the College. The Department notes, however, whether or not an ethical framework was agreed, individuals have personal responsibility for ethical behaviour and for obeying the law.

121. The Department also accepts that documentation in relation to negotiations with the College and in relation to the development of the supply side measure was not adequate.

122. In both these areas the Department is already actively seeking improvement in its performance, and will look carefully at the ANAO advice on the lessons learned about how similar negotiations might best be handled in the future.

123. The Department accepts that aspects of the development of the policy on machines on order could have been managed better, but is firmly of the view that sufficient consideration was given to risk management in relation to the development of the overall policy measure and that there was adequate documentation of the overall policy measure. The Department does not accept that the monitoring and auditing arrangements did not effectively focus on the emerging risks in relation to the number of units. Indeed, the Department believes that the series of policy responses which were made as the risks emerged were appropriate, and dealt effectively with the issues as they arose.

124. The Department notes that the ANAO was unable to come to a substantive conclusion about whether there was inappropriate disclosure of budget sensitive information. Further, the Department notes that in no part of the report does the ANAO suggest that there has been malfeasance by the government parties.

125. The Department considers that the Report should be seen in the context of the overall success of the 1998–99 Diagnostic Imaging budget measure in achieving its objectives.

126. The Government and the profession are working successfully together to constrain outlays within target levels, despite the underlying growth pressures. An important new medical technology (MRI) is now widely available in Australia, and this has been funded from within an

already existing allocation, creating no additional burden on the public purse. Publicly funded access has increased from 18 units to 66. Publicly funded access in non metropolitan areas has increased from zero units to 17.

127. A number of measures have been put into place to ensure the quality of the provision of diagnostic imaging services, including professional supervision requirements, and accreditation arrangements.

128. In sum, the measure has, within a sustainable funding framework, provided considerable benefits to the Australian community.

Health Insurance Commission

129. The HIC's overview comments on the ANAO report are as follows:

- in relation to the HIC's interaction with the Department we would accept that a more formal specification of responsibilities and more information sharing between the Department and the HIC would be closer to better practice. Nonetheless the HIC notes that the ANAO report is not critical of the role of the HIC in this;
- in relation to the HIC's conduct of the investigation we remain concerned at the balance in the report. We accept, as is always the case in reviews after the event, that with the benefit of hindsight improvements could be made. Clearly with hindsight it is possible to point out actions that may have improved the process and timing, such as earlier boosting of resources and more accurate estimation of completion dates. As we have already noted it was not clear until after the eventual imposition of the close off date of 11 October 1999 what the ultimate scope of the investigation was. Our completion of the interim report on the entire investigation by mid December was therefore an extremely good effort;
- in relation to the potential conflict of interest the HIC is pleased that the ANAO has concluded there is no evidence that the investigation was influenced improperly and that the HIC had practices in place to manage the potential conflict of interest. The HIC Board and management put a great deal of effort into ensuring the potential conflict of interest was managed well. To the extent that overall governance can be improved by taking on board ANAO's suggestions you can be assured this will be given high priority within the HIC.

130. As with all ANAO performance audits, the HIC finds them valuable assessments of where our processes can be modified and further improved. This report will therefore guide the HIC in further improving our processes, particularly in the procedures we use for future investigations, and in making further improvements to our Corporate Governance arrangements.

131. The HIC has, as the report acknowledges, already taken some action in these areas and further improvements will be given a high priority.

Lessons learned

132. The Minister, in requesting that the Auditor-General undertake this audit, indicated that he would welcome any observations the Auditor-General may have about how such processes might best be handled in the future. One of the aims of this audit was therefore to identify scope to improve administrative processes surrounding development of policy proposals and advice where this involves potentially commercially sensitive information.

133. The ANAO has sought to establish some lessons learned from the experiences of the MRI policy development and implementation, drawing on the audit evidence and relevant practice. The major aspect of the policy process which underlies many of the concerns expressed in the Parliament and publicly relates to the risks associated with the negotiation process. The over-arching lesson is that agencies responsible for policy advice should develop and implement a risk management strategy to maintain the integrity of sensitive information—in this way protecting the interests of all concerned. This and other lessons potentially of value to those involved in policy development are discussed below.

The importance of effective probity arrangements in negotiations

Systematic risk management to maintain the integrity of sensitive information

134. Developing policy in the Health environment often requires negotiation with stakeholders in order to gain their understanding and support. Negotiation is generally through a representative body such as a council, association, peak body or other such group. Management of such negotiations not only involves implementation of a sound control environment but also the management of perceptions and expectations of all concerned.

135. Negotiating with representatives on these bodies has its own risks, especially where the policy being negotiated has the potential for personal gain for those with access to advantageous information. Representatives may have competing pressures; these may include their own commercial interests and the particular interests of those members they are representing. The risk is therefore that some parties to the negotiation may use confidential information inappropriately for personal gain either directly or indirectly. There is also the risk that, even where

parties to the negotiations do not have direct access to confidential information, they may gain advantageous insight into the Commonwealth's intentions through the process of negotiation. The latter risk also has to be managed effectively.

136. A lesson of this audit is that appropriate risk management strategies to control and/or mitigate the various risks are an ongoing imperative for a policy advising agency. Risk management needs to address the process of negotiation as well as the nature of the policy measure itself. The MAB/MIAC report on Risk Management[10] identifies a useful approach to establishing a risk management model. Managing risks requires rigorous, forward looking, responsible and balanced consideration of all relevant issues. Management needs to be prepared for what can happen and to take action to avoid or reduce unwanted exposure to the cost or other effects of these risks materialising.

137. In managing the risks, it is necessary to strike a balance between the costs and benefits to be gained from any treatment. This requires developing a clear view on what is an acceptable level of risk. The latter is considerably assisted if such decisions are undertaken within a sound corporate governance framework which both supports and reinforces the identification, prioritisation, analysis and treatment of risks as well as implementing appropriate monitoring and review mechanisms.

138. Another lesson of this audit is that risk management processes need to be systematic. This is to ensure that all risks, even those considered as obvious, are in fact identified and treated. This is especially the case in an environment of time constraints and stressful negotiation processes where the primary focus may be on the outcome to be achieved with an unrealistic expectation that normal administrative processes will deal with any process/control issues. Alternatively, there may be a substantial discounting of the possible impact of such issues on the outcome.

139. An essential step in the risk management process is establishing the context for the assessment of risk. Amongst other factors outlined in the MAB/MIAC report it is especially important to know who the stakeholders are and what are the significant factors likely to bear on the policy issue and/or initiative in the external environment.

---

[10] Guidelines for managing Risks in the Australian Public Service, report No.22, October 1996, Joint publication of the management Advisory Board and its management improvement Advisory Committee. See also HB 142-1999—A basic introduction to managing risk using Australian and New Zealand Risk Management Standard AS/NZS 4360:1999.

140. To determine the level of risk, an agency needs to identify the probability and consequence of the risk occurring. The former is dependent on the opportunity and the likely gain, which may include commercial advantage over others or other form of monetary reward. Without prior experience, the latter is likely to involve a considerable amount of judgment as to the appropriate balance to be struck between, for example, the level of risk and policy effectiveness.

141. With an informed risk assessment, agencies can determine the best approach to the negotiation process. Such negotiation can be open to all stakeholders or restricted to stakeholder representatives depending on how the balance referred to above is struck. It will also determine the level of information to be provided and the conditions, if any, which may apply to those gaining access to confidential information. These conditions may involve obtaining signed confidentiality agreements, which at least highlight the importance attached by the Government to the processes involved.

Confidentiality requirements

142. In most situations, consultations with stakeholders can be undertaken with minimal formality while recognising confidentiality concerns. The main purpose of such consultations is to allow Commonwealth officials to understand the stakeholder perspectives and views in relation to how current policies may be better targeted and/or otherwise improved. The approach adopted should aim to provide for the free flow of information from stakeholders to officials in the interests of achieving required outcomes. However, it is recognised that negotiations with particular stakeholder groups require a more formal approach in the interests of reaching an agreement that could advantage them selectively.

143. Before the negotiation process begins, the agency should seek to establish with all persons involved in the negotiation process the obligations, responsibilities and accountability of individuals concerned. These should be documented, as should the manner in which information exchanges will be classified and how they should be treated. The latter should establish what is openly available; what is expected to remain confidential within the negotiating group; and what might be the exclusive domain of one party and therefore not a matter for discussion.

144. Recording such understandings and protocols not only provides the clarity required of the arrangements but also ensures a degree of protection for the Commonwealth in the event of a breach of, or dispute over, the requirements specified.

145. It is also good practice for the parties involved in sensitive consultations to give undertakings to maintain any requirements for confidentiality. This should be obtained formally both for the benefit of the Commonwealth and of the participants themselves.

Procedures for addressing potential conflict of interest

146. Agencies should have a process for bringing to attention, and dealing effectively with, any real or potential conflict of interest by those involved in the negotiation process. The latter should be asked about, and should declare voluntarily, any such interests prior to taking part in negotiations or as they arise. The negotiating group should have the opportunity to discuss all such declarations. These, and any decisions relating to them, should be recorded.

147. In situations where potential conflicts of interest cannot be avoided, agencies should engender an appreciation across all relevant staff regarding the higher risks likely to arise from the misuse of confidential information. Accordingly, agencies should carefully consider suitable strategies to protect the Commonwealth's interests.

Accountability and transparency of direct negotiation processes

148. The level and standard of documentation considered necessary to support an administrative process is always a matter of judgment for management as part of an organisation's control environment. Nevertheless documentation is important for an agency to:

- demonstrate it has taken all reasonable steps to identify and manage risks;
- provide assurance to management that the administrative processes are adequate and have integrity;
- record significant events and decisions;
- be able to review its decisions and processes thereby identifying strengths and weaknesses in the process, drawing out lessons for the future;
- in some circumstances provide support for the Commonwealth's position in the event of a legal challenge; and
- meet its accountability obligations to the Government, Parliament and other stakeholders.

149. The level and standard of documentation needs to match the circumstances. However, it would be expected that both the level and standard of documentation would increase as the consequences of decisions and actions increases.

150. Often it is considered that maintaining paper or electronic records is too burdensome. This is especially so in an environment where there are time and resource constraints. However, as mentioned earlier, such considerations may be substantially lessened by a soundly based corporate governance framework that is set up to deal with such demands. Perversely, it is just such a constrained environment that often requires adequate documentation for accountability purposes. In this context, sound public administration requires key deliberations, decisions and resolutions to be recorded.

Effective processes support policy advice and outcomes

151. Commonwealth departments and agencies provide policy advice to Ministers to help ensure that Government decisions are appropriately supported and informed with a focus on whether the advice:

- is timely, forward looking, correctly recognising emerging issues and problems;
- identifies implications of options, alternatives and cost effective solutions;
- forms part of a clearly defined and coherent strategy, including a strategy for achieving acceptance of the policy; and
- is practical to implement.[11]

152. Good policy process is the vital underpinning of good policy development and, ultimately, good policy outcomes. Good process does not necessarily guarantee a good policy outcome, but the risks of negative process leading to a bad outcome are very much higher.[12] Policy advising is not an exact science, any proposals and advice need to recognise the sensitivity of both being responsive to Government objectives and fully informing the Minister to ensure that he/she is not misled. Within this context, key factors are the identification of the advantages, disadvantages and possible undesirable implications of policy proposals and any alternative options.[13]

---

[11] Michael Keating, Chapter 5, 'Defining the Policy Advising function', *Evaluating Policy Advice: Learning from Commonwealth Experience*, John Uhr and Keith Mackay Editors, Australian National University and Department of Finance, 1996.

[12] ibid.

[13] Department of Family and Community Services, *A Policy Developer's Guide to the Budget Process*, 1998.

153. Another lesson from this audit is that pressures on agencies can undermine the quality of the processes that support policy advice. In particular, important risks and useful options as well as the relevance of some related intelligence to the advice being offered, may be overlooked. In these circumstances, the challenge for departmental management is to have procedures which provide sufficient assurance about the quality and consistency of policy advising processes whilst at the same time being responsive to the requirements of the Minister and of the Government's policy objectives.

154. In this context, it is important for policy developers to establish what the Minister's expectations are with respect to briefings, documentation, identification of risks and other key issues. The Department's policy advising processes need to be targeted to meet these expectations.

155. In meeting these expectations, it is good practice for departments to provide written briefings on key issues as a matter of course, to ensure that issues and options are clearly presented to the Minister. Experience in other agencies supports the merits of this approach, which also allows senior departmental managers to be aware of, and obtain assurance regarding, advice provided to the Minister. It also contributes to corporate memory. In addition, it is good practice for departments to maintain a record of oral briefings on significant issues and any resulting events and decisions, particularly when time pressures preclude provision of written advice. Briefings and records maintained need not be lengthy, but need to be fit for their purpose.

156. Another key aspect of effective policy processes is to make risk management integral to such processes and part of the policy development culture. It should be integrated into the policy development, practices and plans rather than be viewed or practiced as a separate management tool or one that can be paid less attention to as time and other pressures mount.

157. Agencies with policy responsibilities also need to ensure that policy development has regard to implementation issues which are likely to be relevant to the policy's success. This involves consulting, where appropriate, with other arms of government or private sector providers on the relevant implementation issues. This is to ensure the policy measure is properly informed and can be implemented effectively.

Implementation

158. It is important that, as policy considerations move from policy development to implementation and ultimately, review, the significance of the various risk treatments developed during policy development is carried through into implementation arrangements. This audit has

demonstrated that weaknesses in the liaison with all relevant participants on risks to be addressed in implementation, monitoring and auditing can significantly weaken the desired treatment of risk, thereby potentially undermining required program outcomes. Where purchaser/provider arrangements are in place, agreements should clearly set out the significance of various risk treatments to be implemented, the nature and likelihood of any residual risk, and how the effectiveness of the treatments is to be addressed in review and audit activities.

Managing perceived conflicts of interest for bodies subject to the *Commonwealth Authorities and Companies Act* 1997

159. The conduct of Board members of statutory commissions is governed by the *Commonwealth Authorities & Companies Act* 1997 (the *CAC Act*) and by the general law. The relevant provisions of the *CAC Act* codify general law fiduciary duties owed by Board members and are similar to the duties owed by a company director, codified by the Corporations Law (Appendix 9). Provisions of the *Corporate Law Economic Reform Program Act* 2000, detailing requirements for due diligence and business judgement, are also relevant.

160. Guidance to assist members of boards in these matters is available in several publications, including in the publication entitled *Principles and Better Practice, Corporate Governance in Commonwealth Authorities and Companies*, Australian National Audit Office, 1999.

161. Board members are in a fiduciary relationship and must act in good faith to ensure that there is no conflict between the interests of the Commission and their personal interests. For there to be a conflict of interest, the conflicting duty must be sufficient to force the officer, in deciding how to act in a matter, to consider both it and his/her duty to the corporation.[14] '*There is an obligation*' not to profit from a position of trust, or, as it is sometimes relevant to put it, not to allow conflict to arise between duty and interest.[15] Further, a person in a fiduciary capacity must not make a profit out of his/her trust which is part of the wider rules that a trustee must not place himself/herself in a position where duty and interest may conflict.[16]

---

[14] *ANZ Banking Group Limited v Bangadelly Pastoral Co Pty Limited* [1978] 139 CLR 195.

[15] *NZ Netherlands Society v Kuys* [1973] 1 WLR 1126.

[16] *Phipps v Boardman* [1967] 2 AC 46.

162. On occasions, Board appointments are made of individuals who have an involvement or association with activities closely related to the responsibilities of the organisation. It is recognised that, in such situations, the organisation should not be deprived of experience if this is important to its successful strategic direction and management. Indeed, it will commonly be the case that Board members are chosen because of their specialist industry knowledge and/or expertise. However, it does require that the Board has in place arrangements to manage any potential conflicts of interest which are sufficiently robust to address all relevant situations and to do so consistently and credibly. In the case of the MRI investigation, while there was considerable awareness of the need to address these matters, and measures were taken by the Board to ensure that no details of the investigation work being undertaken were discussed, there were lapses in agreed practices to indicate that the Board did not operate at best practice at all times.

163. It is better practice that the role of the Board is clearly articulated in a Board Charter. Board Charters should have sound procedures for anticipating and addressing potential conflicts of interest. For bodies with a regulatory or investigatory function, the Charter should have regard to the fact that this role may involve potential conflicts of interest in addition to those of a commercial nature.

164. The procedures in the Charter should ensure that, at a minimum, Board members bring to the attention of the Board any potential conflict of interest as soon as it arises, to allow the Board to consider the most appropriate course to follow. In some circumstances, it may be most appropriate for the member to absent himself or herself from all Board discussion of the matter. The relevant consideration is that other Board members should have the opportunity to consider whether it was proper to debate these matters in the member's presence and, in particular, whether the latter should have anything to do with decisions bearing on these matters taken by the Board.

165. As a matter of better practice, the experience from this audit suggests that any such Board policy and/or procedures should allow for the situation where, having noted a potential conflict of interest, the Board may decide to refer the relevant matters to, for example, a Committee of the Board. In these circumstances, the Board minutes should accurately record such decisions, and all involved should be informed of the delegation. Reports on the relevant matter should not go to the Board until the Committee is of the view that the matter at issue is finalised. All such reports should be marked in a particular way to maintain appropriate separation and confidentiality. There should be

no discussion of the pertinent issues with individuals on the Board who are not members of that Committee. The Committee should meet formally and have separate agenda papers and separate minutes. The minutes should be clearly marked confidential and appropriately protected.

166. Where, notwithstanding such arrangements, the matters at issue are raised at Board meetings, the member, at a minimum, should bring immediately to the attention of the Board the potential conflict of interest. Other Board members and the Secretary would also have a similar responsibility in this situation.

Learning from the experience

167. All agencies have a responsibility to ensure their staff are aware of the ethical and other, for example professional, standards expected of them. This recognises the importance of an emphasis on training in fundamental elements of public administration in the early years of a staff member's career and continued professional development so that sound administrative practices are reinforced and become embedded in the organisation's culture. The lessons from the audit should desirably be incorporated into agency policy development seminars and courses. In short, sound administrative practices contribute to effective performance.

Audit Findings and Conclusions

1. Policy development

Introduction

1.1 Government policy is the responsibility of Ministers, with Cabinet as the primary focal point of the decision-making process.[17] Commonwealth departments and agencies provide policy advice to Ministers to help ensure that Government decisions are appropriately supported and informed with a focus on whether the advice:

- is timely, forward looking, correctly recognising emerging issues and problems;
- identifies implications of options, alternatives and cost effective solutions;
- forms part of a clearly defined and coherent strategy, including a strategy for achieving acceptance of the policy; and
- is practical to implement.[18]

1.2 Good policy process is the vital underpinning of good policy development. Good process does not necessarily guarantee a good policy outcome, but the risks of negative process leading to a bad outcome are very much higher.[19] Policy advising is not an exact science, any proposals and advice need to recognise the sensitivity of both being responsive to Government objectives and fully informing the Minister to ensure that he/she is not misled. Within this context, key factors are the identification of the advantages, disadvantages and possible undesirable implications of policy proposals and any alternative options.[20]

---

[17] House of Representatives Practice (3rd Edition) 1997 acknowledges that the Cabinet is not specifically provided for in the Constitution nor by any other law. It is in basic terms an administrative mechanism to facilitate the decision-making process of the Executive Government. The Expenditure Review Committee (ERC) is a major coordinating committee with a particular role in advising Cabinet on budget expenditure priorities. (L M Barlin, Clerk of the House of Representatives, 1997, House of Representatives, Commonwealth of Australia. See also Cabinet Handbook, 1994).

[18] Michael Keating, Chapter 5, 'Defining the Policy Advising Function', *Evaluating Policy Advice: Learning from Commonwealth Experience*, John Uhr and Keith Mackay Editors, Australian National University and Department of Finance, 1996.

[19] ibid.

[20] Department of Family and Community Services, *A Policy Developer's Guide to the Budget Process,* 1998.

1.3 Policy development operates within a variety of contexts. It can range from quite open parameters of public debate to the development of closely guarded policy proposals for inclusion in the Commonwealth Budget. In the latter situation, a key consideration in the policy process is the security of budget material and that information is supplied only on a 'need to know' basis. However, there can be tensions between maintaining a strict 'need to know' approach in a new policy area and at the same time ensuring that the final outcome is both practical and acceptable to those parties with an interest in its implementation, which often depends on consultation, even if necessarily restricted.

1.4 Successive Governments have found that in the health policy area in particular negotiation with health professionals and the industry concerned has brought considerable benefits for decision-making. Drawing on the knowledge and understanding of service providers has informed policy options and led to a lower impact on public expenditure than otherwise might have been the case while meeting Government policy objectives for health service targeting and identified program outcomes. The resulting agreements with health professionals also provide a process by which the Government can address ongoing health issues in consultation with the providers of services. The Department has advised that the first Pathology agreement was an example of the merits of such an agreement, and was a pertinent model in seeking to develop the Diagnostic Imaging Agreement. The pathology package measures included:

- a cap on growth in Medicare outlays from a pre-agreement level of around 10 per cent per annum to an average of six per cent per annum;
- a managed consultative structure to monitor progress against the agreed targets;
- agreed approaches to manage growth beyond predicted levels;
- grounds for renegotiating the agreement, for example, where new tests are introduced; and
- cooperation on a program of education strategies to improve ordering and quality use of pathology.

1.5 While openness in policy development provides real benefits in allowing better targeting and acceptance of the policy measure as indicated above, it also carries risks, particularly where parties consulted may gain an unfair advantage over others in the community due to the knowledge gained through the consultation process. It follows that, in these situations, agencies responsible for policy development should develop and implement a risk management strategy to preserve the integrity of sensitive information—in this way protecting the interests of all concerned.

1.6 Risk management strategies tend to adopt variations around one of two contrasting underlying approaches—open and full consultation with all parties likely to be affected, or consultation with a small representative group who would be expected to handle some information discussed sensitively and ethically. With either approach, careful management by departmental advisers of the risks associated with negotiation is essential, and underpins achievement of planned policy outcomes. It is this aspect of the policy process for the MRI Budget measure which underlies many of the concerns expressed in the Parliament and in the media about the probity of the process.

Initial consideration of the MRI policy options

1.7 Consideration of the high level risks in relation to alternative policy options for increased funding of MRI was conducted by the Department prior to the release of the AHTAC report in November 1997. A Minute of 9 September 1997 covered:

- consideration of the AHTAC report findings, conclusions and recommendations, including the then oversupply and maldistribution problems—it was recognised that the number of MRI units in Australia at that time had expanded to some 60 in total;
- problems with current practice, including concerns over waiting times in public MRI units, the high out of pocket expenses for patients using private facilities and access and equity problems;
- critical issues such as determining the Government's key policy objectives, funding, clinical applications, substitution of services, demand and access matters; and
- an options paper, provided for information, setting out possible policy options for responding to the AHTAC report (by increasing publicly funded MRI services, including the advantages and disadvantages of each option). Options considered included a modified Health Program Grants arrangement, a new funding/delivery framework, placing MRI services on the Medicare Benefits Schedule (MBS) on a fee-for-service basis, a modified MBS funding framework, the expansion of current Health Program Grants and block grants to the States.

1.8 The Minister's agreement was sought (and provided in October) to develop the consultation process with the Royal Australasian College of Radiologists (the College), the States and Territories and other peak bodies.

The Budget processes for 1998–99

1.9 On 10 December 1997, the Prime Minister wrote to Ministers advising of the processes agreed for the 1998–99 Budget. Ministers were advised that it was very important to maintain the integrity of the Government's medium term fiscal strategy in the 1998–99 Budget and to continue to increase public sector savings and reduce Commonwealth Government debt. To achieve this outcome it was essential to continue to minimise the budgetary impact of new policy, by ensuring that it was offset from within existing portfolio outlays by genuine savings.

1.10 The Budget processes are supported by guidelines issued each year by the Department of Finance and Administration setting out the procedures for the preparation of portfolio Budget submissions, including the preparation of new policy and savings proposals.[21] Some key features for the 1998–99 Budget were the requirement for:

- portfolio Ministers to write to the Prime Minister by 19 December 1997 outlining major new policy and offsetting savings proposals;
- all new policy to be offset from within existing portfolio outlays by genuine savings; and
- minor new policy to be settled outside of the Expenditure Review Committee (ERC) of Cabinet by the Minister for Finance and Administration in consultation with the Prime Minister and the Treasurer.

1.11 Consistent with his letter to the Prime Minister of 22 December 1998, the Minister for Health and Aged Care developed an overall Portfolio Budget Submission of 24 February 1998 containing several new policy proposals as well as a range of other matters, including measures agreed since the 1997–98 Budget. The MRI initiative formed a relatively small but important component of the diagnostic imaging policy proposal, which was developed essentially as a savings measure. The Minister sought authorisation to reach an agreement with peak bodies to underpin the package. The primary aim being to achieve a diagnostic imaging agreement that would cap total expenditure—as had been previously applied to pathology services.

1.12 The Minister has indicated that radiology expenditure had not been subject to agreed arrangements with the profession to control expenditure and that the establishment of a process for controlling expenditure was important.

---

[21] The Cabinet Handbook (issued by the Department of the Prime Minister and Cabinet) states that Cabinet submissions are prepared in the name of a Minister and provide information and contain recommendations advocating a course of action. The recommendations of a submission summarise the action Cabinet is being asked to consider and provide the basis for a Cabinet minute. Cabinet minutes record the outcomes of Cabinet and Cabinet committee deliberations.

1.13 The improvement in access to MRI services aimed to address the thrust of the AHTAC recommendations to improve access beyond the 18 public hospitals then funded. AHTAC had recommended that, on balance, some expansion of publicly funded provision seemed warranted.[22] (See Appendix 3 for full details of AHTAC recommendations).

1.14 The objectives of the package were to:

- constrain diagnostic imaging expenditure under the Medicare benefits arrangements with indicative net savings for diagnostic imaging services of:

  $2 million in 1998–99;

  $18 million in 1999–2000;

  $28 million in 2000–01; and

  $29 million in 2001–02.

- fund improved access to magnetic resonance imaging services from within the overall diagnostic imaging package.

Negotiation processes

Negotiations with the College

1.15 Preliminary discussions about MRI commenced with the College in November 1997. The negotiations were undertaken primarily with a Task Force on MRI, established within the College. The MRI Task Force comprised a core membership of seven radiologists and a further four radiologists who were involved at different times during the process.[23] The Chief Executive Officer (CEO) of the College and a consultant adviser also attended some meetings. The Task Force members were expected by the Department to consult within the wider radiology profession.

1.16 The formal negotiations between the College Task Force and the Commonwealth were conducted over the period February to late April 1998. There were seven formal meetings between the Department and the Task Force (see Appendix 7).

---

22 AHTAC had reported that all of the necessary capacity existed, but may not be in ideal locations. It also noted that these results should be used cautiously.

23 The Task Force had cross-sectional representation of public sector, private sector and rural practice MRI radiologists, and one non-MRI radiologist. Attendance at meetings by members of the Task Force varied, and one did not attend any meetings.

1.17 The primary focus of the ensuing negotiations was the development of a three year agreement between the Commonwealth and the College that would enable the controlled expansion of MRI services within an overall savings envelope set by the Government for diagnostic imaging services. The negotiations were conducted within the framework of the 1998–99 Budget for confirmation on Budget night 12 May 1998.

1.18 The negotiation process was difficult and contentious. This was largely because of the strong differences of view within the College and the radiology profession as to how to fund additional MRI services while achieving the overall diagnostic imaging savings required by the Government.

1.19 Parties to the negotiations also faced a range of challenges, including resolving the most appropriate method of funding and the level of fees; and some key principles to include in the Agreement such as clinical indicators, accreditation, and quality assurance procedures (with arrangements for the latter matters to be developed intensively after the Budget). The Department has indicated that the implementation of these criteria and their link to the payment of Medicare benefits is not standard practice in terms of the operation of the MBS. Considerable work had to be undertaken in a relatively short period of time. For example, the Task Force with the aid of the consultant adviser undertook extensive modelling of numbers of MRI services and the effect of differing levels of benefit schedule.

1.20 Two of the most critical points of discussion with the College through the MRI Task Force were:

- the inclusion of MRI on the MBS; and
- the quality control/eligibility criteria (ie. ensuring that expenditure was focused on clinical need and contained within funding which would not be open-ended).

1.21 The Task Force initially proposed an expansion of the existing funding arrangements for public providers and the allocation of an MBS item number for private providers. The Department did not favour this proposal, primarily on the grounds that it would not achieve the Government's objectives.

1.22 The second funding proposal centred on MBS item numbers for both public and private providers. The issue of underwriting the MRI expenditure through savings in growth in Diagnostic Imaging and the mechanisms for controlling eligibility were controversial, involving often intense discussion amongst the diverse parties (ie. public vs private, metropolitan vs regional and those with MRI machines and those without). The debate was particularly apparent during the international conference on Magnetic Resonance In Medicine (ISMRM—21 April 1998) where at least one rumour was circulating about the MRI funding being uncapped.

1.23 A particularly contentious matter in regard to the eligibility criteria emerged towards the end of the negotiations between the Department and the Task Force in early to mid-April 1998. This related to the prospect of a site freeze for 18 months from Budget day (excluding new machines or installations after Budget day). The import of this matter to the matters addressed in this audit is discussed in Chapter 2.

1.24 While negotiations progressed until early May 1998, the final meeting of the Task Force with the Commonwealth was on 23 April. On 29 April, the Chairman of the Task Force reported to the College Council, which resolved to support the draft agreement and:

> *empowered the President and Chairman of the Diagnostic Economic Standing Committee to proceed with direct negotiations, with the understanding that Council would have input into the matter of supply control. In particular, Council had reservations about any proposal that control should be by site restriction.*

1.25 Because the policy proposal was so contentious, a further meeting of the Council was held on 4 May 1998. Councillors had serious reservations in regard to a possible site freeze, capping of general diagnostic imaging and the quarantining of MRI from other diagnostic imaging modalities. However, they believed that there was no alternative other than to proceed with an agreement with the Government.

1.26 While these matters were subject to intense debate within the College, the details of the means by which the supply of MRI services might be restricted (such as site restrictions and the eligibility of machines on order) were recognised as being the responsibility of the Commonwealth. Members were concerned about many aspects of supply that did not eventuate, such as limiting rebates to machines of a particular strength, as discussed in the AHTAC report.

Negotiations with the States and Territories

1.27 While the MRI Task Force became the primary focus for the development of the policy on MRI, the Department also consulted with the States and Territories. Consultations commenced on 9 March 1998. The States and Territories were advised that four options were being considered:

- maintaining the status quo with grants to states for publicly funded hospitals;
- reinstating MRI on the MBS to allow rebates;
- operating a dual system with grants to States and rebates available through the MBS; and
- introducing funder/purchaser/provider arrangements which could involve the Commonwealth funding the States or a third party to purchase scans from both public and private providers.

1.28 State views were mixed with NSW opposed to MRI funding for private operators while Victoria was more supportive of this approach.

Involvement of the Minister

1.29 The Minister participated in the negotiation process with the College on several occasions to give it authority. He met with the College twice relatively early in the negotiation process—on 13 October 1997, to commence the process of negotiation, and on 10 March 1998 to advise, *inter alia*, of the importance of funding MRI within an overall package of savings for diagnostic imaging services. On 6 May 1998, the Minister formally concluded the negotiation process with the College, endorsing the negotiated Agreement subject to approval by the Prime Minister and Cabinet.

Development of policy advice

Policy advice to the Minister

1.30 The Minister's Budget proposal on the diagnostic imaging package, along with the other Budget measures, was agreed to by the ERC on 5 March 1998 and by Cabinet on 21 April 1998. The Minister was authorised to proceed with the negotiation of a three year agreement with peak bodies. By this time, the negotiations with the College were running very late in the Budget process. Arguably, it was not certain whether an Agreement was still likely given the contentious nature of the measures proposed.

1.31 The evidence suggests that it was only in late April 1998 that the Department gave serious consideration to including machines on order as part of the supply controls. One departmental officer has suggested that this matter was raised earlier, in meetings with the Minister in late March and early April 1998. It was suggested that the Minister '*indicated that he believed that if it was at all possible we look at the issue of bona fide orders*'. The ANAO found no substantiating evidence that this matter was raised at this time. Other departmental officers and the Minister's staff purported to be present at the meetings have given evidence that, either they do not recall these discussions occurring, or they concluded that the discussions did not take place. The weight of evidence, including the limited documentary evidence and the evidence of other individuals, leads to the conclusion that this issue was first given consideration in late April, at the instigation of the Department, and was first discussed with the Minister and his staff on 5 May 1998.

1.32 The first documentary evidence was on 28 April 1998, when the Diagnostics and Technology Branch raised with the Legal Services Branch options of either restricting supply to existing machines or including those on order. The response given was that either option was acceptable from a legal viewpoint.

1.33 The Department indicated, during the audit, that machines on order was included in the policy because it was concerned not to disadvantage those who ordered ahead of the Budget under normal business parameters when the market was opened up to the MBS. It was concerned that those with genuine orders could not pursue the Government for redress in relation to their business interests.

1.34 The Department advised that this was the basis of oral advice given to the Minister on 5 May 1998, that is, to include in the policy measure machines ordered before Budget night. The Minister accepted the Department's advice, seeking to ensure that the supply measures were as fair as possible to those with genuine orders up to Budget night.

1.35 The Minister sought approval for the negotiated diagnostic imaging package in a letter to the Prime Minister of 5 May 1998. The letter included machines on order as part of the supply controls, consistent with the Department's advice. The principal administrative mechanisms set out in that letter in order to achieve the objectives of the package also included:

- a three year agreement between the profession and Government to improve access to MRI services through increasing Commonwealth funding of services by $29.5 million in 1998–99, $36.3 million in 1999–00 and $38.8 million in 2000–01;

- supply and demand controls including, *inter alia*, the continuation of specialist referral, specific clinical indications based on AHTAC advice, annual volume and expenditure targets along with agreed mechanisms to manage annual underspends and overspends and management/ adjustment mechanisms, accreditation of providers and equipment, detailed itemisation and restrictions to defined clinical indicators/ applications;
- monitoring/auditing of MRI services/rebates to track expenditure against budget targets; and
- a targeted program of HIC compliance monitoring and audit activity to address inappropriate business and professional practices.

1.36 The Minister indicated in his letter of 5 May to the Prime Minister that:

> *a continuing concern with high cost technologies like MRI is their capacity to generate demand and to just add to services and costs. This package continues a managed approach to the funding of MRI services while recognising that their clinical use and the settings in which they should be provided have broadened and that there is excess capacity in the market….An underlying principle is to draw on existing capacity.*

1.37 In the context of drawing on existing capacity, the Minister indicated that there would be a freeze on eligible machines:

> *initially, for a period of 18 months, existing public and private MRI clinical sites and those who have placed firm orders by Budget night 1998 would be eligible for Medicare Benefits payments for MRI services as long as they satisfied the siting … and … quality assurance requirements.*

Approval of the policy

1.38 On 11 May 1998, the Prime Minister agreed to the package negotiated. The Prime Minister noted the need to ensure that the measures proposed contained the costs within the bounds agreed by the Government (see paragraph 1.14).

The inclusion of machines on order

1.39 It was the inclusion of machines on order by Budget night, because of its potential to create commercial advantage, which is at the heart of the allegations of inappropriate behaviour. As such, it is the most significant aspect of the policy advising processes addressed in this audit. The remainder of the Chapter explores the following three central aspects of this matter:

- the probity arrangements for the negotiations;
- accountability, transparency and continuity of program management; and
- the quality of the administrative processes supporting advice to the Minister.

Probity arrangements for the negotiations

1.40 Negotiating new policy measures with professional organisations and third parties outside of the government presents the dilemma of how best to achieve a cooperative agreement in a competitive market. There are particular challenges for Commonwealth officials and Ministers in managing budget sensitive matters, particularly where those involved may gain knowledge or insights into information which could benefit them financially.

1.41 The value of a suitable risk management strategy in maintaining the integrity of sensitive information in negotiations with parties external to the Commonwealth was discussed earlier. Given the sensitive nature of the MRI negotiations and the key role of the College in the policy process, an important element of such a strategy would be expected to at least address the need for clarity and shared understanding of what was to be treated in confidence and what reasonably could be discussed more openly and in what circumstances. In this way, there could be no equivocation or uncertainty for those affected and it would reasonable to expect their full cooperation and conformity with Budget imperatives.

1.42 The Department has indicated, during the course of the audit, that the intention was that the process be completely open; the only budget sensitive matter related to supply controls with respect to the eligibility of equipment. Radiologists were, nevertheless, given to understand by the Department that the discussions were sensitive and that the Department was depending on them to act responsibly and 'not set the hares running'. However, not all MRI Task Force members were present at the relevant meeting where the Department sought to articulate its expectations. There is no formal record or minute of the Department's

intentions in this area, nor the agreement with the members of the Task Force on this matter. Task Force members were not required to sign any confidentiality agreement prior to the commencement of the negotiation process.

1.43 In the absence of agreed protocols for handling sensitive information, there was a high risk of mixed messages being sent, with Task Force members being requested by the Department to fully consult with their College fellows (to achieve an acceptable agreement), and at the same time develop some matters through the College on a very selective basis while maintaining the integrity of Budget sensitive information.

1.44 It may not be unusual that sensitive matters arise in discussions, since they may be used by the Commonwealth to discuss options and their implications while keeping actual Budget issues confidential. However, such practices risk creating 'grey' areas in discussion where important Budget sensitive information may be inadvertently revealed. They also create the possibility that the small number of people on the consultative group discern intentions from such discussions which could give them a competitive advantage over those not party to the discussions. There is also a risk that those participating in the consultations may be seen by their colleagues to have benefited from the discussions even if they did not actually do so.

1.45 For the Task Force, the lack of clarity of protocols for negotiation led to differing recollections of the nature of confidentiality requirements and some confusion as to the extent to which matters could be openly discussed with members of the College. Most Task Force members had a general understanding that aspects of the discussions were of a confidential nature. They were reminded by the Chairman early in their considerations that '*confidentiality in the negotiations with the Department is crucial*'. In this respect the ANAO notes that Task Force correspondence was often marked as confidential or highly confidential. The ANAO also notes that, on 23 April 1998, there were concerns expressed by the Task Force about a possible '*leak of our proposal from Canberra … and that [the Department] doubts any leak from [it]*'. This does not suggest that, in practice, negotiations were conducted in an open manner.

1.46 In practice, the Task Force briefed the College Council on the broad nature of the developing agreement which included reference to possible supply restrictions (such as a site freeze and the cap on diagnostic imaging funding). However, there is no evidence that the College Council was briefed at any stage on the details of whether or not machines on order might be included in the supply controls. The Task Force exercised

considerable restraint in giving, or consulting on, detailed information to members. Members were often reminded that the matter was in confidence. This resulted in dissatisfaction amongst some College members who felt they should have been better informed.

1.47 Members of the Task Force were not asked to declare any potential conflict of interest, pecuniary interest, or intention to buy MRI machines. There were no agreed procedures or arrangements in place to address potential conflicts of interest. Evidence indicates that some of the Task Force members did make declarations of their intentions to buy (or replace) machines at various times during the negotiation process. However, these statements were not documented by the Department, weakening their usefulness since members presumably made such declarations for the public record for ethical reasons and to ensure transparency of their involvement. Such declarations should have been recorded to provide transparency of, and assurance about, the probity arrangements. Only one member of the Task Force did not have a particular financial interest in a MRI machine.[24] In the words of one Task Force member:

> *Future interactions between Government and professional groups should require a formal declaration of vested interests by all participants to clear the air and to determine whether continued membership of the group is feasible in the light of those interests.*

1.48 Some of the confusion in this area is reflected in the fact that, in discussing possible conflict of interest with the Department, the Minister's office gained the impression that formal agreements had been signed. This was not the case, as mentioned above.

1.49 Protocols would help in making more explicit how ethical issues should be managed thereby providing a useful framework for departmental staff involved to discuss and agree how ethical issues are to be managed in particular circumstances. Several Task Force members have pointed to the benefit of more structured procedures to establish confidentiality requirements and to provide for potential conflict of interest situations, both in the interests of the Commonwealth and of participants.

---

[24] As noted earlier, the Task Force had cross-sectional representation of public sector, private sector and rural practice MRI radiologists, and one non-MRI radiologist.

1.50 The Department's approach to establishing arrangements for confidentiality of negotiations neither achieved the goal of an open process with Task Force Members fully consulting with their College fellows nor of ensuring a sufficiently clear and agreed understanding of the confidentiality aspects of the negotiations. Discussion of clearly articulated processes and requirements, and suitable structures to support this, could have resulted in both aims being substantially achieved with mutual understanding and greater confidence of all parties. There is a need for undertaking early discussions among those concerned in the future to establish agreed protocols, addressing arrangements for declaration of interest, and agreement on confidentiality aspects of the negotiations. Applicable models exist within the Department, for example the Medical Services Advisory Committee has procedures to address conflict of interest and confidentiality, including the desirability of conflict of interest being a standard agenda item and the need for signed deeds of confidentiality.

1.51 The Department has accepted that it should have requested formal statements of interest and identified process for handling conflict of interest. However, it has also pointed to the responsibilities of other parties to the negotiations, and emphasised the role of individual responsibility in the process.

Accountability, transparency and continuity of program management

1.52 Accountability is a central focus of sound public sector corporate governance. Transparency in, and documentation of, administrative processes contributes to accountability by demonstrating that decision-making is fair and reasonable and that, for example, the legal and financial risks have been managed and alternative actions properly considered.

> *The Commonwealth Government must be accountable to the people of Australia for its dealings on their behalf. A fundamental aspect of accountability is adequately documenting the business of government through the creation and management of records. Appropriate creation and management of records is also crucial to the efficiency of administration and the retention of corporate memory.*[25]

25 National Archives of Australia and the Office of Government Online Website, 1999.

1.53 The ANAO found that the Department's documentation processes with respect to the MRI policy measure had significant shortcomings. For example, formal departmental records were not taken of Task Force meetings. In addition, in the absence of formal records, few relevant departmental notebooks and diaries had been retained (the Department has commented that the drafting of the Agreement in the latter stages of the negotiations represented some record of negotiations).

1.54 Evidence showed that the Department's documentation practices with respect to records of meetings did not compare well with those of the Task Force, whose members were not subject to the same accountability disciplines as was the Department. The records retained by the Task Force provided for both accountability in relation to decision-making as well as facilitating the sharing of information.

1.55 There was a lack of documentation in relation to the development of some elements of the policy on MRI, specifically about the merits, risks and alternative options in relation to the inclusion of machines on order. Few records on some of the key matters have been retained on file and informal notes, relating to the development of the Budget measure, have not been retained, which, of course, means an inadequate audit trail. Let alone any other interest, this is not helpful to departmental management.

1.56 Official records were not taken or maintained of significant briefings of, and decisions by, the Minister. Evidence in other agencies suggests that, on key issues, it is good practice for departments to provide written briefings to ensure the issues and options are clearly presented to the Minister and that the Minister's decision is recorded and understood. Such an approach also assists in better informing senior departmental managers of progress with the development of policy proposals, and identification and treatment of associated risk assessments, in view of their broader departmental management responsibilities. It also supports administrative effectiveness and corporate memory. In addition, it is good practice for departments to maintain a record of oral briefing of significant issues and any resulting discussions. Briefings and records maintained need not be lengthy, but should be fit for their purpose.

1.57 The Minister has supported the benefits of this better practice. He has also indicated that the weaknesses in the Department's overall record keeping hampered his ability to answer requests by Parliament for information on some MRI matters (for example requiring a memorandum from the Secretary of the Department to be tabled in Parliament to confirm that the Minister had not rejected the Department's advice at any stage—see Appendix 8).

1.58 The Department has accepted that some aspects of MRI policy process could have been better documented and, in particular that it would have been desirable to have had formal minutes of the negotiation meetings and a record of outcomes of meetings with the Minister. However it has stated that the weaknesses did not at any time extend to the formal decision making processes and that it acted with proper authority and obtained the Minister's approval for the policy at every appropriate step. Further, it met all the formal requirements of the Budget process.

1.59 The ANAO accepts that the Department met the formal requirements of the Budget processes and acted with proper authority to progress development of the measure. However, while negotiations and policy development took place over a quite condensed period, the absence of documentation on some of the matters addressed in this audit was not consistent with good administrative practice. There was no evidence of a shared or agreed view within the Department of the standard of documentation required for the development and implementation of the MRI policy measure. The ANAO considers that the pressures on the Department to progress sensitive consultations over a short time period actually suggest the need for greater discipline in record keeping and accountability as part of a sound control environment which is central to robust corporate governance. The latter also provides management with some assurance that required actions will be undertaken particularly in periods of stress accentuated by time pressures.

1.60 The challenge for the Department, as it is for all agencies, is to balance the major focus on results with appropriate accountability for those results, which is central to good risk management. In this context, the ANAO considers that determination of required accountability in the context of a sound corporate governance framework can assist in the effective treatment of risks and support confidence in, and continuity of, sound program management. In this situation, the pressure on the Department to progress sensitive consultations over a short time period actually demanded greater discipline in record keeping and accountability as part of a sound control environment which is integral to robust and successful corporate governance. The latter also provides management with some assurance that required actions will be undertaken particularly in periods of stress accentuated by, for example, time pressures and multiple demands being placed on the same people.

1.61 The Department has acknowledged that there are concerns about significant skill gaps within the Department in the creation, valuing of, and storage and retrieval of information. It has sought to address these

matters through a document management system. However, this has had limited success to date. The Department acknowledges that it needs to further address information management and filing. It has now set in train a longer-term strategy to address these matters.

The quality of the administrative processes supporting advice to the Minister

1.62 As noted at paragraph 1.7, the Department effectively began the policy development process for MRI in September 1997 with consideration of the high level risks in relation to alternative policy options for increased funding of MRI and the need for cost containment. The ANAO therefore recognises that the Department had regard to high level risks in developing options for MRI funding and was aware of the need for controls to contain costs. It was also conscious of the Budget timetable and the need for departmental policy development processes to dovetail with the overall Budget processes. However, in other aspects of the development of the MRI policy measure, there was insufficient consideration given to a disciplined approach to risk identification and systematic management in relation to some aspects of the process, particularly in regard to the decision to include machines ordered by Budget night. Such corporate discipline is not an option in these circumstances.

1.63 The advice to include machines on order was given to the Minister on 5 May 1998, in the context of departmental advice on the whole of the diagnostic imaging package. In discussing the advice given on that day, the Minister and the Department considered the most significant issue to be addressed was the risk of not achieving an agreement and, therefore, not achieving a cap on diagnostic imaging expenditure that would provide net savings to the Budget. This risk was considerable given the lateness of negotiations and the various views in the profession regarding the prospective agreement. Accordingly, most attention, in terms of risk management, was on this particular risk.

1.64 Whilst recognising the challenges to the Department in achieving agreement by Budget day, there were also significant risks that needed to be managed within the arrangements for the proposed package. The Department recognised the need for measures to effectively control supply, 'with an underlying principle to draw on existing capacity' (see paragraph 1.36). One of the most significant risks to this aim has turned out to be the advice to include, in the package, machines on order, which substantially increased capacity. The effectiveness of the processes for providing this advice is considered below.

Intelligence on the industry

1.65 The lack of a Commonwealth financial interest in MRI machines meant that it had limited access to suitable intelligence on the industry's actions. Notwithstanding the lack of formal industry intelligence, the Department was able to establish the numbers of installed machines from the AHTAC report and Task Force. The Department also had a degree of related intelligence from its dealings with the Task Force and the profession generally that orders were being placed in the lead up to the Budget and that there was considerable speculation within the industry. For example, several Task Force members declared their intent to purchase machines during the negotiations. As is discussed later in this report, it is questionable whether the Department made the fullest possible use of the limited intelligence available to it with respect to the machines on order policy.

1.66 Another relevant factor in giving consideration to including machines on order in the package was the nature of the commercial relationships involved in the provision of MRI services. The Department had only a limited understanding of the standard contract arrangements for the purchase of a MRI machine (these are discussed further in Chapter 2).

1.67 The Department's intelligence improved following the Budget, firstly as the Regulations were developed and, subsequently, with registration and monitoring procedures.

The development of advice to include machines on order

1.68 As discussed at paragraph 1.33, the inclusion of machines on order by Budget night was recommended in order not to disadvantage those who had ordered machines before the Budget under normal business parameters and to inhibit those with genuine orders pursuing the Government for redress. This was subsequently noted, in the absence of adequate departmental records on the matter, in a memorandum from the Secretary of the Department of Health and Aged Care to the Minister tabled in Parliament on 21 October 1999 (see Appendix 8):

> *A detailed advice on this matter was provided to you on 5/5/1998. We recommended going beyond the machines actually in operation as we were aware that there might be bona fide orders for machines that would face unfair competition if denied access.*
>
> *Our advice on 5 May and over the following days and weeks concentrated on how to allow bona fide orders but not allow non-binding contracts. Our advice [to] you was based on legal advice to us.*

1.69 The machines on order issue was first raised with the Department's Legal Services Branch, who were asked for advice on 28 April 1998 on the options for providing benefits to machines installed by Budget night or to include:

> *machines . . . for which a firm order has been placed on or by Budget night . . . with the latter we are trying to cover ourselves for the waterfront dispute in case something is held up on the docks.*

1.70 The response to this request was that there should not be:

> *a problem with either option . . . I would have thought that the HIC would have been able to deal with machines ordered by 12 May because I imagine they can simply ask for documents which show when the machine was ordered. I would think that this a concept that will be able to be administered with enough certainty.*

1.71 While the Legal Services Branch had been involved in a number of issues in the development of the policy on MRI, this was the first occasion on which the inclusion of machines on order was raised with them. The ANAO considers that the request for advice was not well focused because the main reason for giving consideration to machines on order—that of fairness to those with an order—was not given as background. The waterfront dispute was peripheral as, at the time, most MRI machines were imported by air rather than by sea and none was held up on the docks.[26] The request did not include other information that was more relevant than the waterfront dispute, such as, declarations of intent to purchase by Task Force participants and orders being placed just before the Budget.

1.72 In the light of the response of the Legal Services Branch, the Department has indicated that its '*reasons for including machines on order were policy reasons, not legal reasons*'. The ANAO observes that policy reasons rather than legal considerations largely drive new policy proposals.

---

[26] Information from suppliers indicates that most machines were imported by air at the time. A small number (2) may have been imported by sea but they were not affected by the waterfront dispute. Even if they had been, the policy could have been extended to cover this contingency.

Identifying risks and alternative options

1.73 While recognising that the Department introduced a range of controls to restrict eligibility (including siting arrangements, accreditation requirements and clinical indicators) a substantial residual risk remained in relation to machines on order. Given the reasons the Department has indicated for including machines ordered before Budget night in the MRI policy, it is not surprising that machines on order would be considered as part of the supply controls. There are precedents for including firm orders for equipment in Budget measures. However, in this instance there were considerable risks which could have usefully involved greater consideration and attention in developing the policy.

1.74 The Department has indicated it did give some consideration to risks of speculative orders as reflected in the reference to firm orders in the letter to the Prime Minister on 5 May, consideration of non bona fide orders and the letter of the 12 May to the College, States and Territories which referred to equipment which had been ordered or leased under an unconditional and enforceable contract.

1.75 However, there is little evidence that consideration was given to the possibility of a surge in orders of machines before the Budget that would put at risk the desire to limit capacity. The Department does not agree that it should have anticipated a surge of orders of a particular size. However the ANAO considers that it had sufficient information from the intelligence it had gained through the Task Force and the wider profession (see paragraphs 1.22, 1.65 and 2.28) to warrant consideration of such risks. It is also relevant that the Minister was about to meet with representatives of the College on 6 May 1998 to conclude the negotiations with the College, which might itself have provided a further indication to the industry of a likely Budget measure and its nature (this is discussed further in Chapter 2).

1.76 As previously indicated, there was no written advice to the Minister on the options and attendant benefits, costs and risks for delivering the key supply measure which would contribute to the control of the level of MRI services funded under the MBS, consistent with the Department's recommended position. The Department discussed a draft of the letter of 5 May with the Minister. It did not advise the Minister, in these discussions, of the risks associated with the Department's preferred option of including machines on order in the Budget measure (from the evidence gathered, one other option appears to have been put, that is, restricting benefits to installed machines). In the event of tight timetables where oral advice of this kind is sought, there should at least be some record of that advice both for internal and external accountability.

1.77 Accordingly, there is no mention of the risks involved in including machines on order in the Minister's letter to the Prime Minister of 5 May 1998, nor indeed of the reasons for this inclusion.

1.78 The Minister was not informed of some considerations that might have been pertinent to his decision, such as the level of speculation and likely resulting ordering, and the fact that some Task Force members had already declared their intention to purchase equipment. The Minister's office has indicated that such considerations would have been relevant to the Minister's decision to include machines on order. In making this decision, the Minister sought and received assurance that genuine orders could be verified. It is not the object of this report to speculate on the outcome if such matters had been considered, but simply to point out the importance of adequate risk identification, mitigation options and conveyance of relevant considerations to decision makers.

Responding to emerging risks before Budget day

1.79 It is not clear when the Department first became aware of the likelihood of some conditional ordering by radiologists of MRI equipment. However, it was certainly aware of this by 8 May 1998, when it sought comment from the Legal Services Branch, in the context of firm orders stating that *'We have heard that there are orders being placed for MRI units conditional upon Budget outcome'* and indicated that *'. . . advice would be welcome'*.

1.80 Once again, the request for comment seems less than precise and was responded to in the context of giving consideration to these matters in the Regulations. This was not brought to the Minister's attention at the time and the Minister was not informed of these risks until being briefed on 7 August 1998.

2. The issue of disclosure of Budget sensitive information

Negotiations between the Department and the College

Commencement of negotiations foreshadowed to College members the prospects of MBS rebates for MRI services

2.1 The Government's intention to improve access to MRI services through MBS funding was known by the Task Force from at least January 1998. It had been foreshadowed by the Minister and was a recognised goal of the Task Force's negotiations. College members were notified through the College newsletter of January 1998 that the inclusion of an MBS item for MRI funding was the preferred position of the Task Force.

2.2 A further signal was given to Task Force members in March 1998 when the Task Force's initial funding proposal, which included continuation of some grants funding, was rejected by the Commonwealth. A College update on negotiations in April informed members that the Task Force was trying to *'reach agreement on a strategy to achieve an acceptable MBS rebate fee for MRI investigations'*.[27] It is a reasonable conclusion that College members would have expected the MBS benefits to become available for MRI services if the negotiations were successful.

Informal contact between the Department and external parties

2.3 Apart from formal meetings with members of the Task Force (discussed below), interested parties would contact the Department to seek information or express views on developments in diagnostic imaging generally, and more specifically, on MRI. While there is clearly a risk that in such circumstances information could be revealed, there is no evidence that any of these informal contacts led to the inappropriate disclosure of information in relation to the development of the MRI proposal, other than in relation to the matters discussed below.

[27] President's message in April Newsletter.

Supply control issues discussed by the Task Force

2.4 The details of the means by which the supply of MRI services might be restricted (such as site restrictions and the eligibility of machines on order) were recognised as being the responsibility of the Commonwealth. Notwithstanding this, discussions of supply controls did take place within the Task Force and in its negotiations with the Commonwealth. Some of these issues, such as accreditation and referral arrangements, were matters for legitimate open discussion. Others, such as the eligibility of machines, were understood to be matters for decision by Government.

2.5 By early April 1998, the Task Force and the Department were considering several control measures to prevent a blow-out of the diagnostic imaging expenditure. These measures were summarised in the Task Force records of a meeting of 4 April with the Department as follows:

- a College quality assurance program with clinical indicators in keeping with the AHTAC report;
- a review committee to review new clinical indications which would need new financing;
- the establishment of a review board to establish clinical guidelines for various disease processes when MRI is appropriate;
- monitoring by the HIC with appropriate auditing measures;
- funding to be for machines in comprehensive practices which are able to perform a complete range of DI functions;
- the AHTAC recommendations including specialist referral; and
- site freeze for a limited time, approximately 18 months, with review [to follow] recognising that although this would cause some objections within College and Task Force, the Government felt that the private sector was over-supplied.

2.6 The last measure, that is controlling supply through a site freeze, appears to have been discussed amongst the Task Force for the first time in late March/early April 1998. There are differing views on what College members considered to be a site freeze—but the essential aspect of it was a freeze on eligibility of machines beyond a certain point in time which were generally, but not exclusively, understood to be installed machines. In essence, the type of control which was implemented.

2.7 On 14 April 1998, there was a particularly robust debate on the issue of the site freeze at a teleconference of the Task Force, not involving the Department. This led to a split in the Task Force. One member asked that the College Executive Council be consulted as to whether they supported a site freeze. The Council was briefed on the problems of a site freeze but was advised that it was essential to get MRI onto the MBS initially and then make modifications over time. In essence, the Task Force and the Council appeared to be resigned to a site freeze.

2.8 The discussions of the site freeze are relevant to the allegations of inappropriate disclosure of information. One radiologist recalls that the issue of machines on order was raised during the debate on a site freeze at a meeting with the Department on 25 March 1998. The radiologist concerned declared an interest as he had just completed negotiations for the purchase of a machine. Another radiologist recalls that at the meeting of 25 March 1998, a departmental officer asked Task Force members present what their intentions were in relation to ordering machines. In this context he advised the Department that his practice had contractual obligations to hospitals and suppliers to purchase several MRI units over time.

2.9 There is no written record of the discussion of machines on order at the 25 March 1998 meeting. Although others present have not recalled these specific discussions, there does seem to be some recognition in discussions in the Task Force that there were a few machines that were known to be on order. This fact was also identified by the Task Force for the Department in late April 1998 in a list of MRI units installed or ordered for installation in that calendar year.

2.10 Subsequent to the 25 March meeting, a conversation concerning supply control options occurred between a departmental officer and a College representative. As a result of this conversation, on 27 March 1998 the Chairman of the Task Force was informed by the representative (marked extremely confidential) that the:

> *Commonwealth was seeking legal advice as to whether they can enforce a regulation that stipulates that MRI benefits will be payable under MBS only to those providers who are currently operational as at a future date (ie the date after the announcement).*

2.11 The date of the announcement was known to be Budget night. Accordingly, the Department gave a clear signal of the possibility of a site or machine freeze effective from Budget night. The officer recalls the conversation but has indicated that it was not the intention to divulge any information. Rather, the discussion had taken place in relation to a College proposal for a range of supply control options. This is an

illustration of the 'grey' area (that is, in terms of what information is public and what is confidential) faced by officials when negotiating agreements of this kind.

Final Task Force meeting

2.12 The final meeting of the MRI Task Force and the Department was on 23 April 1998. One Commonwealth officer recalls that another Commonwealth officer raised the possibility that eligibility for MRI benefits could be extended to include machines on order as at Budget night during this meeting. There is no corroboration of this allegation. Another participant agreed that machines on order was discussed, but considered that it was raised and discussed by the radiologists present. Both of these participants recalled that reservations were expressed about including machines on order, with one recalling concerns discussed about the potential for fraud and the difficulty of controlling the number of machines. Another participant does recall the Department referring to the consequences for MRI equipment suppliers of making false declarations to Government during discussion of supply controls, but cannot recall whether the comments with respect to false declarations applied to installed or ordered MRI equipment. All others present (5 people) could not remember whether the possible inclusion of machines on order in the MRI supply measure was raised and one considered that it did not happen.[28]

2.13 The absence of an official Commonwealth record of this and other relevant meetings has not assisted in establishing the facts in this case. Task Force records of meetings do not support the view that machines on order was discussed prior to the Budget, rather they indicate that the expectation was of site/installation restrictions.

College membership informed of prospective outcomes of negotiations

2.14 A College newsletter in April informed College members of progress in the negotiations. It reported that the MRI Task Force was attempting to reach an agreement on a strategy to achieve an acceptable MBS rebate for MRI services. It advised that the Department was determined to prevent a blow-out of diagnostic imaging expenditure (such as the inappropriate use of MRI). At no stage did the College newsletters provide any details that would lead members to conclude that there was a possibility of machines on order being eligible for funding.

---

[28] All participants at the meeting were interviewed by the ANAO under oath or other provisions of section 32 of the Act.

2.15 At this time, there was already a widening awareness of the progress of the negotiations. For example, the strong differences of view within the Task Force extended beyond Task Force members. Eighteen members of the College Council were briefed on this matter in April and agreed that the Task Force's draft proposal should be put to the Department. The Council also expressed reservations about control by site restriction.

2.16 An 'Important Notice to all College Fellows' in late April 1998 warned that there would be some form of restriction on funding. The President of the College reminded Fellows of aspects of the AHTAC report[29] and stressed that the physical existence or proposed establishment of an MRI installation would not guarantee eligibility for funding. The then Chairman of the Task Force indicated to the ANAO that this message was disseminated to dampen expectations arising from rumours circulating in regard to the availability of MBS benefits for machines.

2.17 These rumours were discussed at the International Society for Magnetic Resonance in Medicine (IMSRM) conference from 18–24 April attended by large numbers of radiologists. The radiologists' and machine suppliers' awareness of the work of the Task Force was increased through presentations by Task Force members and by a departmental officer directly involved in the negotiations. This officer gave a general outline on the history of the Australian Government's policy for funding MRI Services and acknowledged that the Task Force was looking at the issues arising from the AHATAC report.

2.18 During the conference a special meeting of interested radiologists was held to consider the possibility that the MRI Task Force may have agreed with the Government to cap Medicare outlays for diagnostic imaging services in the May Budget. The concern related to whether this had occurred without adequate consultation with the overall College membership.

2.19 The strength of the rumours in the first few days of May concerning the likely Budget measure was one of the main reasons given by one buyer for ordering a total of six machines on 7 and 8 May 1998.

2.20 In spite of the fact that some Task Force members suggested to the ANAO that they were not expecting contracted machines to be included in the Budget, five of the eleven radiologists involved in the

---

[29] Aspects raised included community need, current oversupply, maldistribution of existing scanners, the need for increased public funding and appropriate locational criteria. (Notice to Fellows 23 April 1998).

negotiations were associated with practices that allegedly ordered nine machines prior to the Budget. Two members had an interest in eight of these machines.

2.21 It is a reasonable conclusion that other radiologists would have had regard to ordering of machines by some members of the Task Force in the pre-Budget period in any consideration that they may have been giving to the impact of the foreshadowed Budget measure on MRI on their practice.

Involvement of the Minister and his staff in negotiations

2.22 There were three formal meetings between the Minister and the College which took place on 27 October 1997, 10 March and 6 May 1998. In addition to the formal meetings, the Minister had an informal discussion on MRI funding with members of the profession in January 1998 and was lobbied in February on an alternative proposal for MRI funding. Because the inclusion of machines on order was not agreed by the Minister until 5 May 1998 the first two meetings and the informal discussions were too early in the process for 'machines on order' to have been disclosed as a definite supply control.

2.23 The meeting of 6 May 1998 was important because, subject to approval by the Prime Minister, the decision to include machines on order had been made. The purpose of the meeting was to close the negotiation process and explain to the profession why the Budget papers did not reflect the Agreement. The Department has advised that it sought to signal to the profession successful completion of the process. Notwithstanding this apparent widespread intelligence, those present were asked to respect the confidentiality of the discussions.

2.24 The meeting of 6 May was held at the suggestion of the Department to ensure that the Agreement with the radiologists was confirmed and to explain the way the Agreement would be presented in the Budget papers. The College Council was made aware on 29 April 1998 of the proposed meeting, which had been discussed also at a Task Force meeting on 23 April 1998.

2.25 What was discussed at the meeting of 6 May has had to be elicited from interviews with those who attended, as there are no records of the meeting other than brief speaking points for the Minister. The speaking points confirm that the meeting was focused on closure of the negotiations, explaining problems with the Budget papers, and allaying College concerns. The Department advised the Minister to '*highlight to [the College] that they are a model for others in the medical profession*'.

2.26 It is also relevant that the College representatives attended the 6 May meeting a few days after a College Council resolution had expressed concerns regarding any proposal that supply control should be by site limitation, although the Council believed that there was no alternative other than to proceed with an agreement with the Government (see paragraphs 1.24 & 1.25).

2.27 All College members who attended the meeting of 6 May 1998 agree that the Minister did not reveal Budget measures. However, they are all of the view that, in the context of the College expressing concerns about site restrictions, there was discussion of the possibility of including machines on order as of Budget night, although this was only discussed as an option. All but one member consider that the issue was raised by the Minister (the other has stated that it was raised by the Commonwealth, but could not recall by whom). The evidence of the College representatives indicates that the College expressed concerns regarding enforceability if the Government included machines on order as a supply control and one representative recalls assurance being given in this regard.

2.28 This version of events is strongly supported by the then incoming President of the College, who was briefed the next day about the meeting by the then President. The ANAO also notes that one of the College representatives (supported by one other present) gave evidence that he advised that he had recently (in the previous two months) placed orders personally for two machines.

2.29 The Minister stated that he discussed the supply measures in general terms only, in response to queries from radiologists:

> *I can't say I didn't make a comment, but I didn't disclose the mechanism of supply…..The radiologists raised the issue of limiting supply. I have a recollection that they were worried about anything that would limit supply, they would prefer no limit on supply. And the conversation was incredibly brief. I may have said a few things to be polite, but that's all …... I didn't need their sign off or agreement, there was no point in me raising it.*

2.30 The departmental officer present and the Minister's adviser dispute the radiologists' recollection of the meeting. They do not recall the specific matter of machines on order being discussed. They consider that the Minister did not disclose that machines on order would be in the supply controls, or reveal any other aspect of supply controls. Neither do they recall the radiologist advising that he had placed orders. Indeed the Minister has indicated that he considers ordering of machines by someone involved in the negotiating process highly questionable. He

also considers it would have been unwise to proceed with the meeting after such a disclosure and, therefore, would have terminated the discussions.

2.31 The College representatives attending the meeting have given evidence that the discussions were confidential and, to their knowledge and recollection, they did not pass information divulged to others. The only exception to this is where the then President of the College briefed the incoming President shortly after the meeting.

2.32 No substantive conclusion about inappropriate disclosure of budget sensitive information could be expected on the basis on such contradictory evidence, all of which was collected using the Auditor-General's powers to direct under s 32 of the Act, and much under oath or affirmation. However, when considered alongside the differing recollections of what happened at Task Force meetings, it is a reasonable judgement that negotiation and consultation with the College and open debate about supply controls probably created an environment where some participants may have deduced, or become aware, that the Commonwealth was giving consideration to inclusion of machines on order.

2.33 All evidence indicates that whatever discussions took place between the Minister and College representatives on MRI on 6 May occurred in the formal meeting; that is, there were no informal discussions between the Minister and College representatives on the MRI proposal. Further, there is no evidence that the Minister had any discussions between 6 May and Budget day with any parties outside of government with respect to MRI supply measures.

2.34 The other significant aspect of the 6 May meeting, in the context of the Government's stated wish to include MRI in the MBS, was the fact that it may have signalled agreement had been reached with the College and that a Budget measure to include MRI in Medicare benefits was likely. As acknowledged by the Department, the meeting would have presented a strong indication to the wider community of the success of the negotiations and therefore the likely availability of MBS rebates, even if any restrictions on these rebates were not known.

2.35 The ANAO notes that College records and evidence from College representatives indicates that a departmental representative had a separate informal meeting with the College representatives one or two hours prior to the 6 May meeting with the Minister. Again, this is of significance, given the timing. The College record of the meeting faxed to College Council members (on 8 May 1998) indicated that agreement in principle had been reached and that the proposal would go forward, but

had to successfully negotiate the political process of the Federal Budget. This again may have provided a signal that a Budget measure including MRI/MBS rebates was forthcoming. The records of the informal meeting and interviews with those present do not reflect any discussion of machines on order. Further, there are no departmental records of either of the meetings of 6 May 1998.

2.36 The ANAO interviewed relevant staff in the Minister's office. They stated that they did not reveal any information relating to the Budget measure to external parties. In fact only one staff member was aware, from 5 May 1998, of the proposal regarding machines on order. This person has stated that this information was not passed on to anyone else.

2.37 On the balance of probabilities, when the views of all participants are considered, whatever was said or done at the meeting of 6 May 1998 seems to have had some influence on the following surge in orders for machines, either directly or indirectly, between then and the six days to Budget night.

Suppliers' knowledge of the details of the MRI Budget proposal

2.38 Suppliers of MRI equipment have indicated to the ANAO that high levels of interest in purchasing MRI machines leading up to the Budget were normal business practice. Such interest did not reflect prior knowledge of the Budget measure, only that it was generally understood that there was likely to be a Budget measure on MRI. None of the suppliers interviewed advised the ANAO that they knew in advance that the Budget measure would include machines on order.

2.39 In the normal course of their business, suppliers would not have direct contact with departmental officials, the Minister or his office. The ANAO found no evidence that suppliers had obtained relevant Budget information from these sources. It appears that any awareness of the possible nature of the MRI Budget measure would have most likely come from their customer base.

2.40 Suppliers have indicated that the sudden increase in interest in purchasing MRI machines was driven by the radiology profession. It was noted that this was spurred on by the ISMRM conference in late April 1998 at which all major suppliers had trade displays. As one supplier commented:

> *I think a lot of it [comes] down to what was happening during the ISMRM where everybody was speculating, I guess like in the share market.*

2.41 Another company noted that their sales team had heard that there was going to be a rebate for MRI around the time of the ISMRM conference. Suppliers were interested in the progress of the negotiations following the release of the AHTAC report and the establishment of the MRI Task Force. At least one supply company had been in contact with a member of the MRI Task Force regarding general progress in negotiations. Of course, most Task Force members would have been in contact with suppliers through their normal commercial relationships, and it is noted that five radiologists involved in the negotiations were associated with practices which apparently purchased machines in the lead up to the Budget 1998.

2.42 Other relevant aspects of the commercial environment at the time were that:

- MRI was a leading edge technology, but increasingly seen as a mainstream tool;
- the industry was, and still is, highly competitive with strong pressures to have a broad range of diagnostic imaging services in order for firms to stay viable; and
- at least one supplier was actively promoting new products at the IMRSM conference.

2.43 It is also relevant that the nature of the purchasing arrangements for MRI machines was that often:

- deposits were not required when orders were placed;
- there were no penalties if orders were cancelled early or penalties were small; and
- there was no date by which machines had to be delivered.

2.44 In essence, a contract could be signed and not acted upon for some time. This is borne out by the fact that, by 1 November 1999, only half the machines purchased by the date of the Budget 1998–99 had been installed.

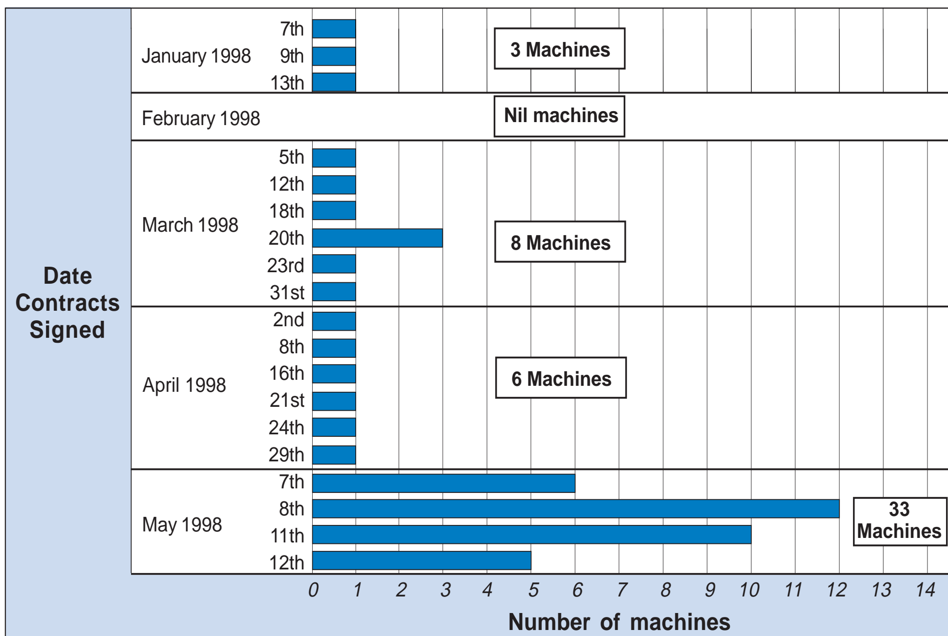
2.45 The ANAO notes that all the major suppliers were able to sell a significant number of machines during the days leading up to the Budget, with no one supplier dominating. (According to the statutory declarations lodged with the HIC, the four largest suppliers each sold between 9 and 14 machines for the period March to 12 May 1998).

Factors contributing to the large number of MRI machines claiming eligibility for MBS benefits

2.46 The above analysis discusses the risks of disclosure occurring in relation to the inclusion of machines on order in the MRI Budget measure. In this context, some 60 public and private machines were expected by the Department to be eligible for MBS benefits—broadly the installed base at the time. However, there was a surge of orders for MRI machines prior to the Budget. While statutory declarations provided to the HIC indicated seventeen machines were ordered between January and April (but not installed by Budget night), the surge occurred between 7 May and Budget night 12 May 1998, when 33 machines were ordered. Figure 3 illustrates the data. The total capital cost of each machine, including installation, was likely to have been some $3 million.

Figure 3

Machines for which contracts were signed between January and 12 May 1998, according to statutory declarations submitted to the HIC.[30]



Source: HIC

[30] Contracts lodged with the HIC for eligibility of equipment for MBS rebates. The figure excludes one registered application for which the contract was dated October 1996.

Contracts were apparently backdated

2.47 One of the factors that explains some of the immediate surge in ordering prior to the Budget (ie 12 May 1998) is that the contract dates claimed in applications are apparently incorrect. The HIC has carried out an investigation into the purchase and installation of MRI scanners that resulted in an interim Report being provided to the Minister on 23 December 1999 (discussed further in Chapter 5).[31] As a result of the investigation, the HIC concluded that contracts relating to 11 MRI machines have, to their knowledge, been backdated.[32] These contracts have been referred to the DPP.

2.48 A further four orders are considered by the HIC to have evidence of backdating but, at the time of the interim Report, not to have sufficient evidence to support referral to the DPP.

2.49 However, it is relevant to the matters being considered in this audit that the possibility of some prior knowledge of, or speculation about, the inclusion of machines on order in the MRI Budget measure cannot be ruled out for all of the above cases. This is because purchase activity appears, at least, in some instances, to have been well advanced even though final documents were not, in the view of the HIC, appropriately completed before Budget night 12 May 1998.

2.50 The HIC investigation also concluded that contracts relating to eight MRI machines contained an option to cancel the contract; these have also been referred to the DPP. A further four may be subject to administrative action for this reason.

2.51 These cases do not rule out prior knowledge or strong suspicion of the likely inclusion of contracts signed before Budget day as part of the MRI Budget measure. Firstly, the contracts signed before Budget day may have been standard contractual arrangements, since it appears to have been quite common for standard contracts to contain options to cancel within a specified period. Secondly, an option to cancel may simply have been seen as a prudent measure, even if there were strong suspicion of the eligibility of contracted equipment.

2.52 The HIC report acknowledges that there are some unresolved questions arising from the fact that so many contracts were said to have been entered into prior to 12 May 1998.

---

31 *Report of investigation by the HIC into purchase and installation of Magnetic Resonance Imaging Scanners following the May 1998 Budget announcement*, 22 December 1999.

32 Backdating is when a contract is signed by one or both parties to the contract later than the date shown on the contract.

2.53 Accordingly, there were reasons, other than backdating, for a large part of the surge in orders prior to the Budget and recorded by the HIC.

Negotiations with the Commonwealth are likely to have provided relevant signals.

2.54 The earlier part of this Chapter discusses the ANAO's findings with respect to disclosure of Budget sensitive information. The ANAO considers that, on the balance of probabilities, this evidence does at least suggest that negotiation and consultation with the College representatives and open debate on supply control issues created an environment where some participants may have deduced, or actually become aware, that the Commonwealth was giving consideration to the inclusion of machines on order in the Budget measure, explaining at least some of the surge in orders. Further, as discussed above, when the views of all participants are considered, whatever was said or done at the meeting of 6 May 1998 seems to have had some influence on the following surge in orders for machines, either directly or indirectly, between then and the six days to Budget night.

Business reasons for investing in MRI and rising expectations in the lead up to the 1998 Budget

2.55 MRI is a leading edge technology with a relatively short product life cycle. At the time of the 1998 Budget the industry was becoming increasingly competitive. There was recognition that investment in MRI facilities by many practices was inevitable at some stage in the near future if radiology practices wished to stay competitive and to offer comprehensive diagnostic imaging services.

2.56 The public release of the AHTAC report in October 1997 provided a strong signal that the Government would review its policy on funding for MRI. Many radiologists were actively researching the purchase of machines as part of normal business planning, in the knowledge that the Government was likely to respond to the AHTAC report.

2.57 Expectations of likely action were reinforced by the establishment of the MRI Task Force and its negotiations with the Commonwealth. As discussed at paragraph 2.1, the commencement of negotiations with the Commonwealth foreshadowed to College members the prospects of MBS rebates for MRI services.

2.58 The Conference of the ISMRM held in Sydney in late April 1998 (paragraph 2.17) indicated greater awareness of the work of the Task Force; professional interest in MRI; new MRI models being promoted; and increasing speculation as to the nature of the anticipated Budget

measure. Some 2 300 delegates attended. As noted by one MRI Task Force radiologist:

> *The strong rumours that there would be an MBS fee and the…implication in general to the uninformed…fellowship that that would possibly apply to magnets on order, started around the time of the ISMRM meeting in Sydney around 21 April.*

2.59 From another perspective, and as noted at paragraph 2.21, other radiologists would no doubt have had regard to the fact that some members of the Task Force were in the process of purchasing machines in the immediate Budget period.

2.60 Around this time, the College also put out a newsletter drawing attention to the progress of negotiations which, although very general and clearly seeking to hose down speculation, would nevertheless have served to focus radiologists' minds on the possibility/likelihood of a measure to fund MRI being included in the Budget.

Nature of commercial relationships reduced the risks of ordering a machine

2.61 MRI contracts often did not involve a deposit and there was no date by which machines had to be delivered. Penalties for breaking the contract either did not apply for a period, or were small in relation to the cost of the capital investment. In any case, the nature of the commercial relationships within the industry was such that it seems unlikely that penalties would have been invoked had orders been cancelled. Accordingly, there would have been little risk to radiologists in signing contracts before the Budget even when they were not sure that the machine would meet eligibility criteria for MBS benefits.

2.62 On the other hand, there would have been commercial risk and a long-term strategic penalty in not taking the opportunity of being included in any MBS benefits available, particularly if competitors did so.

3. Developing administrative arrangements for the implementation of the MRI Budget measure

The Agreement

3.1 On 12 May 1998, the Minister wrote to the President of the College to advise that the Government had endorsed the partnership agreement with the College for a three year program to improve Australians' access to MRI services and to better manage growth in Commonwealth diagnostic imaging outlays. In explaining the Budget measure, the Minister advised that:

> *As you are aware, AHTAC found that excess MRI capacity exists in Australia, with services not always in ideal locations. In response to this advice, the government has decided on a number of measures. In order to attract Medicare benefits, services must be provided with equipment which is in use in hospitals or practices at 7.30pm EST on Tuesday, 12 May 1998. This requirement will be relaxed to allow Medicare benefits to be paid for services provided with equipment which has been either ordered or leased under an unconditional and enforceable contract at 7.30pm EST on Tuesday, 12 May 1998 but are still to be delivered at that time. As well, providers may need to satisfy other eligibility criteria such as siting and accreditation/quality assurance system requirements as recommended by AHTAC.*
>
> *Also, an Adjustment and Relocation Scheme is being considered to look at ways to encourage the relocation of MRI services to underserviced regions. This will be discussed with the College. Its aim is to assist in sectoral adjustment to the new arrangements and ensure best possible patient access outcomes.*
>
> *These arrangements will be monitored closely and reviewed after an initial 18 months. They expand significantly the range of services funded from the existing 18 public hospital MRI units to some 60 Australia wide, give greater choice, and assure quality while continuing a managed approach to the funding and delivery of this specialised medical service. … .*
>
> *The new arrangements for MRI services will commence on 1 September 1998.*

3.2 The Acting College President endorsed the Agreement by letter on 15 May 1998, attaching the final draft of the proposal, whilst noting:

> *several reservations, which were communicated to you … at your meeting last week. These reservations relate to the proposed control by site limitation and the impact of MRI funding upon the diagnostic imaging schedule which will result from an insufficient proposed number of funded MR scans.*

3.3 Whilst it had been agreed between the parties that an exchange of letters would constitute acceptance of the Agreement, the ANAO notes that the final Agreement was attached to the College's letter of 15 May 1998, but not to the Minister's letter of 12 May. There is no copy of the Agreement signed by both parties. This contrasts with the partnership Agreement with the Pathology profession which has much clearer formal arrangements around the Agreement.

3.4 It would have been prudent for an agreement as significant as the Agreement for the Expansion of Funding for MRI, to be signed by both parties. This would have provided for transparency and greater accountability and ensured a shared understanding of the final Agreement. For example, the College's letter indicates that both the letter and the attached proposal constitute acceptance of the partnership arrangement, whereas the Department has indicated that it is unclear as to whether the letter constitutes part of the Agreement. The significance of this observation is that, for example, the Agreement does not specify an increase in the MBS fee in year three, whereas the College letter does. The ANAO also notes that the departmental file copy of the Agreement is annotated with several queries, with one part of the Agreement noted *'we never agreed to this'*. Such uncertainty makes it difficult to monitor/ review such agreements adequately.

The Agreement

The Agreement between the Government and the Royal Australasian College of Radiologists (RACR) formed the basis of a partnership to manage the expansion of public funding for MRI services and set out the responsibilities and risks to be assumed by each party.

The core elements of the Agreement, as identified in the College's letter of 15 May 1998 endorsing the Agreement, were:

- Diagnostic imaging Medicare outlays to grow at seven, six and five per cent per annum over the triennium commencing 1 July 1998;
- funds previously directed towards Health Program Grants (HPG) for MRI to be re-allocated to partially underwrite the new MRI arrangements;
- the expansion program to be limited to 403 000[33] MRI scans over a full three year period at a cost of $164 million with the MBS fee for the test to be $475 for the first two years rising to $529 in year 3[34];
- the cost of the MRI program to be underwritten by technology substitution and active management of global diagnostic imaging outlays within the global diagnostic imaging funding umbrella;
- MRI funding to be targeted to clinical need through a range of mechanisms including specific clinical indicators, specialist only referral and other strategies which may be initiated by the government to manage supply/demand balance in line with the expectations of the AHTAC report;
- only RACR accredited sites to be considered for eligibility to provide funded MRI services under the Medicare Scheme;
- the ability to renegotiate growth targets for a number of unforeseen circumstances; and
- diagnostic imaging outlays to be monitored and managed cooperatively through the Consultative Committee on Diagnostic Imaging (CCDI).[35]

The Agreement mentions, *inter alia*, that:

> *An excess demand above [403 000 MRI scans over three years] cannot be funded within the global arrangements. … Accordingly, the Government will assume the financial risk for MRI volumes above the designated ceiling. … Managing the risk with respect to MRI volumes and potential cost blow out will be an area of responsibility held largely by the Government in consultation with the profession.*[36]

Developing the Regulations

3.5 Following the 1998 Budget, the Department continued work on the necessary arrangements for the implementation of the Agreement by 1 September 1998. An Implementation Committee comprising representatives from the College and the Department was established to finalise outstanding issues stemming from the Agreement. Four College representatives met with departmental officers between May and July 1998. Representatives from the HIC may also have attended one of the meetings.

3.6 The Implementation Committee focussed on identifying clinical indications for MBS eligible MRI services. Clinical indications were used as a basis for targeted MBS itemisations that would allow for extensive data on the provision and use of MRI to be collected and monitored by the HIC. In addition, the Committee provided an opportunity for both parties to the Agreement to discuss progress on issues such as guidelines for accreditation and to provide feedback on consultations with other groups including suppliers.

3.7 The Department also commenced drafting Regulations to give some legislative form to the new arrangements, including itemisation for MRI and related services, eligibility criteria and rules of interpretation for the criteria, and descriptions of specific MRI items (or services).[37] In undertaking this work, the Department obtained legal assistance to determine the scope of the Regulations and had several meetings with the HIC on operational aspects of the Regulations (such as the eligible providers form and explanatory notes, which became part of the Regulations).

---

33 Section 4.2.7 of the Agreement amplifies this: "…a defined aggregate number of MRI scans will be funded/reimbursed by way of Medicare rebates as follows:- Y1 (98-99) 120,000 Scans, Y2 (99-00) 138,000 Scans, Y3 (00-01) 145,000 Scans."

34 Although the College letter refers to the increase in fee in year 3, this is not shown in the Proposal for the Expansion of Funding for MRI Services in Australia attached to the letter.

35 The CCDI is a Committee with membership drawn from the Government and representatives from the Profession nominated by the Minister. Its Charter includes the implementation, monitoring and review of DI Services under the Agreement. With respect to MRI, the Committee was given explicit responsibility for monitoring the number of services. Data is provided to the CCDI by both HIC and the Department.

36 The Agreement can be viewed on the internet at http://www.health.gov.au/haf/branch/dtb/diagreement.htm.

37 Drafting of the Regulations involved amending the *Health Insurance (1997-1998 Diagnostic Imaging Services Table) Regulations*, and consequential amendments to the *Health Insurance Regulations*, and the *Health Insurance (1997-1998 General Medical Services Table) Regulations.*

Response to emerging problems

3.8 During the early months following the Budget, the Department began to receive indications that there were large numbers of MRI machines allegedly ordered before Budget day, and that contracts had possibly been backdated. The Department has indicated that the type and number of complaints were not particularly significant in comparison with complaints that it can receive in some areas of its responsibilities, and that the complaints were dealt with appropriately through its standard processes.

3.9 Indications of some of the messages being received by the Department during the relevant period are as follows:

- on 1 June 1998, the Department received a call from a former Task Force member, who passed on the views of a colleague that 14 machines had been ordered the day before the Budget. The former Task Force member commented, according to departmental records, that the Department would *'have it tuff (sic) to keep this supply under control'*;
- on 4 June 1998, a departmental email reported that officers had had discussions with a salesperson from a major MRI manufacturing firm, who advised that he/she had been approached by radiologists to backdate orders. When the salesperson declined, he/she was informed that others in the industry were offering backdated orders. (The salesperson concerned has advised the ANAO that, in fact, the approach had been by <u>one</u> radiologist to one of his/her staff). The email also reported that the salesperson had heard one member of the College negotiating team had ordered three machines. He/she urged the Department to make it very clear to the industry that the Government would *'act on scams';*
- on 5 June 1998, a telephone conversation occurred between the Minister's office and a departmental officer in relation to the emerging problems with implementation of the Government's MRI policy. The number of orders placed before Budget night was discussed. During a second telephone call on the same day, the Department was advised that legal advice in relation to *'pulling back on MRI'* should be prepared for the Minister. (Advice was provided to the Minister on 7 August 1998, which the Department has advised was prior to the date of 1 September 1998 set for the implementation of the new arrangements);
- on 15 June 1998, a radiologist contacted the Department by telephone to discuss concerns over MRI. The radiologist told the Department that three major companies had ordered machines in the week preceding the Budget. It was claimed that 20 machines had been ordered during the week prior to 12 May and that members of the

negotiating team had ordered a number of machines. The radiologist made reference to the issue of insider information;

- a letter of the same date suggested 20 plus machines ordered, which would result in the Agreement target for MRI services being '*well and truly exceeded*';
- on 21 July 1998, a medical practitioner faxed a letter to the Minister's office alleging that '*those in the know got their orders in for MRI machines before the cut-off date and that this is causing …angst amongst the radiologists*'. Departmental officers heavily annotated the faxed letter, but marked it no further action; and
- on 17 August 1998, the NSW Health Department reported to the Department that it had received anecdotal information suggesting that orders for around 60 units were placed by the private sector before the Budget announcement.

3.10 Whilst some of the complaints received contained limited information, it is clear that, by July, the view that there was a large number of machines ordered had gained widespread acceptance. The College Newsletter of July 1998 informed its readers of MRI developments and warned that the need for MRI services may well exceed 403 000 and '*With the pending confirmed orders and existing MRI facilities, there may be approximately 100 MRI scanners to meet the pent-up need for MRI services*'. The Department observed during the audit that, if clinical need supported more scans, the Agreement target would have to be exceeded.

The Department considers how to address the machine orders problem

3.11 The Department met with suppliers in June 1998 to inform them of the Budget measure and to gather some intelligence on the number of orders placed prior to the Budget. As a result, the Department subsequently received some information from two supply companies which indicated, at least for these companies, considerable numbers of orders placed before the Budget.

3.12 In response to the emerging problems, the Department sought to control supply through requiring statutory declarations with applications for eligibility to support claims regarding contractual arrangements for purchase of MRI machines. Advice was sought from the Legal Services Branch on 6 August 1998 to assist in developing the supply control arrangements. The brief noted that:

> *The major area of concern is that since the Budget there have been unsubstantiated claims that a number of people have circumvented the Budget requirement relating to 'confirmed orders' by either backdating orders or placing speculative orders which means that instead*

of the expected 60 MRI machines there could be between 100–110 MRI machines on stream in the next 18 months.

and

Despite the risks on the supply side of the package … this is a good package and provided tight controls are put into place this should improve health care to the public.

3.13 Consequently, advice was requested on the following issues:

- *under what authority there were penalties for false declarations;*
- *should the requirement to complete a statutory declaration be written into the Regulations …;*
- *the type of paper trail that might be required to substantiate 'confirmed orders', and assist in identification of backdated and speculative orders;*
- *powers of the HIC to collect information; and*
- *investigative powers of the HIC in this matter.*

3.14 Departmental records do not contain a response to this request of the Legal Services Branch. However, the Department has advised that there were subsequent daily discussions between the Branch and policy officers to progress the drafting of the Regulations, including the issues set out in the request of 6 August.

Advice to the Minister

3.15 The Department advised the Minister the next day, in a Minute of 7 August 1998, that problems had emerged on the orders-side of the control measure as follows:

- some practices anticipated and/or speculated on a Budget decision and placed orders;
- there had been claims and anecdotal evidence of backdating of orders;
- the extent of the problem had been difficult to quantify given claims and counter claims made, with some manufacturers providing orders information while others had not; and
- that there appeared to have been some over-stating of the problem, for example, it was rumoured that one major company had ordered 12 MRI machines prior to the Budget, when in fact the order was for six.

3.16 A summary table was provided to the Minister to demonstrate the extent of the problem with a total of 64 installed machines and 39 reported ordered machines as at 6 August 1998. The data was drawn from enquiries made to suppliers and from information provided from other sources to the Department.

3.17 To address the orders problem, eligible provider arrangements were proposed based around requiring statutory declarations and supporting documentation. The Minister was advised by the Department that the controls which had been developed were sufficient to proceed with the implementation of the MRI arrangements. The Minister's Office advised the Minister that the Department was not advocating that *'…we rethink the policy but suggest that six month updates on outlays are a necessity and that we continue the pressure on the RACR'.*

3.18 The briefing did not identify any risks (such as those referred to in its request for legal advice—see 3.13). Nor did it address the risks of continuing with the machines on order policy, such as exceeding the budgeted number of scans in the Agreement should the large number of machines ordered prior to the Budget be legitimate. The advice given did not discuss alternative options. The Department has advised that this was because it was felt that the measures proposed addressed the problem and that there were no additional risks to be considered. Further, the Department has commented that its advice at the time was focussed more on addressing fraudulent claims than on achieving a particular number of eligible MRI machines.

3.19 Nevertheless, it is at least implicit in this advice that the measure would reduce the number of machines claiming benefits to levels much closer to those expected at the time of the Budget announcement. This was also the conclusion that was drawn by the Minister and his Office.

3.20 The Minister accepted the Department's advice and recommendations.

3.21 As well as recommending implementation of the new MRI arrangements, the Department's briefing of 7 August recommended that an Adjustment and Relocation Scheme be implemented, as foreshadowed in the Budget measure (see paragraph 3.1). The purpose of the scheme was, *inter alia* to assist sectoral adjustment to the new arrangements and to encourage relocation to under serviced regions. The Scheme was also approved by the Minister.

Approval of MRI Regulations

3.22 To give effect to the introduction of MRI services onto the MBS, the Government approved, in late August, amendments to the *Health Insurance (1997–1998 Diagnostic Imaging Services Table) Regulations* and consequent amendments to the General Medical Services Table and the *Health Insurance Regulations.* The changes had an effective date of 1 September 1998, with transitional arrangements of one month for MRI machines funded under the existing Health Program Grants scheme.

Monitoring/auditing arrangements are part of agreed MRI arrangements

Responsibilities agreed

3.23 As part of the Agreement negotiated between the College and the Government, provision was made for monitoring, review and evaluation. The CCDI, in partnership with the profession and Government, had overall responsibility for monitoring and managing diagnostic imaging under Medicare. Within these arrangements, the HIC's responsibilities included:

- carrying-out audits to ensure that the services being claimed satisfied eligibility conditions; and
- monitoring the usage of new items on the MBS (specifically the number of services being provided against the number specified in the Agreement).

3.24 Pursuant to this, in June 1998 funds were provided by the Department to the HIC for the development and establishment of program and monitoring/audit systems associated with the introduction of the new MBS item for MRI services. Details of the agreement between the Department and the HIC were that the HIC would:

- engage an experienced radiographer on a part-time basis to audit Medicare benefit claims for the rendering of MRI services; and
- employ an analyst to construct a small episodic database of MRI usage, which will contain earlier histories of MRI patients.

3.25 The Department has indicated that the agreement with the HIC related to additional services to be provided over and above the HIC's usual compliance and audit activities. The HIC has advised that the nature of the agreement explained the type of work to be done; it was not contemplated at the time that the investigators would be needed to deal with any part of the MRI arrangements.

Risk with respect to machines on order

3.26 The agreement between the Department and the HIC did not cover whether there was any need to address the risks in relation to excessive numbers of machines on order claiming eligibility, and what this might indicate about the effectiveness of the risk treatments put in place in the Regulations. The ANAO was advised that it was not intended to do so.

3.27 The initial monitoring/auditing agreement was not formally amended at any subsequent stage to address such risks even though the Department became increasingly aware over the months following the Budget of emerging problems with respect to MRI orders, and briefed the Minister on this. Nor were there formal communications from the Department to the HIC addressing problems with respect to numbers of MRI orders for which eligibility was sought.

3.28 The HIC has emphasised that it understood its role was to monitor the number of services and detect inappropriate ordering and over-servicing. It was not aware of the need to audit risks related to contracts; the importance of detailed checking of the contracts beyond what it would see as normal administrative requirements; nor that numbers of machines claiming eligibility beyond a certain level may indicate that some of the Department's risk treatments had not been effective. The HIC advised that there was nothing to suggest to it that it should be doing anything about the number of machines other than provide data to the Department when required.

3.29 The Department and the HIC did have discussions during development of the Regulations in which concerns were raised about allegations of the potential for backdating orders and of large number of machines that might be seeking eligibility. However, the HIC has indicated that it gained the impression from these discussions that the statutory declaration arrangements were seen as sufficient to address the problems. Consequently, these issues were not addressed in the HIC's detailed audit program for MRI. The HIC has indicated that it would not have undertaken an investigation of MRI contracts if it had not received an anonymous letter (see Chapter 5). In this context the ANAO notes specific details of allegations were not passed on to the HIC.

3.30 On the other hand, the Department is of the view that the discussions held with the HIC should have been sufficient for the HIC to consider this aspect of the eligibility requirements carefully in its monitoring and auditing program as part of its normal responsibilities.

3.31 Both organisations have been working, through strategic partnerships and memoranda of understanding, towards improving liaison at both the strategic and at the operational level. However, it is apparent from the above observations that, in this instance, liaison at the operational level could have provided greater assurance that the risk treatments were being monitored and managed in a disciplined manner. With respect to machines on order, this might have led to the HIC being better informed of specific aspects of allegations received by the Department which might be of relevance to risk monitoring and to better targeted audit approaches, with at least the potential to lead to earlier investigation by the HIC than did occur in this instance.

Relevance of limiting eligible equipment

3.32 In discussing some of the audit issues with the ANAO, the Department has emphasised that the number of machines eligible for MBS benefits, and specifically the number ordered in the period before the Budget, is only one among a number of factors that contribute to controlling the number of funded scans and of overall expenditure on MRI. The Department has also made the point that the MRI Regulations contained a number of controls and mechanisms, such as clinical indicators, which would work as a package to limit the number of MRI services for which MBS rebates would be paid. It further suggested that there was no particular expectation of the number of machines which could be accommodated within the targets for scans and expenditure.

3.33 The ANAO recognises that controlling capacity, in terms of the number of machines able to claim MBS rebates, was one of several control mechanisms. Furthermore, the inclusion of a review at 18 months provided an important check and adjustment mechanism. However, it was a control of some significance. Policy development discussions reflected the need to limit the number of eligible machines to the order of 60; the 5 May 1998 letter to the Prime Minister identifies the significance of control in this area, and the Minister's office has explained that this was important given previous experience in other areas. The Minister indicated to the College that some 60 machines were expected to be covered (see paragraph 3.1). The significance attached to this supply control is also reflected in the briefing to the Minister on 7 August 1998 regarding the machines on order problem.

3.34 The available evidence therefore indicates that controlling the number of MRI machines on order was intended as a substantial contribution to the supply controls instituted in the light the 1998–99 Budget, and the extent to which this action was likely to be successful warranted consideration by departmental program management. This issue is discussed further in Chapter 4.

4. Implementation of the administrative arrangements

Registration and eligibility of MRI equipment

Registration

4.1 The HIC was responsible for registering eligible machines and eligible practitioners, including receiving statutory declarations from radiologists and copies of the contracts or leases for machines which were said to have been signed prior to 7.30 p.m. (EST) on 12 May 1998. Until May 1999, this task was undertaken by the Program Management Division (PMD) which checked each application against eligibility criteria set out in the Regulations. After this date, the HIC's Professional Review Division (PRD) central office took over this responsibility and implemented revised checking procedures to address problems with contracts and statutory declarations.

4.2 The requirement for the application for eligible machines and eligible providers to be accompanied with a statutory declaration meant that the checking process was different from that normally carried out by PMD. The Department and the HIC considered that the Regulations provided sufficient guidance to staff to enable them to assess eligibility, and the HIC advised that the inclusion of the statutory declaration measure made checking of applications against the criteria easier than it would otherwise have been.

4.3 However, this administrative task was made difficult by considerable variation in specific aspects of contracts submitted, and in the nature and details contained in statutory declarations. For example, important information was often missing, such as magnet identification numbers. In other instances, applications from radiologists in the same practice would have different addresses for the practice and different descriptions for the MRI machines. This made it difficult to establish whether the machine had already been approved and to match statutory declarations with contracts.

4.4 Earlier and clearer guidance as to what constituted a valid statutory declaration or contract, what was invalid and a mechanism to address those cases that were unclear or ambiguous would have assisted timely processing of applications.

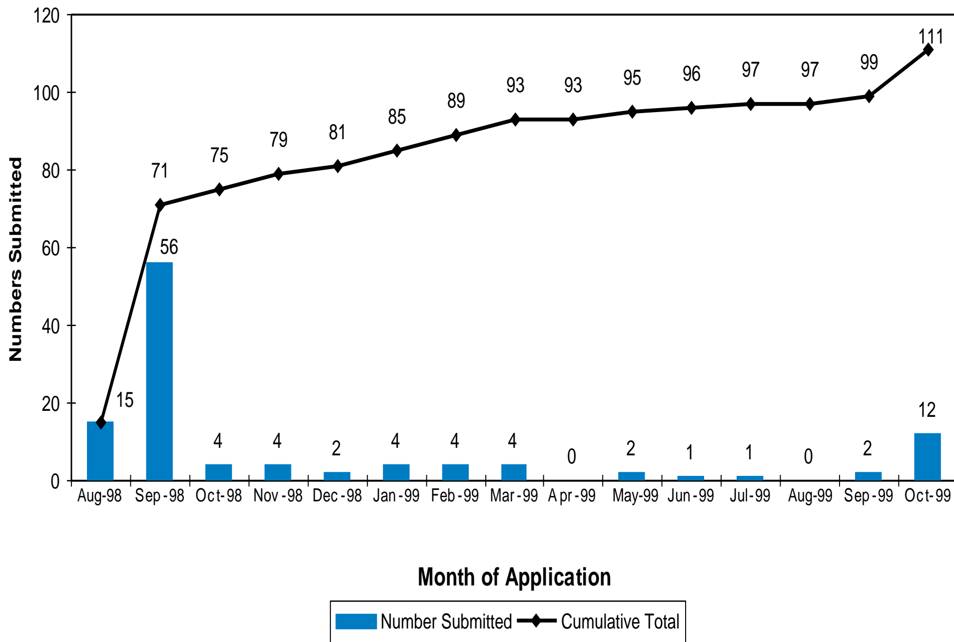
4.5 The registration procedures for eligibility of equipment generally resulted in applications being accepted, since the application was made by way of statutory declaration.

Numbers of machines registered

4.6 Registration of equipment commenced in August 1998 and 71 applications had been submitted by the end of September 1998. There was no cut-off date for registration of eligible machines and applications continued to be received at the rate of about four per month until April 1999 when the rate slowed. The total of applications received reached 111 in October 1999, following amendments to the Regulations to impose a 'cut-off' for applications. Figure 4 demonstrates the data for applications for eligibility submitted to the HIC.

Figure 4

Applications for the eligibility of MRI equipment lodged with the HIC



Source: HIC

Continuing indications of problems with ordered machines after implementation of MRI Regulations

4.7 Subsequent to the implementation of the Regulations for MRI, the Department continued to receive communications from members of the profession concerned about the processes surrounding the negotiation and management of the MRI Agreement. The Department has indicated that it continued to handle such complaints through its standard processes and replied to all communications that it received. An indication

of the type of complaint received is the following, where on 7 September 1998, a radiologist contacted the Department commenting that:

> *It was common knowledge that there was a huge 'leak' prior to the budget with rumours of some 40 MRI scanners having been ordered across Australia in the few weeks immediately prior to the budget release.…*
>
> and
>
> *… the concept of an unconditional contract is meaningless. Of course companies marketing this expensive equipment were prepared to take such orders regardless of the outcome—if the buyer later cancels they are not likely to dump an MRI scanner on the radiologist's doorstep! Any such order can be cancelled perhaps with some nominal penalty charge imposed. This therefore leaves a huge loophole …*

4.8 On 26 October 1998, another radiologist contacted the Department to inform them that:

> *some smarties in our speciality got wind of [the possibility of 'on order' machines being included in the Budget proposal] and got in ahead of the cut-off date to order an MRI.*

4.9 These allegations were not passed on to the HIC by the Department at the time, reinforcing the need for more effective communication on managing and treating key risks in monitoring and auditing arrangements. In this context the ANAO notes that a letter addressed to the Minister and passed on to the Department at the end of October 1998 contained specific allegations of backdating in relation to the actions of one supply company regarding a specific MRI location. Effective procedures would have ensured that this was passed on to the HIC for consideration (although it transpires that the actual application was not received by the HIC until much later).

4.10 When the HIC commenced an investigation into MRI, it resulted from an anonymous allegation to the HIC received in November 1998 (see paragraph 5.3). Paragraph 3.31 of this report has already discussed the benefits of risk treatments being monitored and managed in a disciplined manner which would include sharing of relevant intelligence. More effective sharing of information regarding allegations such as the one above would have had at least the potential to lead to earlier investigation by the HIC of irregularities than occurred. It is also relevant to note that by the time of this complaint, applications in respect of 79 machines had been submitted for eligibility, suggesting that the statutory declaration arrangements had not been as effective as anticipated in addressing the machines on order problem.

Implementation of a cut-off date for registration of eligible providers

4.11 The Department had not seen the need to introduce a cut-off date for registration, nor by advising the Minister that this might be considered as a response to the continuing registration of machines. However, in August 1999, the Minister learned through informal discussions with a departmental officer that new machines were continuing to be registered. He sought immediate advice on imposing a cut-off. (By then, the HIC had been conducting interviews in pursuit of allegations of backdating of contracts for MRI machines for five months).

4.12 In response, the Department advised the Minister on 12 August 1999 that the HIC had received 92[38] statutory declarations for eligible machines from MRI providers and that the HIC was aware that some providers had not yet lodged statutory declarations. The Department recommended that the Minister agree to the Department drafting an amendment to the Regulations to enable an application cut-off date for MRI eligibility of 1 November 1999. The Minister agreed and commented:

> *If there is any way we can introduce it earlier, with an earlier cut off date, I would want to do so.*

4.13 In response an amendment to the Regulations was submitted to the Minister on 13 September 1999 with a cut-off date for eligibility of 11 October 1999.

Eligibility of MRI equipment restricted to machines installed or contracted for purchase by 10 February 1998.

4.14 Following the public notice advising of the 11 October 1999 cut-off date for applications for MRI eligibility, a further thirteen applications were lodged. As a result, the Minister was advised by the Department on 18 October 1999 that it had become apparent that the number of MRI machines was in excess of the predicted level and in excess of what was required to meet the needs of the Australian population. The Department recommended a new regulation changing the eligibility requirements for MRI.

---

[38] In fact there were 97 statutory declarations received at that point. The Department had been advised that 92 of them were eligible at that time.

4.15 The effect of the proposal was to change the date by which providers were required to have MRI equipment installed or contracted for purchase back to 10 February 1998 (when negotiations formally commenced between the Department and the College MRI Task Force) from Budget night 12 May 1998. The Department indicated to the Minister that a Review was being undertaken to determine how best to provide appropriate, quality and accessible MRI services (see Appendix 5), and that the proposed amendment was intended to support the review and to assist in best managing MRI services pending its outcome.[39]

4.16 The new date for eligibility became effective on 1 November 1999 at the same time an exemption from this change was announced for machines providing MRI services in non-metropolitan areas.

4.17 Figure 4 indicates that there were already high numbers of machines submitted for eligibility before October 1999, with claims continuing to trickle in after that time. The ANAO considers that the number of MRI machines applying for eligibility was already at a level which was in excess of that predicted and required to meet the needs of the Australian population (see paragraph 3.1). Accordingly, earlier action offered favourable outcomes for the effective management of the supply controls.

Monitoring of the MRI measures

4.18 As discussed on page 94 the Agreement negotiated between the College and the Government provided for monitoring of the package of diagnostic imaging measures, including for MRI, through the CCDI.

4.19 In order to manage this situation, the HIC provided the CCDI with detailed monthly data showing the cumulative number of MRI and DI services and costs compared with the target, information on services by State and by type of service, and projections based on a number of scenarios. The Department also analysed and presented to the CCDI detailed statistics monitoring the growth of MRI services against other diagnostic imaging services, such as CT and Ultrasound. A consultant was also engaged by the Department to prepare forecasts of MRI and other DI services over the course of the agreement, largely for internal estimation and planning purposes.

---

[39] Following announcement of the review, the Department took an administrative decision to put on hold the Adjustment and Relocation Scheme.

4.20 The improved monitoring arrangements for the provision of services and the more detailed itemisation available after budget night enabled the Commonwealth to have a better understanding of the relationship between expenditure and performance than was the case with the former Health Program Grants to the States and Territories. This was important in strengthening the Commonwealth's approach to 'evidence based medicine'—a major objective within the Department of Health and Aged Care.

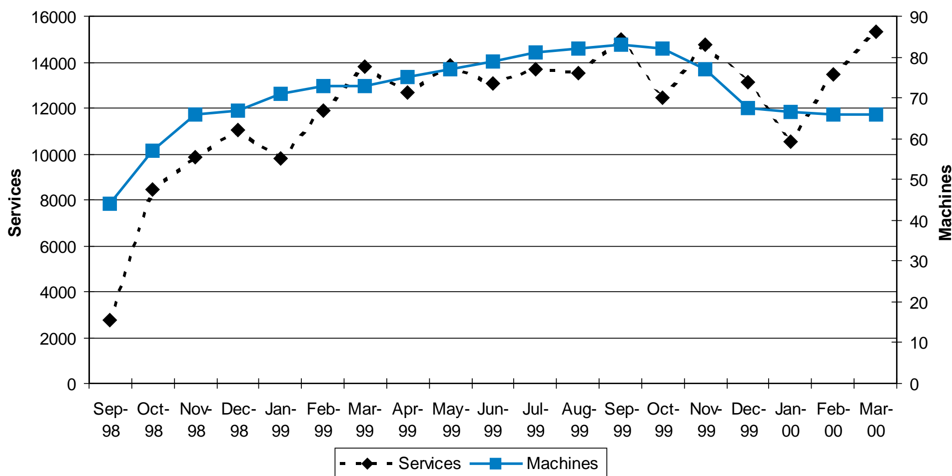
4.21 Whilst there was a large amount of data presented to the CCDI, the breadth of issues requiring the committee's attention was substantial and MRI is a small proportion of overall diagnostic imaging expenditure. Accordingly, coverage of MRI in CCDI discussions was relatively small.

Trends suggest MRI services will exceed agreement target

4.22 The rate of growth of MRI services was rapid in the first six months of the Agreement, followed by a period of slower growth. Figure 5 demonstrates the increase in services processed by the HIC and compares it with the number of eligible machines for which rebates were claimed. The data indicates a statistical association between the increase in eligible machines and the number of services (up to October 1999, at which time the eligibility date was changed)[40].

Figure 5

MRI services processed and machines for which benefits claimed[41]



Source: HIC—data displayed by date at which claims processed.

---

[40] Based on advice from the Statistical Consultancy Unit, Australian Bureau of Statistics, March 2000.

[41] While only 66 machines satisfied eligibility criteria from 1 November 1999, claims continued to be processed for the next few months for machines that were no longer eligible due to the normal delays between a service occurring and a claim being processed by the HIC. Very broadly the number of machines for which claims related in November and December equated to approximately 77 and 68 respectively at the levels operating prior to the changes.

4.23 While the data are clearly subject to some seasonal variations, it was clear, from about March 1999 onwards, that the number of scans was putting pressure on the achievement of the targets in the Agreement—that is 120 000 scans in 1998–99, 138 000 scans in 1999–00 and 145 000 scans in 2000–01. The numbers of scans was substantially in excess of 12 000 each month, a level that was higher than allowed for in the Agreement.[42] While the expenditure over and above the designated ceilings in the Agreement was small, the Commonwealth assumed all of the financial risk for these volumes. This was explicitly outlined in the Agreement and reflects the arrangements under the MBS where clients with genuine clinical needs can not be refused a rebate on the services provided.

4.24 The impact of the high number of services was recognised by the Department in evidence given to the Senate Estimates Committee on 31 May 1999:

> *…on the number of machines we have in the second and third year we are likely to be over the target figures in the Agreement. The third year has 145,000 services … a sort of back of the envelope calculation suggests we might be 30,000 to 40,000 above that on current trends in the final year.*[43]

4.25 The Department's view at the time was that one of the reasons for the additional services forecast was that the number of machines was larger than anticipated.[44]

4.26 In practice, the pressures on the ceilings in the Agreement were considerable. Figure 5 shows that there were 75 eligible machines on which MBS benefits were being claimed in April 1999 and which were producing a level of claims in excess of the Agreement. However, at this point, the HIC had applications for a further eighteen machines, as demonstrated in Figure 4, which would have led to claims being made in the future for MRI services carried out on these machines. Moreover, applications for an additional eighteen machines were submitted by October 1999, bringing the total number of machines lodged with the HIC to 111.

---

[42] The Agreement provided for 403 000 scans over the three years, allocated as 120 000 in 1998-99, 138 000 in 1999-00 and 145 000 in 2000-01. On 28 April 1999 the Department adjusted the annual target for 1998-99 down to 100 000 services, increasing the later years to 148 000 in 1999-00 and 155 000 in 2000-01.

[43] Senate Estimates (Community Affairs Legislation Committee, Consideration of Budget Estimates) 31 May 1999 CA 151.

[44] Senate Estimates (Community Affairs Legislation Committee, Consideration of Budget Estimates) 31 May 1999 CA161.

4.27 Following the first month, the average number of scans per machine per working day was steady at about eight, suggesting that as each additional machine became eligible and rendered MBS rebated services, the targets in the Agreement would be placed under further pressure.

4.28 Notwithstanding the reduction in eligible machines to 66, as a result of the new Regulation (see paragraphs 4.14–4.16), the most recent data processed by the HIC for February 2000 (see Figure 5) indicates that the number of rebatable MRI services remains at a level above that consistent with the Agreement targets. The Department has indicated that this level of services is commensurate with clinical need, since there is no evidence of people receiving services where there is no clinical need. Further this level of services is consistent with the recommendations of the Blandford review.

4.29 At the time of the preparation of this report there were 45 machines registered that are no longer eligible for MBS rebated MRI services, because of the change in eligibility rules. The ANAO notes that anecdotal evidence from some of those operating ineligible machines indicates that some of their services would otherwise qualify for the MBS. Combined with the evidence of past data trends on numbers of services and machines, this suggests that these machines would have generated additional claims on the MBS if the policy in respect of eligible machines had not been revised.

Administrative effectiveness—interim outcomes achieved

4.30 As indicated in Chapter 1, the Government's objectives from the Budget measure were to:

- constrain growth in diagnostic imaging expenditure under the Medicare benefits arrangements, with annual net savings to the budget for diagnostic imaging services rising to $28 million in 2000–01; and
- fund improved access to MRI services from within the net savings for diagnostic imaging. (It should be noted that, while an important component of the policy, funding of MRI services represents a small part of the total diagnostic imaging budget—with MRI accounting for some $67 million in 1999–2000 from total diagnostic imaging outlays of some $1.1 billion.)

4.31 The implementation of the policy so far has resulted in a number of positive benefits as well as some unforeseen outcomes that have undermined these achievements. These matters are discussed below.

Achieving a Partnership Agreement

4.32 The achievement of the partnership Agreement with the profession met an important policy objective of the Government . As discussed in Chapter 3, it provided a basis for managing both quality and costs for diagnostic imaging services over the longer term. Radiology expenditure had not previously been subject to agreed arrangements with the profession to control expenditure, and the Minister has indicated that the establishment of a process for engaging with the profession to control expenditure was therefore important.

4.33 The Department's negotiations with the College were successful in achieving this aim.

Constraining growth in diagnostic imaging expenditure and achieving net savings

4.34 At the time of this audit the anticipated level of control over growth in diagnostic imaging outlays had not been achieved. Expenditure on diagnostic imaging in the first year of the Agreement was some $46 million over the target specified in that Agreement, that is, some five per cent higher than the seven per cent growth anticipated. The overspend was a consequence of diagnostic imaging services other than MRI—in particular ultrasound and CT. However MRI expenditure above the ceiling in the Agreement represented an additional $4 million (see paragraph 4.39). The problems in achieving the diagnostic imaging objective were acknowledged in the annual report of the Department of Health and Aged Care for 1998–99. The Department considers that the failure to achieve the growth target in the first year of the Agreement is not evidence of the Agreement not working, but evidence that the underlying demand pressures for DI were greater than the Forward Estimates suggested before the Agreement was negotiated.

4.35 After peaking in November 1999, growth in expenditure declined, with growth for 1999–2000 to March of some six per cent. This is largely a consequence of the regulatory changes to the Diagnostic Imaging Services Table in areas other than MRI.

4.36 The Department is working in consultation with the profession to implement further changes to achieve the targets in the Agreement in the longer term by using the processes established in the Agreement for review and adjustment. It has indicated that these changes will address financial reductions through structural changes which promote evidence based health care such as: appropriate clinical use of items, abolition of redundant items, and addressing inappropriate usage in the MBS.

4.37 The ANAO notes that, while growth in diagnostic imaging expenditure has declined for the current year, the level of growth, taken with the excess growth in the first year, presents substantial challenges for the Department in negotiating with the profession to achieve the Agreement targets.

4.38 Performance in achieving the planned net savings to the budget is directly related to the constraint of diagnostic imaging expenditure. As a consequence of the growth in diagnostic imaging outlays, the net savings to the Budget sought from the Agreement have not yet been achieved. The Department considers that progress in managing expenditure over the life of the Agreement suggests that the savings may be achievable albeit within a different timeframe. The ANAO notes that this also will present a substantial challenge to the Department.

Funding improved access to MRI services

Funding

4.39 Expenditure for MRI services has also exceeded expectations. As a result of the number of scans being higher than the targets in the Agreement, expenditure for 1998–99 was some $4 million over the anticipated level. Projections for 1999–2000 suggest expenditure of $6 million over target. The ANAO notes that, prior to the reduction in eligible machines to 66 (see paragraph 4.28), there was considerable potential for expenditure to exceed targets by larger amounts if all 111 machines registered had remained eligible. This is particularly important given that, under the Agreement, the Commonwealth assumed the financial risk for MRI volumes above the designated ceiling for scans.

4.40 The MRI measure has also resulted in the unexpected outcome of exposure of the Commonwealth to risks of fraud through backdating of contracts or otherwise misrepresenting the nature of the contracts. These matters have been the subject of the HIC investigation previously referred to (the investigation is discussed further in Chapter 5).

4.41 The Department considers that the original target of 403 000 scans over three years is still achievable but notes that the Blandford Review suggests an increase in MRI usage. The Department has also advised that, while the net savings to the Budget from the Agreement have not yet been achieved it believes that, given the underlying trends, the savings to Government have been significant.

Improving access

4.42 MRI services are now more widely available in the community, with 66 MRI units now eligible for MBS rebates compared with the eighteen MRI machines previously funded by the Commonwealth through

Health Program Grants to the States. Seventeen of the eligible MRI units are located in non-metropolitan areas. Figure 6 illustrates the distribution of units.

Figure 6

MRI Units eligible for Medicare Rebates at 1 November 1999

State or Territory	Total	Number in Non-metropolitan Areas
New South Wales	22	7
Victoria	17	4
Queensland	11	5
Western Australia	5	-
South Australia	5	-
Tasmania	3	1
ACT	2	-
Northern Territory	1	-
Total	**66**	**17**

Source: Department of Health and Aged Care

4.43 Notwithstanding the wider access available from the new arrangements, the Adjustment and Relocation Scheme (see paragraph 3.21) has not resulted in any grants being paid to relocate surplus machines to higher need regional areas. Up to $300 000 was to be made available to eligible applicants, but no payments have yet been made and relevant matters are now being considered within the context of the recommendations of the Review of MRI Services chaired by Professor Blandford.

Substitution of MRI for other services

4.44 An important consideration in the Agreement was the potential to promote substitution of MRI for other services. The Agreement stated: *'...the cost of the MRI program [is] to be underwritten by technology substitution and active management of global diagnostic imaging outlays within the global diagnostic imaging umbrella'* and suggested that MRI scans could replace more invasive and costly diagnostic procedures in some clinical applications. There is some evidence that since MRI has been funded through the MBS some substitution is taking place. For example for head and neck examinations there is some evidence of MRI substitution for CT. However, the level of substitution overall seems relatively limited compared with the above goal. Professor Blandford's review (see Appendix 5) is due for release shortly and is likely to address this and other relevant matters.

5. The investigation by the HIC

HIC's investigative role

5.1 The Professional Review Division (PRD) of the HIC is responsible for detecting, investigating and deterring external fraud and inappropriate practice by service providers and the public in programs administered by the HIC. Its functions and related powers for professional review are conferred by the *Health Insurance Commission Act* 1973.

5.2 Professional Review Branches in each State operate through State Case Management Committees (CMCs) which perform a coordinating role within each State. The HIC's Fraud and Service Audit Committee (FASAC), which is a standing committee of the Board of Commissioners, monitors and reviews tasks undertaken by PRD.

Management of the investigation

Commencement of the MRI investigation

5.3 The MRI investigation commenced following receipt of an anonymous letter from an ex-employee of a MRI supply company dated 12 November 1998.[45] The letter was forwarded to PRD on 30 November. The letter alleged that a number of orders lodged with the supply company had been backdated to enable them to qualify for eligibility under the MBS Regulations. The letter was also addressed to the Federal Police and the Federal Minister for Health and Aged Care.

5.4 The HIC has indicated that they viewed the letter as of some significance and that the response to the letter was not seen as routine. On 3 December 1998, PRD Central Office was tasked to identify the supply company from data held. The letter, therefore, provided the first impetus for HIC to check which supply companies had sold MRI machines. At the end of the month, progress on the preliminary review resulted in a copy of the address details of the supply company taken from the White Pages.

---

45 The ex-employee worked for the same company as the salesperson who urged the Department to 'act on scams' in June 1998—see paragraph 3.9.

5.5 The CCDI, which includes departmental representatives, was informed at its 10 December 1998 meeting that '*the HIC were investigating some contracts that had been provided as part of Statutory Declarations*'. The ANAO notes that the HIC did not seek to establish with the Department what information it may have had on this company as a result of its contact with suppliers post Budget (as noted earlier in this report, the Department had not provided the HIC with details of the allegations that it had received regarding the 'orders problem').

5.6 Consistent with standard HIC practice, the Minister was not informed that the review was being undertaken.

5.7 The preliminary review involved obtaining the necessary documentation for the supply company from state offices, who were still receiving documentation and determining the eligibility of applicants. The statutory declarations made by applicants did not identify the supply company and accordingly it was necessary to obtain the individual contracts from the state offices.

5.8 The review was referred to in the Senate Estimates Committee hearing on 8 February 1999, with HIC commenting that:

> *We are looking at all of the applications. We have been through one particular group from a major city and we are looking at the other cities as well. We have looked through Sydney and we are further examining some matters there. We are looking at Melbourne and Brisbane but we have not commenced inquiries there.*[46]

5.9 The HIC has advised that instructions were given verbally to the NSW office to commence an investigation into the NSW contracts early in February 1999. The formal report of the preliminary review was actually completed on 24 February 1999, recommending that the identified contracts be subjected to audit. This was agreed, and Professional Review Branch (PRB) NSW was formally requested to investigate two of the eight identified contracts (located in Sydney) with the others to be considered at a later date. Identified statutory declarations and associated documentation for the two machines in Sydney were sent with the request.

5.10 The NSW State CMC was notified of the commencement of the MRI investigation on 2 March 1999 and the first interview with a staff member of the supply company was conducted on 8 March 1999.

---

[46] Official Committee Hansard, Senate Community Affairs Legislation Committee, Consideration of Additional Estimates, Monday 8 February 1999, CA73.

Progress of the investigation

5.11 The investigation was managed by PRD in Canberra because of the sensitivity of the investigation. Reports on the progress of the investigation were provided to PRD in Canberra on a regular basis and indicated, at times, that the task was growing. However as late as mid July, there was an expectation that the investigation report would be completed by the end of that month.

5.12 The HIC interviewed 135 people over the period March to August 1999 in all mainland states and in the ACT. The HIC referred its first case to the DPP on 7 July 1999.

5.13 In August 1999 the decision was made to employ the compulsory powers of investigation under Part IID of the *Health Insurance Commission Act* 1973. Part IID powers enable authorised HIC officers to:

- issue a notice requiring a person to give information or produce documents;
- enter premises with the consent of the occupier and conduct a search for the purpose of monitoring compliance with regulatory requirements; and
- enter premises, conduct searches and seize evidential material under warrant, where there are reasonable grounds for believing that a 'relevant offence' is being or has been committed.

5.14 The use of such powers was deemed necessary in the MRI investigation due to the amount of inconsistent and conflicting evidence being provided by individuals interviewed. In using these powers, a total of 99 notices were issued for the attendance of a person or the production of documentation. The ANAO was advised that Part IID powers were not applied earlier in the investigation because it was necessary to gather sufficient evidence of the suspicion of a relevant offence to enable an application to be made to the Managing Director to use the powers.

5.15 The HIC provided the Minister for Health and Aged Care with an interim report detailing the preliminary findings of their investigation on 23 December 1999.

Management of elapsed time

The initial phase (November 1998–February 1999)

5.16 The ANAO found that there is no formal timeframe required for the completion of preliminary reviews of this nature and that they are not subject to specified guidelines, as is the case for investigations.

5.17 In this case, it took three months, including the Christmas period, before the first interview was conducted. Anonymous complaints present special problems for the HIC and it has advised that it experienced difficulty extracting the relevant data from its records during the preliminary review. This was because the statutory declarations provided by applicants did not have to include details of the contract and it was therefore necessary to examine the contracts accompanying the statutory declarations; and because the relevant documents were not filed by the HIC in a systematic way. At this time not all the relevant applications had been lodged with the HIC. In practice, the initial stage of the review resulted in very little information being provided and it was not until February 1999 that all of the supply company's contracts were identified.

5.18 The ANAO considers that, while there were no doubt other priorities, communication of the apparent importance of the matter did not result in it being handled with particular urgency. The limitations with respect to formal timeframe, processes and documentation have been noted above. The ANAO also notes that, during the course of the audit, there was conflicting evidence regarding the timing of the conclusion of the preliminary review and the formal direction to commence the full investigation. This suggests less than clear communication in the initial phase.

The investigation (March 1999–December 1999)

5.19 As late as mid July 1999, the HIC anticipated that the investigation would be completed by end July 1999. At the end of July 1999, by which time 38 contracts had been lodged, this completion date was revised to 30 November 1999. The investigation into all 52 contracts was not completed until December 1999. This was, according to the HIC report, for a number of reasons as follows:

- the number of applications to be investigated continued to grow until the lodgement cut off date of 11 October 1999 was introduced. This action finalised the lodgement arrangements and determined the scope of the investigation (a total of 52 contracts were investigated, including 13 contracts lodged in the final fortnight before the cut-off);
- there was considerable delay in obtaining information once the use of Part IID powers commenced. Part IID provides that parties who are required to attend for interview must be given 14 days notice. This, combined with the general availability of individuals resulted in some time lapse before each interview; and
- for each case referred to the DPP a considerable amount of time was required to prepare detailed briefings (a total of nineteen cases have been referred to the DPP).

5.20 FASAC regularly considered the progress of the investigation. In September 1999, FASAC reported to the Board of Commissioners that it was satisfied with the progress of the investigation.

5.21 The ANAO recognises that, during the course of the investigation, the scope and complexity of the investigation increased. In addition, the HIC has indicated that investigators faced significant challenges to elicit truthful and accurate evidence, which meant that interviews had to be conducted often more than once. Nevertheless, the ANAO considers that the investigation could have been more effectively managed through more disciplined and systematic project management procedures. This is considered below.

Resources

5.22 Although PRD investigations of a similar character to the MRI investigation are normally conducted across a number of States, it was determined that the investigation would be conducted out of one office only, that is, NSW, because of the location of the supply company in question and relevant investigation experience in the NSW office. NSW office retained responsibility for conduct of the investigation as the investigation widened to more supply companies and all States. The ANAO notes that all medical supply companies had their headquarters in Sydney.

5.23 Initially, two senior investigators, with experience in radiology matters, were assigned to the MRI investigation. At that time there were 89 MRI machines lodged with the HIC, 30 of which were not installed at the 1998–99 Budget night. The anonymous allegation referred to eight of these contracts.

5.24 In response to the draft audit report, the HIC has advised that an additional NSW investigator joined the team in June and another two joined in August 1999.[47] As at August 1999 there were approximately 38 machines within the scope of the investigation.

5.25 In August and September 1999, the minutes of the HIC Board of Commissioners noted concerns expressed by one Board member about the importance of allocating resources to complete the investigation as soon as possible. It was not until October 1999, following the introduction of the 11 October 1999 lodgement cut off date resulting in a further

---

[47] Previously the HIC had advised that only two additional investigators had been assigned—in July/August. Administrative assistance with the serving of compulsory notices under Part IID powers was provided by officers in the State Offices, but these officers did not assist with the conduct of investigations.

thirteen contracts being lodged (see paragraphs 4.11–4.14), that the HIC further increased the investigation team by contracting three field staff and one manager from a consultancy firm to assist with the investigation. The Minister has indicated that, whilst not wishing to interfere with proper investigation processes, on two occasions he expressed the wish for increased resourcing to give the investigation priority. In response to queries raised by the Minister's office, the HIC advised on 20 October 1999 that resources were assigned to the investigation in accordance with normal procedures.

5.26 The HIC has advised that investigators had access to the resources they required and that there is no evidence that they were denied anything. However, the ANAO considers that the evidence indicates that the widening scope of the investigation was not responded to promptly enough in terms of adequately matching resourcing to the task. Whilst the HIC had not been provided with a specified target of contracted machines, it was clear there were a large number of applications which potentially impacted on the investigation. More effective communication between the Department and the HIC, especially concerning specific aspects of allegations and other information that it had, had the potential to indicate far earlier in the process that the investigation was likely to have a wide scope and could require more resources to report within the specified timetable.

Project Management

5.27 PRD Investigation Guidelines require an investigation plan to be submitted to the NSW State CMC by the investigation team prior to the commencement of the investigation outlining:

- background to the investigation;
- resources required;
- time line for the investigation;
- budget for the investigation; and
- use of special powers.

5.28 No such investigation plan was prepared for the MRI investigation. Notwithstanding the requirements in the Investigation Guidelines, the HIC advised:

> *that it is not the custom in the NSW PRB office to prepare investigation plans for any investigations. The MRI investigation was no different and no investigation plan was prepared. No plans were prepared during the course of the investigation.*

5.29 The ANAO also found that there were no formal reviews of progress of the investigation which provided justification for additional resources, an increase in the Budget and a change in the milestones. The possible need to address the use of Part IID powers was not considered in formal planning or reporting before August 1999.[48]

5.30 The cost of the HIC investigation could not be readily supplied to the ANAO despite the requirement in the Investigation Guidelines for relevant data to be kept so that the actual costs could be calculated. The HIC advised that the cost as at 17 March 2000 was $267 569.05[49]. The HIC also advised that the costs of the investigation would have been of no help in managing the investigation as costs were not relevant to the investigation process.

5.31 The HIC has advised the ANAO that the investigation was considered to be one of high importance and sensitivity and in the circumstances it was appropriate to depart from its stated policy. The ANAO recognises the particular circumstances of the MRI investigation, but considers that the HIC's Investigation Guidelines requiring an investigation plan to reflect *'…accountability, for example, cost-effectiveness, budget, timelines etc'* represent better practice and their application in this case would have assisted with the project management of the investigation and consequently should be considered as better practice in all investigations. The ANAO notes that a previous ANAO audit recommended use of formal project management procedures.[50]

Results of the MRI investigation

5.32 The HIC report dated 22 December 1999 noted that 19 contracts have been referred to the DPP (of which 16 were ordered in the period leading up to the Budget, 7 to 12 May). Eleven of the cases were referred for backdating and eight cases because the contract was subject to an option to cancel. Eight other contracts were likely to be the subject of civil action. A total of 25 contracts, with dates ranging from February 1998 to 12 May 1998, were deemed to be compliant, with the report noting that only seven or eight contracts were found to be *'…unquestionably genuine and binding'*.[51]

---

48 In response to the draft report the HIC stated that 'the suggestion that no formal reviews were carried out is wrong and that this would have assisted in resource allocation is simply conjecture'. No evidence was provided to support this view. The HIC has also stated that the need to use Part IID powers was raised in discussion in February 1999.

49 The basis of this cost, such as whether and how full salary costs, overheads, corporate costs, travel, consultancy, legal and senior management time were included, has not been supplied.

50 Audit Report No. 17 1992-93, *Medifraud and Excessive Servicing: Health Insurance Commission.*

51 Health Insurance Commission, *Report on the investigation by the HIC into the purchase and installation of Magnetic Resonance Imaging Scanners*, 22 December 1999.

Potential conflict of interest

5.33 A new Chairman of the Health Insurance Commission Board was appointed on 30 July 1998. The Board is responsible for the strategic direction of the Commission, its governance, and ensuring that there are adequate resources for all its activities. The Board is not expected to focus on operational detail, although it does receive reports from all elements of the Commission to ensure that the Commission is fulfilling its statutory responsibilities in an effective manner.

5.34 This section of the report addresses management of perceived conflict of interest by the Board in the context of the MRI investigation.

Appointment to the Board of Commissioners

5.35 The Parliamentary Handbook provides instructions on the procedures for dealing with senior Government appointments requiring Cabinet endorsement, such as the Chairman of the HIC Board of Commissioners. The responsibility for initiating such appointments lies with the responsible Minister who selects and forwards the name of the preferred candidate to the Prime Minister for approval. The Handbook states that:

> *In proposing and making appointments, care has to be taken to ensure that the Government and nominees are caused no embarrassment and …assurances must be obtained from prospective nominees—particularly in respect of potential conflicts of interest and personal affairs.*

5.36 The Department provided assistance to the Minister in the selection process for the appointment of the new Chairman of the HIC, by identifying a proposed shortlist of suitable applicants with the assistance of consultants. Comments on the shortlist by the Department noted the potential for conflict of interest. This was due to the proposed Chairman's connections with the parent company of a prominent Australian health care company (he was an employee of the parent company and, until 30 June 1998, had been the Managing Director of its health care subsidiary with responsibility for pathology and radiology businesses). Following discussion, the Minister indicated that he considered the conflict of interest was manageable. In forming this opinion he advised that he had obtained advice from the Department of the Prime Minister and Cabinet supporting this view.

5.37 The appointment of the new Chairman was therefore proposed by the Minister to the Prime Minister on 29 June 1998 with a statement that the nominee had indicated that there would be no conflict of interest should he be appointed. The proposed Chairman advised in writing on 2 July 1998 that he had '*…no actual or potential conflict of interest in a financial,*

professional or any other way which could cause embarrassment to the Government'. He also advised that he was an employee of the parent company and that he was willing to step down from his position as Executive Director of the parent company if he was appointed.

5.38 The Prime Minister confirmed the Cabinet's endorsement of the new Chairman of the HIC on 23 July 1998. He asked the Minister to ensure that the Chairman

> *… fully discloses his interests at HIC Board meetings and absents himself if and when issues specific to [the parent company] are raised. I also ask that his position as director on the [parent company] Board be kept under review.*

5.39 On 30 July 1998, the day of his appointment, the new Chairman wrote to the Minister's office to '*make sure there is a complete understanding about my role [in the parent company] … it is important there is full disclosure of my full responsibilities and [parent company] relationships*'. The new Chairman also disclosed his personal financial affairs, including share options and incentives, as required by the Parliamentary Handbook.[52] The ANAO also notes that a media release a few days after his appointment also referred to the Chairman's connections with the parent company.

Managing conflict of interest

5.40 The first Board meeting that the new Chairman attended was held in August 1998. Prior to this meeting, the Chairman, the Managing Director and the Board Secretary discussed the Prime Minister's letter of 23 July 1998 and the need to manage perceptions of conflict of interest.

5.41 At the Board meeting, the Chairman acknowledged that concern had been expressed in various fora that his appointment may result in conflicts of interest. He told the Board that to address this possibility he had, with effect from 30 June 1998, stepped down from his position as the head of the health care company, and that he had also resigned from the Board of the parent company. He further advised that he would absent himself from consideration of any matters placed before the Commission that may involve impact on the operations of the parent company or any of its subsidiaries. The ex-Chairman also advised the ANAO that he informed the Board that they should feel totally free to raise any matter they thought could raise a potential conflict of interest because a conflict identified is usually a conflict dealt with. The Commission accepted these as being adequate measures to address any possible conflict of interest situation that may arise.

---

[52] A record of this letter was not on files held at the Commission, the Department or the Minister's office.

5.42 The Board minutes for this meeting do not record the Chairman's remaining responsibilities with the parent company.

5.43 In addition to the above measures, the Managing Director has indicated that he sought to undertake a 'gatekeeper role' to ensure that Commission matters which may present a potential conflict of interest did not arise with respect to the Chairman's interests in the parent company or its health care arm.

5.44 Three weeks after the August Board meeting the Chairman, in his capacity as an Executive Director[53] of the parent company, wrote to the HIC Managing Director explaining that a significant part of the planned growth of the company's health care operations involved acquisitions in pathology and diagnostic imaging. The letter further states that:

> *In addition to my declaration referred to in the minutes of the last Commission Meeting (August 1998), I would also ask you to ensure that any HIC matters which might have any commercial relevance in the acquisition of diagnostic businesses be identified and that I not be party to any related Commission deliberations.*[54]

5.45 The Minister and Board were not informed of this letter. The HIC has advised that as the Managing Director clears all papers and submissions to the Board, it was a straightforward matter for him to ensure that the Chairman was not placed in a conflict of interest situation. The above letter was therefore considered to be an administrative document acknowledging the 'gatekeeper role' of the Managing Director. Further, the HIC emphasised that it would have been most unusual for the Board to discuss matters of commercial relevance in this area. The HIC was therefore confident the Chairman would not be involved in any discussions causing a possible conflict of interest.

5.46 Whilst recognising the arrangements in place, the ANAO considers that, consistent with good practice in managing potential conflicts of interest, and to ensure that other Board members were appraised of any potentially conflicting position, it would have been appropriate for this letter to be tabled for the benefit of all Board members or provided to members out of session. The HIC has commented that there is no evidence to indicate any consequences in relation to the management of conflict of interest within the Board.

---

[53] The then Chairman has indicated that he retained the title of Executive Director, but was no longer a Board member of the parent company.

[54] Letter from the Chairman to the Managing Director (31.08.98).

MRI Investigation

5.47 On 8 February 1999, the HIC's response to the anonymous letter of 12 November 1998 was raised at a Senate Estimates Committee hearing. At a Board meeting a few days later, members were briefed on the background and issues associated with the publicity surrounding MRI.[55] The Chairman withdrew from the meeting during this discussion.

5.48 There is no formal documentation of specific aspects of the discussions. However, it is the recollection of the Board Secretary and those present that reporting on the investigation into MRI would be handled through the Board's Fraud and Audit Services Committee (FASAC), consistent with normal practice. The Chairman was not a member of that Committee. It would have been appropriate for the Board minutes to have reflected this decision and the reason for it (which was to manage a perceived conflict of interest).

5.49 Investigations into the purchase of MRI units commenced in earnest in March 1999. Over the next few months the investigations widened from the specific allegations in the anonymous letter to cover all claims for eligible MRI equipment where orders were placed in the period leading up to the Budget. In this context, the health care company had ordered a number of MRI machines shortly before Budget day; prior to his appointment to the HIC Board, the Chairman had approved these purchases when Managing Director of the company. The fact that the company had a number of machines within the scope of the investigation was known by some, but not all, Board members.

5.50 The investigation was raised at a number of Board meetings at which the Chairman was present. On 25 June 1999 the issue was raised by a Board member who commented that the introduction of licensing arrangements for MRI facilities remains a very sensitive issue. The Board were informed that the HIC was well aware of the situation, that it was a high profile issue for the HIC and that the investigation was proceeding as fast as possible.

5.51 Progress of the MRI investigation was also considered by the Board at its 23 July 1999 meeting. At the request of the Chairman, the Managing Director informed the Commission of progress of the investigation, the referral of one case to the Director of Public Prosecutions and that the investigation should be completed by the end of the month.

---

55 The HIC's investigative actions were initiated by HIC officers in response to the letter, and not by the Board.

5.52 In August 1999, the Managing Director provided to the Board a written report on the progress of the MRI investigation. The report addressed, *inter alia*, progress, significant findings, resourcing and the intention to use the compulsory powers under Part IID of the *Health Insurance Commission Act*.

5.53 In September, the Chairman of FASAC reported briefly on progress being made in the MRI investigation.

5.54 The Chairman took leave of absence on 15 October 1999 '*in the interests of absolute probity as it might be seen as inappropriate for me to be attending Commission meetings while this matter [the MRI investigation] is under consideration*'. The Chairman commented to the ANAO that he had previously believed that the MRI enquiries were a routine investigation and that, on the first occasion he heard that the company had changed from being part of all the investigation to being in a group where there may be a question, he took leave of absence. The Chairman resigned on 28 October 1999 advising the Minister that '*….I had hoped that my previous decision to seek leave of absence would adequately deal with this issue, but unfortunately this has not been the case…..*'.

Managing a potential conflict of interest

5.55 The conduct of board members of statutory commissions is governed by the *Commonwealth Authorities & Companies Act* 1997 (the CAC Act) and by the general law. The relevant provisions of the CAC Act codify general law fiduciary duties owed by Board members and are similar to the duties owed by a company director, codified by the Corporations Law (Appendix 9).[56]

---

[56] From 13 March 2000 agencies regulated by the Commonwealth Authorities and Companies Act 1997 will also be subject to the Corporate Law Economic Reform Program Act. This Act contains provisions detailing requirements for due diligence and business judgement pertinent to Board Members of the Health Insurance Commission.

5.56 Board members are in a fiduciary relationship and must act in good faith to ensure that there is no conflict between the interests of the Commission and their personal interests. There are a number of statements of authority that assist in determining whether there is a conflict of interest.[57] For there to be a conflict of interest, the conflicting duty must be sufficient to force the officer, in deciding how to act in a matter, to consider both it and his duty to the corporation.[58] *'There is an obligation'* not to profit from a position of trust, or, as it is sometimes relevant to put it, not to allow conflict to arise between duty and interest.[59] A person in a fiduciary capacity must not make a profit out of his trust which is part of the wider rules that a trustee must not place himself in a position where his duty and interest may conflict.[60]

5.57 The HIC has emphasised that the significance the Board attaches to appropriately addressing governance matters is reflected in the HIC's high level risk assessment, strategic audit planning and reviews of corporate governance for the Board. The ANAO acknowledges that the Chairman and the Board were mindful of the need to manage any conflicts of interest and did seek to make arrangements to do so. The statement at the August 1998 meeting and the discussion and arrangements agreed to at the February 1999 meeting evidence this.

5.58 However, as the investigation progressed, the scope of the investigation widened to cover all machines ordered in the period leading up to the Budget, with the possibility emerging of backdating and conditional contracts which could lead to prosecutions. The ANAO considers that the Chairman should have informed the Board that his employer was involved in ordering MRI machines over the relevant period. He should, at a minimum, have brought to the attention of the Board the potential conflict of interest, which would have allowed the Board to consider the most appropriate course to follow. In the particular circumstances that pertained, it would have been most appropriate for

---

[57] The expression 'conflict of interest' (or sometimes just 'conflict') describes a number of different relationships. One example is the scenario where a person is a director of two corporations (or commissions) and there is an issue relevant to each corporation. The legal expression 'conflict of duty and duty' is often used as a shorthand way of analysing the relationship, although it is also encompassed within the expression 'conflict of interest'. A further example is where the person is a director of a corporation that may act (or not act) in such a way that the person's own interests are relevantly affected positively or otherwise. This latter relationship is characterised as a (potential) conflict of duty (to the corporation) and interest (own personal interest). Again the relationship is appropriately classified as a conflict of interest situation.

[58] *ANZ Banking Group Limited v Bangadelly Pastoral Co Pty Limited* [1978] 139 CLR 195.

[59] *NZ Netherlands Society v Kuys* [1973] 1 WLR 1126.

[60] *Phipps v Boardman* [1967] 2 AC 46.

the Chairman to have absented himself when the matter was raised at the Board meetings, including matters of resourcing and progress. Other Board members aware of this information also had a responsibility to consider whether this information should be presented to the Board. The Minister was not informed of this situation.

5.59 This opinion does not imply that the Chairman's employer was engaged in any improper conduct in ordering MRI machines; further, there is no audit evidence that the course of the investigation was influenced improperly because of the Chairman's connection with the subsidiary of a major health care company.

5.60 The ANAO also acknowledges that the ex-Chairman believes he did not have a conflict of duty and duty[61] and that, in his view, the reports given to the Board on the investigation were so general as to not even raise any perception of a conflict. However, the ANAO considers that the relevant considerations are that, if this information is not disclosed and the Chairman does not absent himself from Board consideration of these matters, there is a risk that other Board members are deprived of the opportunity to consider whether it was proper to debate these matters in his presence. It is also a matter of transparency of probity arrangements, as acknowledged by the Chairman in his letter of 15 October 1999 (see paragraph 5.54).

5.61 In the event, the arrangements adopted by the Commission did not prevent matters being raised at several Board meetings with respect to progress of the MRI investigation where the Chairman was present. The most significant failure was the presenting of the report to the Board in August on the conduct of the investigation; the request by the Chairman for a briefing at the July meeting also represented a weakness in the arrangements in place. Effective procedures would have sought to prevent this occurrence, and, when it did happen, some corrective action should have been taken.

5.62 There would be merit in the Board drawing on the lessons of this experience for the future. The Board does not have a charter, but we understand that one is being developed. There would be considerable merit in the charter of the Board anticipating, and providing for a system of dealing with, any conflict of interest involving a Board member in this way. Should similar circumstances arise again, adequate systems should be in place to formalise arrangements ensuring that, having noted

---

[61] See footnote 57.

the potential conflict of interest and having referred investigation matters to a Committee, reports do not go to the Board until the investigation is finalised. The Board minutes should accurately record such decisions. All involved should be informed of the delegation to the Committee and all reports should be marked in a particular way to maintain appropriate separation and confidentiality. There should be no discussion with Board members who are not members of that Committee. The Committee should meet formally and have separate agenda papers and separate minutes. The minutes should be clearly marked confidential and appropriately protected.

Canberra ACT
10 May 2000

P. J. Barrett
Auditor-General

Appendices

Appendix 1

Text of letter from the Minister for Health and Aged Care to the Auditor-General requesting this audit

The Hon Dr Michael Wooldridge
Minister for Health and Aged Care

18 October 1999

Mr Pat Barrett AM
Auditor-General
Centenary House
19 National Circuit
BARTON ACT 2600

Dear Mr Barrett

I am writing to ask you to inquire into and report on the probity of the processes surrounding the negotiation of the agreement between the Government and the diagnostic imaging profession covering the period 1998–99 to 2000–01 announced in the 1998 Budget on 12 May 1998. I would like you to focus especially on those aspects of the agreement leading to the introduction of Magnetic Resonance Imaging (MRI) to the Medicare Benefits Schedule (MBS).

MRI is a relatively new scanning technology. In 1997 the Australian Health Technology Advisory Committee (AHTAC) released a review of MRI that among other things recommended extension of MBS benefits to MRI services.

Although government funding had until that time been limited to 18 MRI units in public teaching hospitals, there were 62 MRI units operating in Australia at the time of the AHTAC review. Those operating outside public hospitals were funded from a variety of sources including direct charges to patients.

Following the AHTAC review the Government decided that there was a clear need to make MRI services more accessible to patients at a reasonable cost to the Government. To facilitate this, the Government entered into negotiations with the Royal Australian and New Zealand College of Radiologists (RANZCR) to reach an agreement to manage the orderly introduction of MRI in the context of a capped funding agreement

covering all diagnostic imaging services. While the negotiations were of a confidential nature, it was recognised that formal confidentiality agreements for the College's negotiators would be inappropriate because of their need to consult the College membership more widely on aspects of the agreement.

The Government informed the College that while it intended to extend access to the MBS to MRI services, it would only do so in the context of a supply-side measure that would constrain growth in benefits. However, as prior knowledge of the details of the supply-side measure—limiting access to the MBS to service provided to machines in place or on order before the Budget—would have been advantageous to those radiologists with access to that knowledge, the measure was not discussed in the negotiations.

An agreement was reached with RANZCR on all elements except the supply-side measure just before the 1998 Budget. The supply-side measure, introduced by regulation, was announced as part of the Budget.

Under the regulation operators seeking to have services provided on their machines covered by Medicare were required to notify the Health Insurance Commission by 11 October 1999 of the details of the machines. The Commission has now been notified of 111 machines, 59 of which were in place on Budget night and 52 of which are were claimed to have been on order at that time.

There have subsequently been a number of accusations that those persons placing orders for machines in the period preceding the Budget had access to information about the particular measure to be announced in the Budget. I would like you to focus your inquiry upon these accusations and the probity surrounding the processes leading to the introduction of MRI to the MBS.

As you would appreciate, there is a significant dilemma facing Governments in negotiating agreements such as the diagnostic imaging agreement with professional organisations. It is difficult to negotiate agreements around potentially commercially sensitive issues without revealing information that could be advantageous to some members of the group. I would welcome any observations you may have about how similar processes might best be handled in the future.

Yours sincerely
Dr Michael Wooldridge

Appendix 2

Text of Auditor-General's response to Minister's letter

5 November 1999

The Hon Dr Michael Wooldridge, MP
Minister for Health and Aged Care
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to earlier correspondence concerning an audit of the probity of the processes surrounding the negotiation of the agreement between the Government and the diagnostic imaging profession announced in the 1998 Budget.

My officers have now undertaken a preliminary assessment of the issues involved to determine the scope and objectives of the audit. My intention is to undertake an audit under section 18 of the *Auditor-General Act* (the Act) with the objectives of examining and reporting on the effectiveness and probity of the processes involved in:

(a) the development and announcement of the proposal to improve access to Magnetic Resonance Imaging (MRI) services announced in the 1998 Budget, including negotiation with the diagnostic imaging profession; and

(b) the registration of 'eligible providers' and 'eligible equipment' to enable the payment of claims for MRI services on the Medicare Benefits Schedule in relation to these services, and related administrative and monitoring arrangements.

The examination will include an assessment of the:

- adequacy and timeliness of advice provided to the Minister for Health and Aged Care by his Department and the Health Insurance Commission, including advice in respect of the identification and treatment of risks;
- adequacy of the protection of sensitive budget information in the period leading to the Budget announcement, including steps taken to avoid conflict of interest;

- adequacy and timeliness of actions taken by the Department and the Health Insurance Commission in response to indications of unanticipated or inappropriate MRI submissions; and
- scope to improve administrative processes surrounding the Budget development and advice processes involving potentially commercially sensitive information of this kind.

The audit will not focus or report on individual cases of potential fraud. These are matters for the Health Insurance Commission, the Australian Federal Police and the Director of Public Prosecutions. Equally, matters of any individual breaches of budget confidentiality are matters primarily for the Australian Federal Police.

As you would be aware, my powers are not those of a Royal Commission. As indicated above, the audit will be undertaken pursuant to section 18 of the Act that enables me to invoke the information gathering and access powers under sections 32 and 33 of the Act.

The section 18 audit's primary focus will be the administration of relevant Commonwealth agencies and will also include a review of the involvement of your office in so far as this is relevant to the audit objectives. The audit will also involve as appropriate, discussions with, and access to relevant information and records held by, third parties including professional organisations, individual members of the diagnostic imaging profession and industry suppliers.

I appreciate that you have informed Parliament that you are happy to cooperate in all ways with the Auditor-General. We have received legal advice on how best this could be achieved and this advice suggests that there would be merit in extending the section 18 audit by entering into an agreement with you pursuant to section 20 of the Act. An audit under section 20 of the Act would put beyond doubt my legal authority to review the role of you and your staff in the matters to be examined.

I would therefore like to raise with you the possibility of formalising the cooperative arrangements by entering into an agreement pursuant to section 20 of the Act. These arrangements would be made under sub-section 20(1)(b) of the Act and cover your role and that of your office. An agreement under section 20 of the Act will provide the Auditor-General and authorised officials with the necessary authority to access all relevant information and records and review all matters as far as they are relevant to the ANAO's examination of the issue. The objectives of this audit will be to examine and report on the effectiveness and probity of your role, and that of your office, in relation to the matters set out in (a) and (b) above.

The Auditor-General and authorised officials will require full and free access to relevant records and information held by yourself and your office, and will necessarily involve discussions with yourself and relevant members of your staff. It may be necessary for my staff to request that the information obtained or answers to questions given be verified or given on oath or affirmation. This will ultimately be a matter for decision by me.

This latter work will be done in tandem with the performance audit to be conducted under section 18 of the Act. The audit report on this aspect will be incorporated into the audit report to be conducted under section 18, which will be tabled in the Parliament as required by the Act.

It would be appreciated if you could confirm your agreement to the above arrangements in respect of a section 20 audit at the earliest opportunity. My officers would be happy to discuss this matter with you or your staff. The relevant contact officer is Mr John Meert, Group Executive Director (ph: 02–6203 7360). I would, of course, be happy to talk with you if you consider that necessary.

Regarding the timing of the audit, at this stage we aim to complete our inquiries to enable a report to be tabled by April 2000. This timetable is dependent on the availability and timely cooperation of all parties involved. In the latter respect, I particularly appreciate your statement to the Parliament.

Yours sincerely
P. J. Barrett

Appendix 3

Summary of AHTAC report recommendations

The report of the Australian Health Technology Advisory Committee 1997, *Review of magnetic resonance imaging*, made the following recommendations:

1. MRI services be located in:

- geographical areas with a sufficiently large population and patient referral base to ensure appropriate and efficient use;
- medical settings with a concentration of key specialists; and
- a radiology department of practice which offers a comprehensive range of alternative imaging modalities.

2. A variation of publicly funded MRI services as follows:

- to meet existing demand, an increase within the range of 40 000–48 000 publicly funded MRI scans per year, which is equivalent to 10–12 units working at full capacity; and
- to cover population growth and expected future increased use of specialist services over the next five years, a further increase of between 20 to 30 per cent or 16 000–24 000 publicly funded MRI scans per year, equivalent to 4–6 units working at full capacity.

3. The continuation of specialist referral only for MRI.

4. All MRI studies be supervised, performed and read by a trained radiologist.

5. The following mechanisms be put in place to enable key stakeholders to work in partnership to ensure effective management of MRI in Australia:

- Government and the RACR develop and implement a MRI accreditation/quality assurance system. Both radiologists and radiographers working in the MRI field must be suitably trained and accredited, and minimum standards should be developed and linked to the MRI site accreditation/quality assurance system;
- the strengthening of ongoing information collection, analysis and reporting systems. This data collection role should be incorporated into future funding arrangements for MRI and site accreditation;
- Government and the medical profession should examine methods of promoting appropriate MRI substitution for other modalities and quantifying the effects of this substitution;

- the development of clinical practice guidelines for specific conditions where MRI plays a role. The NHMRC's Guidelines for the Development and Implementation of Clinical Practice Guidelines (1995) should be used as the framework for development, implementation and evaluation. Guidelines must be updated regularly to reflect changes in knowledge and practice; and
- more research in Australia to establish MRI safety, clinical applications and substitution, to enable informed decision on expansion and further arrangements for public funding of MRI services.

6. The strengthening of patient education.

7. The improvement of patient access and transportation schemes.

8. A review of anaesthetic fees for paediatric and adult patients who need general anaesthetic for MRI.

9. The monitoring of emerging MRI technological developments and clinical applications to ensure responsive government policy.

Appendix 4

Timing of key events

Date	Event
September 1997	Draft final AHTAC report is forwarded to Department.
9 September 1997	Policy options for increased funding of MRI advised to Minister in briefing on AHTAC report.
October 1997	AHTAC report is released.
13 October 1997	Minister meets with representatives of the College.
5 November 1997	MRI Task Force is established by the College.
10 December 1997	Prime Minister writes to Ministers advising of processes for 1998–99 Budget.
January 1998	College sends newsletter to members advising that MBS funding is the preferred MRI funding option of Task Force members.
10 February 1998	First meeting of College Task Force with the Department.
19 February 1998	Task Force meeting with Department.
24 February 1998	Minister lodges overall Portfolio Submission for DI.
5 March 1998	DI savings package is considered by ERC—Minister authorised to proceed with negotiations within a DI savings proposal.
9 March 1998	Department commences consultations with States/Territories.
10 March 1998	Minister meets with the College to advise of importance of funding MRI within an overall package of savings for DI.
17 March 1998	Task Force meeting with Department.
25 March 1998	Task Force meeting with Department.
31 March 1998	Task Force meeting with Department.
April 1998	College sends newsletter to members providing an update on the MRI negotiations.
4 April 1998	Task Force meeting with Department.
14 April 1998	College Teleconference at which the issue of a site freeze is discussed.
18–24 April 1998	6th meeting of the International Society for Magnetic Resonance in Medicine—speculation and rumours about changes to MRI funding. Presentations by Task Force members and a departmental officer involved in the negotiations.
21 April 1998	Minister's Budget Submission on DI package agreed to by full Cabinet; Cabinet endorses Minister's authority to proceed with the negotiation of a three-year agreement with peak bodies.
22 April 1998	Department and HIC meet to discuss systems requirements for the new MRI/MBS arrangements.
23 April 1998	Final Task Force meeting with Commonwealth; Task Force members are advised that they should meet with the Minister before the Budget.
23 April 1998	College President sends important message to all Fellows advising that there would be some sort of restriction to funding MRI.

Date	Event
28 April–4 May 1998	Department and DoFA consult on DI package.
28 April 1998	First documentary evidence of Department giving consideration to including machines on order.
29 April 1998	College Council meeting; Members of Council are advised that a meeting with the Minister is scheduled for the next week; Council resolves to support the Agreement.
4 May 1998	College Council meeting; Councillors highlight their reservations with the Agreement.
5 May 1998	Department advises Minister to include machines on order on Budget night. Minister for Health and Aged Care writes to Prime Minister, Treasurer and Minister for Finance seeking approval for the negotiated DI package.
6 May 1998	College representatives meet with a departmental officer prior to meeting the Minister. Minister meets with College representatives to conclude negotiations, on advice of the Department.
8 May 1998	Department seeks comment from legal area in the context of firm orders.
11 May 1998	Prime Minister, Treasurer and Minister for Finance and Administration agree to the package negotiated.
12 May 1998	Budget measure is announced and Agreement is endorsed by Minister.
13 May 1998	The College establishes MRI Implementation Committee.
15 May 1998	College formally writes to the Commonwealth on the partnership arrangement between the Government and the profession.
1 June 1998	First allegation of significant orders before Budget night received by the Department.
5 June 1998	Department and the Minister's office discuss concerns about the numbers of machines ordered before Budget night and backdating.
16 June 1998	Department provides funds for HIC monitoring and audit systems.
19 June 1998	The College release MRI guidelines—quality and accreditation program.
30 July 1998	Australian Health Minister's Conference.
30 July 1998	New part-time Chair of the HIC appointed for a 5–year term.
August 1998	Regulation Impact Statement is produced.
3 August 1998	Department sends a brief to the Minister on the Adjustment and Relocation Scheme.
7 August 1998	Department advises Minister on problems with the new MRI arrangements and recommends the introduction of a statutory declarations.
17 August 1998	Department seeks Minister's agreement to a proposed amendment of Diagnostic Imaging Services Table.
18 August 1998	Department briefs the Minister on the Regulations and new Arrangements for MRI.

Date	Event
25 August 1998	Diagnostic Imaging Service Table Regulations are made.
26 August 1998	Department sends a brief to Minister on transitional arrangements for MRI.
1 September 1998	Benefits for MRI are payable from this date.
27 October 1998	Department policy area seeks legal advice on 'floating' MRI units ie. those imported without a site in mind.
November 1998	HIC receives anonymous letter, dated 12 November, alleging that MRI machine orders have been backdated.
30 November 1998–February 1999	HIC conducts a desk-top review of contracts and statutory declarations.
4 February 1999	HIC Canberra verbally requests HIC NSW to conduct an investigation into backdating of MRI contracts.
8 February 1999	Senate Estimates Committee raises questions on MRI.
24 February 1999	Formal report of the HIC 's preliminary review completed. HIC Canberra formally requests NSW State Office to conduct an investigation.
2 March 1999	HIC NSW State Case Management Committee is notified of the commencement of the HIC investigation.
8 March 1999	HIC conducts first interview in its investigation.
April 1999	Concern is raised within HIC about the legal validity of contracts and statutory declarations.
28 April 1999	The annual target number of scans for the first year of the Agreement is revised.
12 May 1999	HIC develops and implements revised processing procedures because of problems with contracts and statutory declarations.
7 July 1999	HIC refers its first case to the Director of Public Prosecutions.
End-July 1999	Original anticipated completion date of the HIC investigation.
August 1999	Two additional resources are added to the HIC investigation team.
6 August 1999	HIC investigation officers first given approval to use Part IID powers (these give greater powers to compel evidence).
12 August 1999	Department recommends a cut-off date for applications for MRI eligibility. This is subsequently approved with an effective date of 11 October 1999.
19 August 1999	HIC investigation officers are given approval to use Part IID powers.
24 August 1999	HIC investigation officers are given approval to use Part IID powers.
3 September 1999	HIC investigation officers are given approval to use Part IID powers.
October 1999	HIC contracts staff of Arthur Anderson to assist with the investigation.
15 October 1999	HIC sends a brief to the Minister advising of final number of applications seeking approval of MRI equipment Chairman of the HIC stands down from his position.

Date	Event
18 October 1999	Department recommends changing to 10 February 1998 the date by which providers are required to have equipment installed or contracted for purchase. Minister writes to Auditor-General requesting probity audit.
20 October 1999	HIC sends a brief to the Minister advising of the status of the MRI investigation.
28 October 1999	HIC Chairman resigns.
30 November 1999	HIC investigation officers are given approval to use Part IID powers. Revised anticipated completion date of the HIC investigation.
22 December 1999	HIC completes interim report on its investigation into the purchase and installation of MRI scanners.
23 December 1999	HIC sends interim report on investigation to Minister.

Appendix 5

Blandford Review

As part of the implementation of the new arrangements for MRI funding, it was announced that a review would take place within 18 months after the implementation of the MRI measure. However, the Committee held its first meeting on 26 November 1999.

The aim of the review was to assess the impact of the arrangements on the delivery of MRI services in Australia, through examination of data collected in the first 18 months of the new arrangements.

The review focussed on a number of areas, and built on the work undertaken in the Australian Health Technology Advisory Committee (AHTAC) Review of MRI, the report of which was released in 1997.

Terms of Reference

1. To advise on the appropriate aspects of MRI delivery that should be in place to ensure high quality health care. These should include (but are not limited to) siting and safety arrangements, evidence base and clinical applications, accreditation and quality assurance issues, and cost effectiveness.

2. To investigate and report on the number and distribution of MRI units which are required to ensure appropriate access to MRI services for the distribution of Australia's population.

3. To advise on the most appropriate funding mechanism to achieve the number and distribution.

4. To advise on mechanisms which allow for the ongoing monitoring and review of the application of MRI, including:

- data collection and reporting arrangements; and
- timing of periodic review.

5. To advise on a strategy for future management of MRI in Australia, including:

- projections of future role and demand based on the Australian diagnostic imaging context, and on overseas experience; and
- projections of cost.

The review is due for release shortly.

Appendix 6

International Society of Magnetic Resonance in Medicine (ISMRM)

The International Society of Magnetic Resonance in Medicine (ISMRM) is a non-profit professional association that holds annual scientific meetings and sponsors other major educational and scientific workshops. The Sixth Annual Meeting of the International Society for Magnetic Resonance in Medicine was held in Sydney from 18–24 April 1998. The Annual Meeting involved over 600 presentations on scientific and clinical applications of MRI, nine poster walking tours and a 'Site Presentation Centre' which highlighted research and clinical activities in more than 50 Pan Pacific medical institutions. An accompanying trade fair allowed MRI manufacturers to demonstrate their products. Some 2300 delegates attended the meeting.

On 21 April 1998, the agenda included an afternoon session titled 'MRI in Australia—Impact and Economic Issues'. This session included six presentations (three of these from Task Force members and one from a departmental officer directly involved in negotiations with the College). The aim of the session was to provide participants with:

- an understanding of the controlled manner in which MRI had been introduced into Australia;
- an explanation of the mechanisms of current funding arrangements for MRI in Australia and elsewhere in the world;
- an evaluation of the clinical impact of MRI in Australia since 1986; and
- a comparison of the arguments for and against a change in MRI reimbursement policy in Australia.

The departmental officer's presentation was entitled 'The Australian Government's policy for Funding MRI Services' and sought the profession's views on moving MRI into its next stage within the health system.

Appendix 7

Task Force Meetings with the Department and their purpose

This appendix outlines meetings held and issues discussed at the meetings between the Department of Health and Aged Care and members of the College MRI Task Force. In the absence of Commonwealth records of the meetings the key elements have been drawn from records maintained by the Task Force.

There were seven core members of the College Task Force. A further four radiologists, an external adviser and the College CEO were also involved at different stages in the negotiations with the Department.

1. Meeting of 10 February 1998

Attended by five radiologists, their adviser and two departmental representatives.

Discussions centred on the Minister's priorities in relation to MRI; requirements for any future funding and service delivery system; and sources of possible savings. The existing HPG funding system was discussed. College representatives indicated that they favoured a dual system with continued funding for public sector MRIs under the HPG system and MBS funding for private sector MRIs.

2. Meeting of 19 February 1998

Attended by eight radiologists, their adviser, the College CEO and four departmental representatives.

Supply controls including the need for clinical indicators and accreditation were discussed and a timetable for the Budget process was to be developed and provided by the Department at the next meeting of the group.

3. Meeting of 17 March 1998

Attended by four radiologists and two departmental representatives.

The appropriate level of future growth for DI was discussed and consideration was given to the issue of fee per scan. It was agreed that the Department would begin drafting a proposal outline for the expansion of MRI services in Australia in the light of discussions at the meeting.

4. Meeting of 25 March 1998

Attended by six radiologists, their adviser and three departmental representatives.

Further consideration was given to supply controls including eligibility and accreditation provisions. Fees per scan and potential growth rates were also discussed.

5. Meeting of 31 March 1998

Attended by four radiologists, their adviser and three departmental representatives.

Controls on growth and funding were discussed. Monitoring by the CCDI and the desirability of substitution were also raised as issues.

6. Meeting of 4 April 1998

Attended by three radiologists, their adviser and two departmental representatives.

Control mechanisms including: accreditation; clinical indications; and monitoring by HIC were discussed. Potential fees and growth rates were also raised. A site freeze for approximately 18 months, which would then be reviewed, was discussed. The fact that this would cause objections within the College and the Task Force was noted. It was also noted that the Government felt that the private sector was over-supplied, and that it did not wish to encourage more installation of MRI machines in the short term.

7. Meeting of 23 April 1998

Attended by five radiologists, their adviser, the College CEO and two departmental representatives. The meeting coincided with ISMRM Conference that was also held in Sydney.

Concern outside the Task Force regarding the composition of the Agreement was discussed and the possibility of leaks were canvassed.

The Department indicated that it was obtaining a legal opinion on the eligibility of sites. It was emphasised that no existing site had certainty of funding and that no future site could have certainty of funding. It was decided that a memo would be drafted to the general membership of the College to inform them of the risks of installing MRI in the hope of beating some imagined deadline. This was to be sent out to hose down speculation and remind members that the Government would designate sites based on AHTAC's recommendations.

The draft proposal was reviewed and the Department emphasised that a meeting with the Minister was required prior to the Budget.

Appendix 8

Text of a Memorandum from the Secretary of the Department of Health and Aged Care to the Minister for Health and Aged Care 21 October 1999

Minister

You asked whether the Department provided advice on restricting eligibility for MRI machines for MBS purposes which you had not accepted.

I have not been able to find any evidence of your rejecting our advice in this area.

The Officers most involved assure me they never advised that you should limit eligibility to machines then operating in the country.

A detailed advice on this matter was provided to you on 5/5/1998. We recommended going beyond the machines actually in operation as we were aware that there might be bona fide orders for machines that would face unfair competition if denied access.

Our advice on 5 May and over the following days and weeks concentrated on how to allow bona fide orders but not allow non-binding contracts. Our advice you was based on legal advice to us.

A.S. Podger
Secretary

Appendix 9

Commonwealth Authorities and Companies Act 1997

Division 4—Conduct of officers

21. Directors must disclose material personal interests

(1) A director of a Commonwealth authority who has a material personal interest in a matter that is being considered, or is about to be considered, by the Board must disclose the nature of the interest at a meeting of the Board.

(2) The disclosure must be made as soon as possible after the relevant facts have come to the director's knowledge, and must be recorded in the minutes of the meeting.

(3) Unless the Board or the responsible Minister otherwise determines, the director:

(a) must not be present during any deliberation by the Board on the matter; and

(b) must not take part in any decision of the Board on the matter.

(4) For the purpose of a determination being made under subsection (3), any director who has a material personal interest in the matter to which the disclosure relates:

(a) must not be present during any deliberation by the Board on whether to make the determination; and

(b) must not take part in making the determination.

(5) In this section:

Board means the directors of the authority.

22. General obligations on officers

(1) An officer of a Commonwealth authority must at all times act honestly in the exercise of his or her powers and the discharge of his or her duties as an officer.

Note: This is a civil penalty provision and Schedule 2 sets out the civil and criminal consequences of contravening it.

(2) An officer of a Commonwealth authority must, in the exercise of his or her powers and the discharge of his or her duties as an officer, exercise the degree of care and diligence that a reasonable person in a like position in a Commonwealth authority would exercise in the authority's circumstances.

Note: This is a civil penalty provision and Schedule 2 sets out the civil and criminal consequences of contravening it.

23. Officers must not make improper use of inside information or position

(1) An officer (or former officer) of a Commonwealth authority must not make improper use of inside information or of his or her position as an officer in order to:

(a) gain an advantage, either directly or indirectly, for himself or herself or for another person; or

(b) cause detriment to the authority or to another person.

Note: This is a civil penalty provision and Schedule 2 sets out the civil and criminal consequences of contravening it.

(2) If an officer is also a public servant, nothing done by the officer in the normal course of the performance of his or her duties as a public servant is to be regarded as improper for the purposes of subsection (1). For this purpose, *public servant* means an officer or employee within the meaning of the *Public Service Act 1922*.

(3) In this section:

inside information means information obtained because of the person's position as an officer.

24. Effect of civil penalty disqualification on being a director

(1) The office of a director of a Commonwealth authority is, by force of this section, vacated if the person holding the office:

(a) becomes subject to a civil penalty disqualification; or

(b) is convicted of an offence of which he or she is guilty because of clause 11 of Schedule 2.

(c) A person whose office is vacated because of paragraph (1)(a) cannot, without leave granted under clause 8 of Schedule 2, be reappointed as a director until the end of the period specified in the disqualification.

(2) A person whose office is vacated because of paragraph (1)(b) cannot, without leave granted under clause12 of Schedule 2, be reappointed as a director until the end of the period of five years referred to in subclause 12(1) of that Schedule.

(3) For the purposes of this section, a person is or becomes subject to a *civil penalty disqualification* if, and only if, an order relating to the person is in force, or is made, under paragraph 4(3)(a) of Schedule 2.

25. Other obligations and remedies not affected

This Division:

(a) does not detract from any rule of law relating to the duty or liability that a person has because of the person's office or employment in relation to a Commonwealth authority; and

(b) does not prevent civil proceedings being instituted for breach of such a duty or in respect of such a liability.

26. Indemnifying officers

(1) A Commonwealth authority or a subsidiary of a Commonwealth authority must not indemnify a person who is or has been an officer of the authority against either of the following liabilities incurred by the person as an officer of the authority:

(a) a liability to the authority or to any subsidiary of the authority;

(b) a liability to another person (other than the authority or a subsidiary of the authority) arising out of conduct involving a lack of good faith.

(2) Subsection (1) does not prevent a person from being indemnified against either of the following liabilities:

(a) a liability for costs or expenses incurred by the person in defending civil proceedings in which judgment is given in favour of the person;

(b) a liability for costs or expenses incurred by the person in defending criminal proceedings in which the person is acquitted.

(3) Subject to this section, a Commonwealth authority may indemnify a person who is or has been an officer of the authority against liabilities incurred by the person as an officer of the authority.

(4) A Commonwealth authority (or a subsidiary of a Commonwealth authority) must not exempt a person who is or has been an officer of the authority from any liability incurred by the person as an officer of the authority.

(5) In this section:

indemnify includes indemnify indirectly through one or more interposed entities.

27. Insurance premiums for indemnity insurance of officers

(1) A Commonwealth authority or a subsidiary of a Commonwealth authority must not pay, or agree to pay, a premium on a contract that insures a person who is or has been an officer of the authority against a liability:

(a) incurred by the person as an officer of the authority; and

(b) arising out of conduct that involves a contravention of section 23 or a wilful breach of duty in relation to the authority.

(2) If subsection (1) is contravened, the contract is void in so far as it insures the person against such a liability.

(3) Subsections (1) and (2) do not apply to a liability for costs and expenses incurred by a person in defending civil or criminal proceedings, whatever their outcome.

(4) Subject to this section, a Commonwealth authority may insure a person who is or has been an officer against liabilities incurred by the person as an officer.

(5) In this section:

pay includes pay indirectly through one or more interposed entities.

Index

A

accountability 13, 20, 24-28, 47-49, 67, 70-72, 76, 93, 120
Adjustment and Relocation Scheme 37, 92, 99, 107, 113
agreement 11, 12, 16, 17, 19, 21, 22, 24, 25, 27, 28, 30, 33, 35-37, 47, 51, 58-60, 62-65, 6-71, 73, 78, 81, 83-85, 92-95, 97, 99-101, 104, 107-113, 131-135, 138-140, 145
allegations 18, 30, 34, 35, 67, 80, 101, 102, 105, 106, 115, 119, 124
audit methodology 13
audit objective 134
Australian Health Technology Advisory Committee (AHTAC) 14, 16, 17, 31, 59, 61, 63, 66, 74, 79, 82, 87, 90, 92, 94, 131, 136, 138, 142, 145

B

backdated 21, 31, 32, 37, 89, 96, 98, 114, 140
backdating 37, 89, 90, 97, 98, 101, 105, 106, 112, 120, 126, 139, 140
Blandford 18, 36, 37, 110, 112, 113, 142
- Blandford Review 36, 37, 112, 110, 142

Briefing
- 5 May 27, 28, 65, 66, 73, 74, 76, 77, 83, 86, 93, 94, 102, 139, 146

Budget measure 11, 13, 15, 20-22, 26, 28, 31, 32, 42, 59, 64, 71, 76, 82-86, 88-90, 92, 93, 95, 97, 99, 101, 110, 139
Budget process 20, 26, 27, 49, 57, 60, 64, 72, 73, 144

C

Consultative Committee on Diagnostic Imaging (CCDI) 94, 95, 100, 107, 108, 115, 145
College 11, 16-22, 25, 27-32, 42, 59, 61-64, 67-70, 76, 78-85, 90-97, 100, 102, 107, 111, 131, 132, 138, 139, 143-145
College Council 29, 63, 68, 82-85, 139
College members 25, 30, 31, 69, 78, 79, 81, 82, 84, 90, 132
complaints 32, 96, 97, 104, 117
Computerised Tomography (CT) 14, 16, 37, 107
conditional contracts 126
confidentiality 13, 20, 24, 25, 29, 42, 47, 48, 52, 68-70, 83, 128, 132, 134
conflict of interest 12, 13, 20, 23, 25, 39, 40, 42, 43, 48, 52, 53, 69, 70, 121-128, 133

D

declaration of interest 70
diagnostic imaging 11, 12, 16-19, 27, 32, 36, 37, 42, 46, 60, 63-65, 67, 68, 71, 75, 79, 83, 84, 86, 87, 94-99, 105, 109, 116-121, 134, 140, 148-150
Director of Public Prosecutions (DPP) 31, 38, 89, 116, 117, 120
disclosure 18, 22, 29, 31, 42, 78-81, 83, 85, 87-91, 122, 147
documentation 13, 20, 25-27, 33, 42, 48-50, 70-72, 99, 115-117, 124

E

eligibility 11, 22, 24, 29, 33-35, 37, 62, 63, 67, 76, 79, 81, 82, 88, 89, 91, 92, 94, 95, 97, 100, 101, 103-108, 110, 114, 115, 140, 145, 146
eligible equipment 12, 34, 102, 133

H

HIC Board 23, 39, 40, 43, 46, 51-53, 79, 114, 118, 121-128, 147
HIC investigation 13, 18, 21, 23, 31, 34, 37-40, 43, 52, 78, 89, 101, 102, 105, 106, 112, 114-121, 124-128, 140, 141
HIC report 31, 89, 117, 120

I

International Society for Magnetic Resonance in Medicine (ISMRM) 32, 63, 86, 87, 91, 143, 145

L

legal advice 74, 80, 96, 99, 134, 140, 146
Legal Services Branch 65, 75, 77, 97, 98

M

machines on order 20-22, 26-31, 33, 34, 42, 63, 65, 67, 68, 71, 73-77, 79-81, 83-86, 88-90, 99, 101, 102, 105, 139
Medical Benefits Schedule (MBS) 11, 12, 15, 17, 19, 21, 22, 28, 29, 31-37, 59, 62-65, 76, 78, 80-82, 85, 86, 88, 90, 91, 93-95, 100, 102, 109-114, 131, 132, 138, 144, 146
Meetings
  25 March 80, 138, 145
  23 April 63, 68, 81, 82, 83, 138, 145
  6 May 21, 22, 30, 64, 76, 83, 84, 85, 86, 90, 139
Minister 12-14, 19-22, 24-28, 30-33, 35, 37, 45, 49, 50, 57, 59, 60, 64-67, 69, 71-78, 83-86, 89, 92, 93, 95-99, 101, 102, 105-107, 111, 114-116, 119, 121-123, 125, 127, 131, 133, 138-141, 144-147

N

negotiations 13, 17-21, 24, 25, 29, 31, 32, 42, 45-48, 61-64, 67, 68, 70-74, 76, 78-83, 85, 87, 90, 91, 107, 111, 131, 132, 138, 139, 143, 144
number of machines 33, 34, 81, 87, 97, 99, 101, 102, 108, 109, 124
number of services 34, 95, 100, 101, 108, 109

O

ordering 28, 31, 34, 39, 40, 58, 77, 80, 82-84, 89, 91, 101, 126, 127

P

policy advice 26, 45, 49, 50, 57, 64
probity arrangements 20, 23, 24, 40, 45, 67, 69, 127
project management 23, 38, 118-120

R

Regulations 18, 33, 35, 37, 38, 74, 77, 95, 98, 100-104, 106, 114, 139, 140
risk management 19, 24, 27, 42, 45, 46, 50, 58, 59, 67, 72, 73
rumours 82, 91, 105, 138

S

Senate Estimates 11, 109, 115, 124, 140
site freeze 29, 63, 68, 79, 80, 138, 145
site limitation 84, 93
Statutory Declaration 11, 21, 22, 31, 33, 87, 88, 97-99, 101, 103-106, 115, 117, 140
substitution 16, 59, 94, 113, 136, 137, 145
suppliers 13, 29, 75, 80-82, 86, 87, 95, 97, 99, 115, 134
supply controls 11, 21, 24, 28, 29, 31, 34, 35, 65, 67, 68, 76, 79, 81, 84, 85, 102, 107, 144, 145
supply measure 20, 28, 30, 65, 76, 81, 84, 85

T

Task Force 17, 20, 21, 24-26, 28-30, 32, 61-64, 67-71, 74-83, 85, 87, 90, 91, 96, 107, 138, 143-145

W

waterfront 75

Series Titles

Titles published during the financial year 1999–2000

Audit Report No.41 Performance Audit
Commonwealth Emergency Management Arrangements

Audit Report No.40 Performance Audit
Tactical Fighter Operations
Department of Defence

Audit Report No.39 Performance Audit
Coordination of Export Development and Promotion Activities Across Commonwealth Agencies

Audit Report No.38 Performance Audit
Coastwatch
Australian Customs Service

Audit Report No.37 Performance Audit
Defence Estate Project Delivery
Department of Defence

Audit Report No.36 Performance Audit
Home and Community Care
Department of Health and Aged Care

Audit Report No.35 Performance Audit
Retention of Military Personnel
Australian Defence Force

Audit Report No.34 Performance Audit
Construction of the National Museum of Australia and the Australian Institute of Aboriginal and Torres Strait Islander Studies

Audit Report No.33 Performance Audit
Business Entry Program
Department of Immigration and Multicultural Affairs

Audit Report No.32 Performance Audit
Management of Commonwealth Non-primary Industries

Audit Report No.31 Performance Audit
Administration of Tax Penalties
Australian Taxation Office

Audit Report No.30 Examination
Examination of the Federation Cultural and Heritage Projects Program

Audit Report No.29 Performance Audit
The Administration of Veterans' Health Care
Department of Veterans' Affairs

Audit Report No.28 Audit Activity Report
Audit Activity Report July to December 1999
Summary of Outcomes

Audit Report No.27 Performance Audit
Risk Management of Individual Taxpayers Refunds
Australian Taxation Office

Audit Report No.26 Performance Audit
Army Individual Readiness

Audit Report No.25 Performance Audit
Commonwealth Electricity Procurement
Australian Greenhouse Office
Commonwealth Scientific and Industrial Research Organisation
Department of Defence
Department of Finance and Administration

Audit Report No.24 Performance Audit
Commonwealth Management and Regulation of Plasma Fractionation
Department of Health and Aged Care

Audit Report No.23 Performance Audit
The Management of Tax Debt Collection
Australian Taxation Office

Audit Report No.22 Performance Audit
Weather Services in the Bureau of Meteorology
Department of the Environment and Heritage

Audit Report No.21 Financial Statement Audit
Audits of the Financial Statements of Commonwealth Government Agencies for the Period Ended 30 June 19999.

Audit Report No.20 Performance Audit
Special Benefits
Department of Family and Community Services
Centrelink

Audit Report No.19 Performance Audit
Aviation Safety Compliance
Civil Aviation Safety Authority

Audit Report No.18 Performance Audit
Electronic Service Delivery, including Internet Use, by Commonwealth Government Agencies

Audit Report No.17 Performance Audit
Commonwealth/State Housing Agreement
Department of Family and Community Services

Audit Report No.16 Performance Audit
Superannuation Guarantee
Australian Taxation Office

Audit Report No.15 Performance Audit
Management of Australian Development Scholarships Scheme
Australian Agency for International Development (AusAID)

Audit Report No.14 Performance Audit
Commonwealth Debt Management

Audit Report No.13 Performance Audit
Management of Major Equipment Acquisition Projects
Department of Defence

Audit Report No.12 Financial Control and Administration Audit
Management of Contracted Business Support Processes

Audit Report No.11 Performance Audit
Financial Aspects of the Conversion to Digital Broadcasting
Australian Broadcasting Corporation
Special Broadcasting Service Corporation

Audit Report No.10 Financial Statement Audit
Control Structures as Part of Audits of Financial Statements of Major Commonwealth Agencies for the Period Ended 30 June 1999

Audit Report No.9 Performance Audit
Managing Pest and Disease Emergencies
Agriculture, Fisheries and Forestry—Australia

Audit Report No.8 Performance Audit
Managing Data Privacy in Centrelink
Centrelink

Audit Report No.7 Financial Control and Administration Audit
Operation of the Classification System for Protecting Sensitive Information

Audit Report No.6 Audit Activity Report
Audit Activity Report January–June 1999—Summary of Outcomes

Audit Report No.5 Performance Audit
IP Australia—Productivity and Client Service
IP Australia

Audit Report No.4 Performance Audit
Fraud Control Arrangements in Education, Employment, Training and Youth Affairs

Audit Report No.3 Performance Audit
Electronic Travel Authority
Department of Immigration and Multicultural Affairs

Audit Report No.2 Financial Control and Administration Audit
Use of Financial Information in Management Reports

Audit Report No.1 Performance Audit
Implementing Purchaser/Provider Arrangements between Department of Health and Aged Care and Centrelink
Department of Health and Aged Care
Centrelink

Better Practice Guides

Business Continuity Management	Jan 2000
Building a Better Financial Management Framework	Nov 1999
Building a Better Financial Management Support	Nov 1999
AMODEL Illustrative Financial Statements 1999	Jul 1999
Managing APS Staff Reductions (in Audit Report No.47 1998–99)	Jun 1999
Commonwealth Agency Energy Management	Jun 1999
Corporate Governance in Commonwealth Authorities and Companies–Principles and Better Practices	Jun 1999
Managing Parliamentary Workflow	Jun 1999
Cash Management	Mar 1999
Management of Occupational Stress in Commonwealth Agencies	Dec 1998
Security and Control for SAP R/3	Oct 1998
Selecting Suppliers: Managing the Risk	Oct 1998
New Directions in Internal Audit	Jul 1998
Life-cycle Costing (in Audit Report No.43 1997–98)	May 1998
Controlling Performance and Outcomes	Dec 1997
Management of Accounts Receivable	Dec 1997
Protective Security Principles (in Audit Report No.21 1997–98)	Dec 1997
Public Sector Travel	Dec 1997
Audit Committees	Jul 1997
Core Public Sector Corporate Governance (includes Applying Principles and Practice of Corporate Governance in Budget Funded Agencies)	Jun 1997
Administration of Grants	May 1997
Management of Corporate Sponsorship	Apr 1997
Return to Work: Workers Compensation Case Management	Dec 1996
Telephone Call Centres	Dec 1996
Telephone Call Centres Handbook	Dec 1996
Paying Accounts	Nov 1996
Performance Information Principles	Nov 1996
Asset Management	Jun 1996
Asset Management Handbook	Jun 1996
Managing APS Staff Reductions	Jun 1996