

The Auditor-General
Audit Report No.17 2000–2001
Performance Audit

Administration of the Waterfront Redundancy Scheme

**Department of Transport and Regional Services
Maritime Industry Finance Company Limited**

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Canberra ACT
4 December 2000

Dear Madam President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Department of Transport and Regional Services, and the Maritime Industry Finance Company Limited, 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 *Administration of the Waterfront Redundancy Scheme*.

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

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Abbreviations/Glossary

ABS	Australian Bureau of Statistics
ANAO	Australian National Audit Office
BTE	Bureau of Transport Economics
DoTRS	Department of Transport and Regional Services
DEWRSB	Department of Employment, Workplace Relations and Small Business
DOFA	Department of Finance and Administration
DWRSB	Department of Workplace Relations and Small Business
MIFCo	Maritime Industry Finance Company Limited
SIFC	Stevedoring Industry Finance Committee
TEU	20 foot equivalent unit or 20 foot container

Summary and Recommendations

Summary

Introduction

1. The waterfront redundancy scheme was announced in April 1998 as a key component of the Government's waterfront reforms. The scheme provides funding to Australian stevedoring companies to enable them to restructure their workforces by being able to offer their employees voluntary redundancies. The waterfront redundancy scheme has funded around 1530 redundancies, involving a total outlay of about \$181 million paid between August 1998 and December 1999. The Maritime Industry Finance Company Limited (MIFCo) was responsible for funding 1487 redundancies costing some \$178 million. In addition, 45 redundancies in a number of Western Australian ports were funded for a total cost of \$2.9 million through a separate agreement between the Commonwealth and the Western Australian Government.

2. MIFCo, a wholly owned Commonwealth company limited by guarantee, was formed to manage a loan facility and ensure that employees made redundant were paid the full value of their benefits by any stevedoring company that undertook to commit to the Government's Seven Benchmark Objectives for waterfront reform. MIFCo established a Cash Advance Loan Facility, with a commercial banking syndicate, to provide funding for redundancy-related payments to the eligible stevedoring companies. The repayment of the Cash Advance Loan Facility is funded by an industry levy imposed under the *Stevedoring Levy (Imposition) Act 1998*. The Levy rate was set in December 1998 at \$12 per container and \$6 per motor vehicle.

3. The former Department of Workplace Relations and Small Business (DWRSB) originally administered the scheme but, in October 1998, responsibility for the scheme was transferred to the Department of Transport and Regional Services (DoTRS). As at 30 June 2000, DoTRS had collected \$38.3 million from the Stevedoring Levy. DoTRS estimated that the costs of the scheme (including interest costs) can be recovered from the stevedoring industry by 2006–07.

Audit objectives and scope

4. The objectives of the audit were to:

- assess compliance with the *Stevedoring Levy (Collection) Act 1998* and *Stevedoring Levy (Imposition) Act 1998* and other relevant legislation;
- assess the effectiveness of the administrative and financial controls regarding the collection of the Stevedoring Levy by DoTRS and the provision of redundancy payments to eligible employees of stevedoring companies and the management of the funding of those payments by way of borrowings by MIFCo; and
- review the administrative efficiency of the redundancy payment and Stevedoring Levy collection aspects of the waterfront redundancy scheme.

5. The scope of the audit included:

- administrative control processes surrounding the assessment, disbursement and funding of redundancy related payments in accordance with the *Stevedoring Levy (Collection) Act 1998* and Deed of Agreement between MIFCo and the Commonwealth of Australia;
- controls and processes supporting the collection of the Stevedoring Levy imposed under the *Stevedoring Levy (Imposition) Act 1998*;
- administration costs associated with the management of the Stevedoring Levy by DoTRS and the operation of MIFCo; and
- administration of the current scheme in respect of matters previously raised in relation to the former stevedoring levy scheme established in 1977, and operation of the Stevedoring Industry Finance Committee (SIFC).

Overall conclusion

6. The ANAO concluded that substantial compliance with the *Stevedoring Levy (Collection) Act 1998*, *Stevedoring Levy (Imposition) Act 1998* and other relevant legislation has been achieved. Further, a high level of efficiency and effectiveness has been achieved in the design and implementation of the administrative and financial controls governing the provision of redundancy payments to eligible employees of stevedoring companies by MIFCo. The ANAO also found, however, that the potential exists for the DoTRS Stevedoring Levy collection compliance strategy to be improved in order to sustain the current high level of industry compliance. In particular, DoTRS could:

- review Stevedoring Levy collection trends using a broader range of data sources to enhance future levy collection estimates;

- improve the mechanisms to identify new entrants and/or stevedoring companies handling leviable freight, which may have previously been exempt; and
- at an appropriate time, review its risk management strategy and target audit activity towards stevedoring companies, for whom material discrepancies have been identified, through the current formal audit process and a broader compliance strategy.

Recommendations

7. Four recommendations aimed at further improving the administration of the scheme were agreed to by DoTRS. These include:

- enhancing DoTRS' compliance strategy;
- specification of minimum data set requirements for future similar industry restructuring schemes;
- suggestions for fully implementing the Government's requirement that the waterfront redundancy scheme be funded totally 'off-budget'; and
- enhancing reporting by DoTRS to the MIFCo Board to further improve the transparency of MIFCo's decision making.

DoTRS and MIFCo responses

8. DoTRS noted that the report concluded that both DoTRS and MIFCo have achieved substantial compliance with the Act and control weaknesses identified in previous ANAO audits have been rectified. MIFCo responded that the report is a fair and accurate assessment of MIFCo's role in the outcomes achieved resulting from MIFCo's participation in the Waterfront Redundancy Scheme.

Key Findings

Collection of the Stevedoring Levy—Chapter 3

9. The ANAO found that DoTRS had been successful in managing the collection of the Stevedoring Levy in line with its responsibilities under Commonwealth legislation. However, the audit findings also indicate that opportunities exist for DoTRS to improve its management of the levy collection.

10. The ANAO found that in regard to the management of the Stevedoring Levy by DoTRS:

- the Industry Guidelines and the associated self assessment scheme developed by DoTRS, in consultation with the stevedoring companies, have contributed to the current high level of industry compliance;
- the strategy developed by DoTRS to ensure that the stevedoring companies pay the correct amount of the Stevedoring Levy has been effective. However, the future compliance strategy can be both more comprehensive and more cost effective in order to sustain the current high level of industry compliance. In particular, DoTRS could:
 - compare annually Stevedoring Levy payment data to freight movement data collected by the port authorities, as a correlation should exist between the Stevedoring Levy payment and port authorities' data;
 - strengthen the mechanisms to identify new entrants or stevedoring companies handling leviable freight, which may have previously been exempt; and
 - at an appropriate time, review its risk management strategy and target audit activity towards stevedoring companies for which material discrepancies have been identified, through the formal audit process and/or a broader compliance strategy.
- given the experience with the uneven level of contributions made by the parties to the 1977 scheme, it is particularly important that, in order to maintain the current high level of industry compliance, individual stevedoring companies meet their obligations under the Stevedoring Levy Scheme and are seen by the industry to be doing so;
- the scheme makes no distinction between the Levy charged for 20 and 40-foot containers, but the increasing trend toward the use of 40-foot containers may have implications for future levy collections. In

1996–97, 40-foot containers accounted for approximately 25 per cent of containerised freight movement. By 2005–06, it is anticipated they will account for 31 per cent;

- the original analysis used by DoTRS in February 1999 in estimating the future Levy collections was limited. This had implications for MIFCo in its management of the Cash Advance Loan Facility. However, the current revised estimates prepared by DoTRS are consistent with estimates independently prepared by the ANAO;
- control weaknesses identified in previous ANAO audits of the scheme have been rectified to the extent possible; and
- administrative problems with the collection of the Levy experienced by the previous scheme have been avoided in the design of the current scheme. For example, the development of a simpler, more verifiable form of assessing levy liabilities was developed for the current scheme, as was an improved form of record keeping.

Payment of redundancies—Chapter 4

MIFCo funded redundancies

11. The ANAO concluded that MIFCo had established a well designed control framework to manage the redundancy payments to eligible stevedoring companies. The ANAO found that the framework included effective controls, which adequately supported the review, payment and reconciliation processes. The controls were extensive, well developed, properly implemented, and gave a high level of assurance of the accuracy, validity and timeliness of payments.

12. The relevant legislation and the Deed of Agreement between MIFCo and the Commonwealth imposed various reporting requirements. The ANAO concluded that both MIFCo and DoTRS have complied with those requirements. Comprehensive details have been provided to the Minister and the Parliament in relation to the operation of MIFCo and the operations of the scheme in general.

13. The ANAO noted that the variability in the information provided to MIFCo by the stevedoring companies, made MIFCo's review and audit process that much more difficult in relation to some stevedoring companies. In respect of any future similar initiatives to restructure industry, the ANAO sees advantages in the development of a minimum data set and standards as part of the program design. This would include a description of data/information requirements, as well as the format in which this data should be provided. Making compliance with the minimum data-set a pre-requisite for government assistance would encourage recipients to provide the relevant information within the

required time frame. Creation of a minimum data set and standards should streamline any review and audit processes and reduce the possibility of inaccurate payments by the Commonwealth. It would also enhance the responsible department's monitoring and reporting abilities, without incurring any substantial additional cost to the applicants.

14. The ANAO found that the Commonwealth and MIFCo have avoided the administrative problems that occurred with the previous scheme. The design and implementation of the redundancy payments processes have limited the exposure of the Commonwealth to future legal liabilities.

Western Australian redundancy scheme

15. From its examination of the implementation by DoTRS of a separate Agreement with the Western Australian Government to fund redundancies in three small ports, the ANAO found that:

- the authorisation of a payment of \$1.6 million had been incorrectly made. Strictly speaking, this was a breach of the legislation; and
- compliance with some of the administrative requirements of the Agreement had not been effectively sought by DoTRS. This meant that, in the case of two of the ports, DoTRS was not able to assess how the proposed redundancies would contribute to the achievement of the Government's Seven Benchmark Objectives expected from the redundancy payments.

16. MIFCo had no involvement in the management or funding of the Western Australian scheme.

Funding the scheme—Chapter 5

17. The ANAO noted that the Government intended that the scheme be fully funded by the industry from levy collections and that revenue and expenses would be matched each year. At the time of the audit, the ANAO found that DoTRS had not been formally monitoring the annual financial position of the waterfront redundancy scheme to ensure that the Government's requirements of the scheme's financial performance were being met. The \$2.75 million provided to MIFCo from the 1998–99 Budget by the Commonwealth to cover its initial administrative costs has not been repaid to the Commonwealth from Stevedoring Levy proceeds to date. Similarly, the total loan of \$2.9 million made available to the Western Australian Government in 1999 from levy collections should have been identified for future recovery by DoTRS as apart of a formal ongoing monitoring process. The ANAO also notes that the early drawdown of \$12.9 million from the Special Appropriation—*Stevedoring*

Levy (Collection) Act 1998—in July 2000, to enable MIFCo to repay part of its Cash Advance Loan Facility, should be offset against Stevedoring Levy proceeds in 2000–01.

18. The ANAO concluded that the Government's intention, for the waterfront redundancy scheme to be funded totally 'off-budget', had not been achieved to date. DoTRS advised that they had been giving priority to meeting MIFCo's needs with other calls being given less priority. Now that MIFCo's needs have been met, DoTRS will be ensuring matching from this year on.

19. Accessing commercial finance 'off-budget', as required by the Government to ensure an adequate separation between the Commonwealth and the employees of the stevedoring companies, incurred an interest rate margin of some 140 basis points over that of 'on-budget' loan raising. In addition, loan establishment fees, legal fees and financial advisers' fees were also incurred for both MIFCo and the Banking Syndicate.

20. The ANAO found MIFCo had properly managed the process of loan raising and interest rate risk exposure and had drawn down funds only as required. MIFCo's ability to manage its exposure to the risk that loan costs might escalate through an extension of the loan term, is linked to the provision by DoTRS of timely, comprehensive and accurate data on actual Stevedoring Levy collections and estimates for future Levy collections. Estimates prepared by the ANAO, based on long-term container and vehicle movements, indicate that the \$300 million estimated cost of the scheme could be repaid by 2006–07, or earlier. That is, repayment could be made before 2008–2009 as originally estimated by DoTRS in 1999, or 2010 as expected at the time the legislation was introduced into Parliament. The Cash Advance Loan Facility Agreement entered into with the Banking Syndicate in 1998 called for the loan to be repaid by 2010. The earlier repayment of the Cash Advance Loan Facility would result in substantial savings to the industry through a lowering of total scheme costs. The ANAO notes that DoTRS had revised its estimates in late 1999 and early 2000 and, by then, had determined that there was a possibility that the scheme could be wound up by 2006–07.

Recommendations

Detailed below are the ANAO's recommendations with the Report paragraph reference and abbreviated response. The ANAO considers that priority should be given to Recommendation 3.

**Recommendation
No.1
Para. 3.28**

The ANAO *recommends* that DoTRS improve the efficiency and effectiveness of the management of the Stevedoring Levy by:

- further developing and implementing a more comprehensive and cost effective compliance strategy that includes:
 - monthly and annual monitoring of actual Levy collections against Levy collection estimates and other industry and company freight data;
 - reviewing its risk assessment strategy at an appropriate time, and targeting audit activity towards stevedoring companies for which material discrepancies have been identified, through the formal audit process and/or a broader compliance strategy; and
- considering the findings of the ANAO's analysis of historical freight movement data in any subsequent revisions of its Levy estimates and monitoring the impact of the increasing use of 40-foot containers by the shipping industry.

Agency response: DoTRS agreed.

Recommendation No.2
Para. 4.27 The ANAO *recommends* that, for any future similar initiatives, agencies should develop minimum data set requirements and standards that would provide detailed guidance to claimants seeking funding from industry restructuring schemes, which would have due regard to compliance costs to claimants. This should ensure the consistency and quality of information provided and result in streamlined review and auditing processes, and enhanced monitoring and reporting capabilities.

Agency response: DoTRS agreed.

Recommendation No.3
Para. 5.11 The ANAO *recommends* that DoTRS in working towards the Government's requirement that the scheme be funded totally 'off-budget':

- fully implement previously agreed ANAO recommendations 2 and 6 in ANAO Report No.32 of 1999–2000, which called for levy collecting agencies to identify their levy collection costs by developing their financial accounting systems to enable agency managers to receive regular adequate and timely costing information; and
- ensure the \$2.75 million received by MIFCo from the Advance to the Minister for Finance and Administration to assist MIFCo in meeting its establishment and initial administrative costs is returned to the Budget from the Stevedoring Levy collections.

Agency responses: DoTRS agreed.

Recommendation No.4 The ANAO *recommends* that in relation to the management of the loan facility:

Para. 5.30

- DoTRS provide regular formal reports to the MIFCo Board regarding Stevedoring Levy collections, including for example, details of payments received for the previous period, cumulative and year to date information compared with revised Stevedoring Levy estimates based on historical and anticipated future industry trends and current Stevedoring Levy payment data. This should enhance the transparency of MIFCo's decision making and provide a clear management trail.

Agency response: DoTRS agreed.

Audit Findings and Conclusions

1. Introduction

Background

1.1 The waterfront redundancy scheme was announced in April 1998 as a key component of the Government's waterfront reforms. The scheme provides funding to Australian stevedoring companies to enable them to restructure their workforces by being able to offer their employees voluntary redundancies. The waterfront redundancy scheme has funded around 1530 redundancies, involving a total outlay of about \$181 million paid between August 1998 and December 1999. The Maritime Industry Finance Company Limited (MIFCo) was responsible for funding 1487 redundancies costing some \$178 million. In addition, 45 redundancies in a number of Western Australian ports were funded for a total cost of \$2.9 million through a separate agreement between the Commonwealth and the Western Australian Government.

1.2 MIFCo, a wholly owned Commonwealth company limited by guarantee, was formed to manage a loan facility and ensure that employees made redundant were paid the full value of their benefits by any stevedoring company that undertook to commit to the Government's Seven Benchmark Objectives for waterfront reform. MIFCo established a Cash Advance Loan Facility, with a commercial banking syndicate, to provide funding for redundancy-related payments to the eligible stevedoring companies. The repayment of the Cash Advance Loan Facility is funded by an industry levy imposed under the *Stevedoring Levy (Imposition) Act 1998*. The Levy rate was set in December 1998 at \$12 per container and \$6 per motor vehicle.

1.3 The former Department of Workplace Relations and Small Business (DWRSB) originally administered the scheme but, in October 1998, responsibility for the scheme was transferred to the Department of Transport and Regional Services (DoTRS). As at 30 June 2000, DoTRS had collected \$38.3 million from the Stevedoring Levy. DoTRS estimated that the costs of the scheme (including interest costs) can be recovered from the stevedoring industry by 2006–07.

Audit objectives and scope

1.4 The audit of the waterfront redundancy scheme was largely focused on legal compliance, administrative efficiency and effectiveness associated with collecting the Stevedoring Levy by DoTRS; the funding of redundancies; and the management of the Loan Facility used to fund the redundancies by MIFCo. The objectives of the audit were to:

- assess compliance with the *Stevedoring Levy (Collection) Act 1998* and *Stevedoring Levy (Imposition) Act 1998* and other relevant legislation;
- assess the effectiveness of the administrative and financial controls regarding the collection of the Stevedoring Levy by DoTRS and the provision of redundancy payments to eligible employees of stevedoring companies and the management of the funding of those payments by way of borrowings by MIFCo; and
- review the administrative efficiency of the redundancy payment and Stevedoring Levy collection aspects of the waterfront redundancy scheme.

1.5 The scope of the audit included:

- administrative control processes surrounding the assessment, disbursement and funding of redundancy related payments in accordance with the *Stevedoring Levy (Collection) Act 1998* and Deed of Agreement between MIFCo and the Commonwealth of Australia;
- controls and processes supporting the collection of the Stevedoring Levy imposed under the *Stevedoring Levy (Imposition) Act 1998*;
- administration costs associated with the management of the Stevedoring Levy by DoTRS and the operation of MIFCo; and
- administration of the current scheme in respect of matters previously raised in relation to the former stevedoring levy scheme and operation of the Stevedoring Industry Finance Committee (SIFC).

Audit methodology

1.6 The ANAO visited the offices of DoTRS in Canberra and examined files and records held by the Department. It also interviewed a number of departmental staff responsible for managing the waterfront redundancy scheme. The ANAO met the lawyers and accountants employed to act for MIFCo and examined their records relating to the waterfront redundancy scheme. The fieldwork was undertaken during the period January to April 2000. The audit was conducted in accordance with ANAO standards and cost \$215 000.

Related reports

1.7 This audit is one of a number of reviews, which have been, or are being currently undertaken, on various aspects of the recent waterfront reforms. These reviews include:

- the report on the *Stevedoring Levy (Collection) Amendment Bill 1999* (September 1999), prepared by the Senate Rural and Regional Affairs and Transport Legislation Committee;
- the *Container Stevedoring Monitoring Report*, October 1999, prepared by the Australian Competition and Consumer Commission;
- a recent study by the Productivity Commission of the stevedoring industry and work arrangements; and
- the ANAO performance Audit Report No.32 (1999–2000) *Commonwealth Non-primary Industry Levies* which was tabled in February 2000.

1.8 This audit sought to avoid duplication with the other review activity. By way of ongoing reviews, *Waterline*, an ongoing quarterly publication prepared by the Bureau of Transport Economics within DoTRS, tracks progress with the waterfront reform process.

Report structure

1.9 This report has been structured to address the objectives of the audit and includes chapters on the background and history of the waterfront redundancy scheme, collection of the Stevedoring Levy, payment of redundancies and scheme funding issues. The report is structured as follows:

- Chapter 1—Introduction
- Chapter 2—The Waterfront Redundancy Scheme
- Chapter 3—Collection of the Stevedoring Levy
- Chapter 4—Payment of Redundancies
- Chapter 5—Funding the Scheme



Source: DoTRS

An Australian container port.

2. The Waterfront Redundancy Scheme

2.1 On 8 April 1998, the Minister for Workplace Relations and Small Business introduced legislation to Parliament aimed at establishing the waterfront redundancy scheme. The legislation was introduced as a component of the Government's waterfront reform agenda, during the industrial disputation that occurred in the stevedoring industry in 1998. This scheme follows previous waterfront schemes put in place by the Commonwealth since 1945. The scheme was seen by the Government as a key part of its waterfront reforms and reflected the Government's Seven Benchmark Objectives for the waterfront. They were:

- *ending overmanning and restrictive work practices;*
- *raising container crane productivity to a national 5-port average of 25 lifts per hour;*
- *improving reliability, particularly reducing industrial disputation;*
- *lowering the high work-related injury and fatality levels;*
- *assisting in lessening costs throughout the logistics chain to the waterfront;*
- *making effective use of technology; and*
- *promoting training programs*¹.

2.2 Also on 8 April 1998, MIFCo a wholly owned Commonwealth company, was registered under the Corporations Law as a vehicle to implement much of the Government's waterfront redundancy scheme. At the same time, the Government also made clear its requirement that this scheme should be funded totally 'off-budget', that is, that it would '*be fully funded at no cost to the taxpayer, through a levy charged to the stevedore*'.² This was re-affirmed in early 1999, when the Minister for Finance and Administration stated that the reforms would be financed commercially at no net cost to the Government³.

¹ DoTRS 1998 99 Annual Report p. 143.

² Minister for Workplace Relations and Small Business Press Release of 12 May 1998

³ Minister for Finance and Administration undated 1999 letter to the Prime Minister.

2.3 The Prime Minister again confirmed this in a letter to the Minister for Transport and Regional Services when he made it clear that he considered:

preserving this design feature of the original scheme to be important in terms of the Government's commitment that the scheme be financed at no cost to taxpayers⁴

2.4 To this end, officers of DWRSB commenced negotiations with a number of commercial banks to enable MIFCo to borrow the funds it required to provide the industry assistance envisaged under the scheme. On 30 June 1998, the Commonwealth and MIFCo entered into a Deed of Agreement which sets out the roles and responsibilities of both parties, both to each other, and in respect of the implementation of the waterfront redundancy scheme. MIFCo was provided with a grant of \$2.75 million from the 1998–99 Budget to cover its establishment and operating costs.

2.5 On 3 July 1998, the *Stevedoring Levy (Collection) Act 1998* and the *Stevedoring Levy (Imposition) Act 1998* came into force. On 13 July 1998, the Government agreed that the Framework Agreement developed between parties to the 1998 waterfront dispute was consistent with the Seven Benchmark Objectives. Concerning the application by the Patrick Group, the Government authorised MIFCo to enter negotiations with the Patrick Group to provide funding for redundancy related payments to be made by the Group to its employees. On 18 August DWRSB, acting for the Commonwealth, and MIFCo entered into a loan arrangement with a commercial banking syndicate to provide MIFCo with a \$155 million Cash Advance Loan Facility.

2.6 On 5 August 1998, MIFCo executed funding Deeds with the five companies in the Patrick Group. In late 1998, MIFCo made three drawdowns totalling \$108 million, under the terms of its loan arrangement. That funding was used by MIFCo to provide the Patrick Group with advances totalling \$102.1 million to cover redundancies being offered by the Patrick Group to its employees. By early 1999, following discussions between the Commonwealth, MIFCo and the banking syndicate, the Government was advised that the funding cap of \$250 million imposed by the 1998 legislation was too low. This advice was given after taking into account the higher than expected assistance with redundancy funding already given to the Patrick Group and the higher levels of interest expense expected to be incurred by MIFCo as a consequence of the likely higher level of borrowings, over the life of the

⁴ Letter to the Minister for Transport and Regional Services from the Prime Minister dated 3 April 1999.

loan. When the Government first introduced the draft legislation into the Parliament in 1998, the loan was then expected to extend to 2010.

2.7 Following gazettal⁵, DoTRS commenced collecting the Stevedoring Levy imposed by the 1998 legislation on the stevedoring industry in February 1999. The *Stevedoring Levy (Collection) Act 1998* provides for the imposition of a levy on certain stevedoring operations, being the loading and unloading of containers and motor vehicles. Levy collections can be applied, amongst other things, for the purpose of assisting MIFCo in making payments under its loan facility.

2.8 Following discussions at Ministerial level, the Commonwealth entered into an agreement on 30 April 1999 with the Western Australian State Government to provide a loan to enable that Government to offer redundancies to about 45 employees of three small ports in that state. By November 1999, the Commonwealth had advanced \$2.9 million for redundancies to the Western Australian State Government, drawing on Stevedoring Levy collections accumulated to date. MIFCo was not involved in the management or funding of this process.

2.9 On 2 June 1999, the *Stevedoring Levy (Collection) Amendment Bill 1999* was introduced to the House of Representatives. The Bill was referred to the Senate Rural and Regional Affairs and Transport Legislation Committee on 20 June 1999. That Committee produced its report on 21 September 1999 and, after taking into account issues raised by Committee Members, an amended bill was passed by the Parliament in November 1999, which raised the funding cap to \$300 million and removed a number of the Minister's powers to approve expenditure granted under the 1998 Act. The powers removed by the Parliament, related to Ministerial approval for expenditure on a number of aspects of industry restructuring including occupational health and safety programs, workforce training programs and assistance with the introduction of new technology or the improvement of wharf facilities.⁶

2.10 On 14 July 1999, the banking syndicate⁷ increased the Cash Advance Loan Facility available to MIFCo to \$220 million. As is required under the Deed of Agreement between MIFCo and the Commonwealth, the Minister for Transport and Regional Services, representing the Commonwealth, approved submissions for funding assistance under the

⁵ Commonwealth of Australia Gazette, No. GN50, 16 December 1998.

⁶ Section 18 (1) (b) of the *Stevedoring Levy (Collection) Act 1998* was deleted.

⁷ Now led by a different foreign major bank, after the previous leading bank withdrew on the grounds that the interest margin was too low, given the amount involved and the risk level involved.

scheme from an additional 13 companies, outside of the Patrick Group, during the year ended 31 December 1999. In addition, the Minister also approved the provision of funding of redundancies in respect of employees or members involved with a company in liquidation and a defunct partnership.

2.11 By December 1999, all redundancy payments under the waterfront redundancy scheme had been finalised by MIFCo.⁸ The amount drawn down from the Cash Advance Loan Facility together with capitalised interest and bank fees etc. consisted of two components, one component being \$150 million attracting a fixed interest rate with the balance of some \$45.3 million subject to a floating rate. The later amount was repaid by MIFCo in July 2000 drawing on accumulated Stevedoring Levy proceeds and an early draw down of 2000–01 Stevedoring Levy collections facilitated by the Department of Finance and Administration (DoFA) from the Special Appropriation *Payments to MIFCo 2000–01*. In total, the waterfront redundancy scheme has funded about 1530 redundancies at a cost of \$181 million through MIFCo and the Western Australian State Government.

Roles, responsibilities & management of the scheme

2.12 DoTRS has overall responsibility for the waterfront redundancy scheme. In this capacity, it replaced the Department of Workplace Relation and Small Business (DWRSB) on 21 October 1998, after changes in the Administrative Arrangements Order. After the change, officers from DEWRSB, as well as DoTRS and DoFA, continued to act as directors on the MIFCo Board.

2.13 In particular, DoTRS is responsible for:

- overall management and administration of the scheme;
- submitting applications by stevedoring companies for assistance under the scheme to the Minister for approval;
- supporting MIFCo's ongoing negotiations with the Banking Syndicate;
- managing the separate waterfront redundancy scheme entered into with the State Government of Western Australia, which has funded 45 redundancies in three small ports in that state for an outlay of about \$2.9 million; and

⁸ There are outstanding claims in respect of three employees of the Patrick Group who have lodged Total and Permanent Disability Claims. If any of the claims are unsuccessful, MIFCo will be required to fund the redundancy related payments. The necessary funds to make these payments are held in trust by the Administrators of the Patrick labour hire companies.

- collecting, accounting for and forwarding the Stevedoring Levy receipts to MIFCo to enable the company to repay its loans from the Banking Syndicate.

2.14 As noted earlier, MIFCo is a company established by the Commonwealth to implement much of the scheme. It is a company registered under the Corporations Law as a company limited by guarantee. MIFCo's company directors are drawn principally from DoTRS, DEWRSB and DoFA, with an independent Chairman. At the time of this report, MIFCo had funded 1487 redundancies to stevedoring companies with an aggregate value of around \$178 million. Its other principal role is the administration of a Cash Advance Loan Facility established to fund redundancy-related payments. Repayment of the Cash Advance Loan Facility is to be achieved through the imposition of the Stevedoring Levy collected by DoTRS for the Commonwealth pursuant to the *Stevedoring Levy (Collection) Act 1998*. At the time of the audit, the Cash Advance Loan Facility established by MIFCo was expected to continue until 2010. When the Cash Advance Loan Facility is repaid, MIFCo will be wound up and collection of the Stevedoring Levy will cease.

Scheme to be fully funded by industry

2.15 As stated earlier, the waterfront redundancy scheme was seen by the Government as a key part of its waterfront reforms to achieve world's best practice in relation to productivity and reliability in cargo stevedoring and to realise the associated national benefits.

2.16 The Government sought to achieve its intention that the taxpayer not pay for the scheme by funding it 'off-budget' using commercial financing. This involved the Government tasking MIFCo to fund the required industry redundancies by borrowing from a banking syndicate. The Western Australian Scheme referred to earlier was also funded 'off-budget' through a temporary diversion of Stevedoring Levy receipts. That temporary diversion of Stevedoring Levy receipts collected to date was authorised by the Minister for Transport and Regional Services, after obtaining legal advice on his powers in this respect. In terms of 'on-budget' assistance, an initial grant of \$2.75 million was provided to MIFCo by the Commonwealth in May 1998 initially from the Advance to the Minister for Finance and Administration and ultimately from the 1998–99 Appropriation, Department of Workplace Relations and Small Business under: Division 911—Other Services—*Maritime restructuring facilitation scheme*. This was provided to assist MIFCo with meeting its initial administrative expenses until the borrowing arrangements with the banks were put in place. As of 30 June 2000, this advance of \$2.75 million had not been recovered from the levy collections. The concepts of 'on-budget' and 'off-budget' funding are further discussed in later chapters.

3. Collection of the Stevedoring Levy

Background

3.1 To enable the waterfront reform scheme to be funded ‘off-budget’ the relevant legislation passed by the Parliament provided for the imposition of a levy on the loading and unloading of imported and exported containers and motor vehicles. The maximum rate of levy payable by the stevedoring companies was set at \$20 per container and \$10 per motor vehicle⁹. Imposition of the Stevedoring Levy by regulation under the *Stevedoring Levy (Collection) Act 1998* was gazetted in December 1998. The Levy rate was set by regulation under the *Stevedoring Levy (Imposition) Act 1998* at \$12 per container and \$6 per motor vehicle. Imposition of the Levy commenced in February 1999 after responsibility for waterfront reform transferred from DEWRSB to DoTRS. DoTRS received the first Stevedoring Levy payments in March 1999 for the period commencing 1 February 1999.

Audit findings

3.2 The ANAO’s objective in respect of auditing the administration of the Stevedoring Levy was to review the effectiveness of controls and processes supporting the collection of the Stevedoring Levy. Accordingly, the ANAO reviewed DoTRS processes and procedures to ascertain compliance with the relevant Commonwealth legislation and ensure the equitable imposition and payment of the Stevedoring Levy. The audit findings are discussed under the following headings: internal policies, procedures and industry guidelines; audit and control framework; impact of the increasing use of 40-foot containers; stevedoring levy estimates; compliance issues arising out of the 1998–99 financial statement audit and previous scheme’s problems avoided.

⁹ *Stevedoring Levy (Collection) Act 1998* and *Stevedoring Levy (Imposition) Act 1998*.

Internal policies, procedures and industry guidelines

3.3 The ANAO reviewed the internal Operations Manual developed by DoTRS and found the controls to be effective in their design and implementation. The Manual had not been updated since its initial development in April 1999. During the audit fieldwork the ANAO identified a number of changes in administrative practices, and noted that the Manual was being reviewed by DoTRS in order to be aligned with the changed processes. DoTRS has now completed the update of the Manual.

3.4 The ANAO found that DoTRS had developed the *Stevedoring Levy Scheme Guidelines* in consultation with the industry. The Guidelines are distributed to all stevedoring companies and explain the processes to be followed in the administration of the scheme. Included with the Guidelines are pro-forma documents used to capture payment information, including *Stevedoring Levy Returns* and *Stevedoring Levy Return Statutory Declarations*. Implementation of the guidelines has worked well, with a high degree of industry compliance. At the time of the audit the ANAO noted that DoTRS was in the process of reviewing the guidelines in order to update and align them with recent administrative changes. The update to the Guidelines was completed subsequent to the audit fieldwork, however, all stevedoring companies paying the Levy had been formally advised in writing of the changed administrative practices in November 1999.

3.5 To ensure consistency of practices in collection of the Levy, the ANAO considers that it would be appropriate for DoTRS to reissue the Guidelines to all stevedoring companies. DoTRS advised that the stevedoring companies have consistently adopted the changed practices and that the Guidelines will now be reissued to all stevedores.

Audit and control framework

3.6 The ANAO reviewed the DoTRS control framework used to support the collection of the Stevedoring Levy. DoTRS records receipt of payments by stevedoring companies each month to identify late payments and facilitate future planning activities. Monitoring of Levy collections is focused on the timeliness of payments by the companies and the reconciliation of their levy returns with actual receipts posted in the DoTRS ledger.

3.7 Payment of the Stevedoring Levy is based around a model of self-assessment by the stevedoring companies. DoTRS has relied on the accuracy of data on container and motor vehicle movements submitted by the stevedoring companies in the first instance, and sought to later confirm the accuracy of this information through inspections by a private sector firm of auditors. At the time of the audit fieldwork, the ANAO noted that 18 audits had been completed. The ANAO found DoTRS had planned for all ports handling leviable freight to be audited within a three-year program. The objectives of the audits were to ensure that:

- the levy payments made by (stevedoring companies) were accurate and complete based on the number of leviable containers and vehicles handled;
- (each stevedoring company) has sound systems in place to minimise the risk of under or over payments of the Levy; and
- the relevant legislative requirements were being complied with.

3.8 The ANAO noted that, by early March 2000, DoTRS had received draft audit reports for all audits completed. At that time, DoTRS had commenced discussions with the contracted audit firm to finalise the audit reports. The audits revealed a high level of industry compliance and did not identify any fraudulent activity. However, they did find some errors in payments and a number of minor issues that required attention by DoTRS and some of the stevedoring companies.

3.9 DoTRS advised that in order to manage industry compliance with levy collection, the finalised audit findings would be forwarded to the stevedoring companies and that stevedoring companies' compliance with the findings would be monitored.

3.10 The ANAO noted, that in early 2000, DoTRS had contacted a number of ports to ascertain whether they were handling leviable freight. The ANAO considers that this is a cost-effective control that should be extended annually to any port for which no Stevedoring Levy payments have been received.

3.11 The Cash Advance Loan Facility used to fund the scheme is supported by a Commonwealth Guarantee. It is possible that the Commonwealth could be called upon to make loan repayments if the level of compliance by the industry were to deteriorate significantly. On the other hand, MIFCo could renegotiate the term of the Cash Advance Loan Facility or DoTRS could increase by regulation the rate of the Levy and/or extend the term of the collection of the Stevedoring Levy. This would effectively increase the total scheme costs through increased interest and administrative costs for MIFCo and DoTRS, all of which has to be recovered from the Stevedoring Levy collections if there is to be no cost to the taxpayer. If total scheme costs were anticipated to exceed

the \$300 million cap imposed by the *Stevedoring Levy (Collection) Amendment Act 1999*, then the Government would need to consider introducing legislation into Parliament to raise the cap. This is not expected to eventuate in the current environment. DoTRS advised that it is confident of being able to maintain the current high level of compliance.

3.12 Given the Government's intention that the waterfront reform scheme be funded 'off-budget', the ANAO considers DoTRS compliance strategy should be aimed at maintaining the current high level of industry compliance. The possibility of non-compliance can be minimised by ensuring that all members of the industry remain confident that all industry members are meeting their obligations to pay the Stevedoring Levy. Recent media reports have highlighted the potential risk of non-compliance, with some stevedoring companies questioning the equity of the current model of Levy imposition and redundancy payment.¹⁰ The ANAO noted equitable payment of the Levy by all participants was a problem for the 1977 scheme in that the awareness of non-compliance by some participants led to an increasing level of non-compliance by others over the life of the scheme.

3.13 Information regarding freight movement on Australian wharves is available from a number of sources. Data covering the loading and unloading of containers and motor vehicles for the five major ports in Australia is published quarterly by the Bureau of Transport Economics (BTE) in its publication *Waterline*. The data is supplied by the stevedoring companies and is used to review productivity gains arising from the waterfront reforms. Detailed information regarding freight movement is also available directly from port authorities, with some ports publishing such information in their annual reports.

3.14 The ANAO noted DoTRS has access to information regarding freight movement on Australian wharves by port and by stevedoring company for each of the five major Australian ports. This information could be used as a check on data supplied with Stevedoring Levy payments. Initially a monitoring program of this nature could be combined with the audit program currently in place, forming part of an overall compliance strategy. In future years, the scope of the audit program could then be reduced or targeted towards stevedoring companies and ports representing the greatest risk. Greater reliance could be placed on DoTRS internal control processes, combined with an ongoing review of industry trends for the handling of leviable freight at individual ports.

¹⁰ Chinnery K 2000, *Sea-Land kicks off new push to change reform levy system*, Lloyd's List Daily Commercial News 18 August 2000 and Long S, *Patrick exits Newcastle terminal*, The Australian Financial Review 23 August 2000.

Impact of the increasing use of 40-foot containers

3.15 During the audit, the ANAO noted an increasing trend in the use of 40-foot containers. The majority of containerised freight imported or exported from Australia is moved in 20-foot containers, commonly referred to as TEU's or 20-foot equivalent units. However, for the five major Australian ports the use of 40-foot containers is increasing. In the 1996–97 financial year, 40-foot containers accounted for approximately 25 per cent of containerised freight movement, increasing to 28 per cent in 1998–99 (see Appendix 2, Figure 3). Currently, the Stevedoring Levy is imposed at a rate of \$12 per container, regardless of size. If the current pattern of growth in the use of 40-foot containers continues, by 2005–06 40-foot containers will account for approximately 31 per cent of containerised freight movement in Australia.

3.16 The ANAO considers that it would be appropriate for DoTRS to monitor international trends in the use of 40-foot containers and assess any future impact on Australian shipping trends and subsequent collection of the Stevedoring Levy. Given the pattern of growth in the use of 40-foot containers and the rate of Levy payable, it would be appropriate for DoTRS to review the appropriateness of continuing to levy the handling of 20 and 40 foot containers at the same rate. In reviewing this issue, DoTRS would need to consider the possible threat to future levy collections by the displacement effect of the growing use of the larger containers.

Stevedoring Levy estimates

3.17 The ANAO reviewed the DoTRS methodology for estimating future Stevedoring Levy collections. Accurate Stevedoring Levy collection estimates are important, as MIFCo's ability to effectively manage and minimise its loan costs, is directly linked to the accuracy of the Stevedoring Levy estimates. The provision of accurate estimates allows MIFCo to make informed decisions regarding its future financing strategy.

3.18 Australian port authorities and other agencies, collect a wide range of information regarding imports, exports and coastal freight movements. As indicated earlier, some port authorities publish freight movement statistics in their Annual Reports, while historical information is also available in such publications as the *Australasian Shipping Directory*, published annually.

3.19 The ANAO found DoTRS used only a limited number of data sources in preparing its original estimates and developing assumptions in relation to the handling of coastal freight and motor vehicles. For example, in the preparation of its estimates of levy collections for containers, DoTRS generally relied upon statistics provided by the BTE,

which indicated total container movements for Australia's five major ports on an annual basis and the total containerised tonnage of domestic freight. However, the ANAO notes that, the number of coastal containers was calculated by dividing the total containerised tonnage of domestic freight by the estimated weight of a container. This data represents only a subset of available freight movement information. For motor vehicles, DoTRS relied on 1996 data from the Industry Commission Report, No.58 of May 1997 Volume 1 *The Automotive Industry*, when calculating the Stevedoring Levy payable on motor vehicles. The ANAO notes that the Australian Bureau of Statistics (ABS) collects extensive continuous time series data regarding the import and export of motor vehicles that would have been better for this purpose.

3.20 DoTRS has not changed its methodology to develop subsequent Levy estimates. At the time of the audit, the Levy had been in place for only 12 months. Some difficulty would have been expected in establishing a sound base from that short period of collection, on which to prepare accurate estimates. However, the ANAO notes that a considerable quantity of historical data regarding freight movement in Australia was available at the time. If used, this information could have allowed DoTRS to identify, in a comprehensive manner, current and future trends in freight movement in Australia. This would have better assisted DoTRS in developing its estimates and planning for the collection of the Levy, as well as assisting it with its responsibility of providing quality policy advice to its Minister and detailed accurate estimates to the MIFCo Board. Such estimates would also have provided DoTRS with baseline data to undertake a sophisticated comparative analysis of actual and estimated Stevedoring Levy receipts over time. Nevertheless, the ANAO acknowledges that the levy estimates prepared by DoTRS in late 1999 and early 2000 with the use of BTE data and limited historical levy collection data are consistent with the ANAO's independently prepared estimates.

Compliance issues 1998–99 Financial Statement Audit

3.21 In the DoTRS 1998–99 Financial Statement Audit, the ANAO identified a lack of controls, or non-compliance with controls, in relation to aspects of the administration of the Stevedoring Levy. A management letter was issued to DoTRS identifying these matters.

3.22 In addressing the matter of the bank reconciliation of the first Stevedoring Levy Bank Account (the Account), the ANAO observed DoTRS had engaged a firm of accountants to undertake a reconciliation of Stevedoring Levy receipts and payments with source data such as remittance advices. All matters have now been addressed satisfactorily to the extent possible.

3.23 The ANAO noted that, under a Ministerial Delegation, the imposition of penalties for late payments made between February and November 1999 were remitted in accordance with section 12(3) of the *Stevedoring Levy (Collection) Act 1998*. DoTRS issued supporting documentation at that time to ensure the stevedoring companies were aware of their obligations under the Acts and Regulations. The ANAO noted that since that time delayed payment had only been an issue with one stevedoring company who had been contacted by DoTRS. The payment concerned was subject to dispute and has since been resolved.

Previous scheme's problems avoided

3.24 Recognising that waterfront reform has been a priority for governments since the Second World War, the ANAO notes that this scheme has been designed to minimise the exposure to administrative problems that have proved a challenge for the 1977 scheme. These included:

- ambiguity in relation to the interpretation of the levy guidelines that resulted in the many participants incorrectly declaring their liability; and
- insufficiently detailed and accurate records recording payment of the levy, limiting the responsible department's ability to reconcile the payments and reimburse the surplus levy payments.

3.25 The ANAO found that previous problems have been avoided with the design of the current scheme. For example, a simpler, more verifiable means of assessing levy liabilities was developed for the current scheme, as was an improved form of record keeping.

Conclusion

3.26 The ANAO found that DoTRS had been successful in managing the collection of the Stevedoring Levy in line with its responsibilities under Commonwealth legislation. However, the audit findings also indicate that opportunities exist for DoTRS to improve its management of the levy collection.

3.27 The ANAO found that in regard to the management of the Stevedoring Levy by DoTRS:

- the Industry Guidelines and the associated self assessment scheme developed by DoTRS, in consultation with the stevedoring companies, has contributed to the current high level of industry compliance;
- the strategy developed by DoTRS to ensure that the stevedoring companies pay the correct amount of the Stevedoring Levy has been

effective. However, the future compliance strategy can be both more comprehensive and more cost effective in order to sustain the current high level of industry compliance. In particular, DoTRS could:

- compare annually Stevedoring Levy payment data to other freight movement data collected by the port authorities, as a correlation should exist between the Stevedoring Levy payment and the port authorities' data;
 - strengthen the mechanisms to identify new entrants or stevedoring companies handling leviable freight, which may have previously been exempt; and
 - at an appropriate time review its risk management strategy, and target audit activity towards stevedoring companies for whom material discrepancies have been identified, through the formal audit process and/or a broader compliance strategy.
- given the experience with the uneven level of contributions made by the parties to the 1977 scheme, it is particularly important that, in order to maintain the current high level of industry compliance, individual stevedoring companies meet their obligations under the Stevedoring Levy scheme and are seen by the industry to be doing so;
 - the scheme makes no distinction between the Levy charged for 20 and 40-foot containers, but the increasing trend toward the use of 40-foot containers may have implications for future levy collections. In 1996–97, 40 foot containers accounted for approximately 25 per cent of containerised freight movement, by 2005–06 it is expected they will account for 31 per cent;
 - the original analysis used by DoTRS in February 1999 in estimating the future Levy collections was limited. This had implications for MIFCo in its management of the Cash Advance Loan Facility. However, the current revised estimates prepared by DoTRS are consistent with estimates independently prepared by the ANAO;
 - control weaknesses identified in previous ANAO audits of the scheme have been rectified to the extent possible; and
 - administrative problems with the collection of the Levy experienced by the previous scheme have been avoided in the design of the current scheme. For example, the development of a simpler, more verifiable form of assessing levy liabilities was developed for the current scheme, as was an improved form of record keeping.

Recommendation No.1

3.28 The ANAO recommends that DoTRS improve the efficiency and effectiveness of the management of the Stevedoring Levy by:

- further developing and implementing a more comprehensive and cost effective compliance strategy that includes:
 - monthly and annual monitoring of actual Levy collections against Levy collection estimates and other industry and company freight data;
 - reviewing its risk assessment strategy at an appropriate time, and targeting audit activity towards stevedoring companies for which material discrepancies have been identified, through the formal audit process and/or a broader compliance strategy; and
- considering the findings of the ANAO's analysis of historical freight movement data in any subsequent revisions of its Levy estimates and monitoring the impact of the increasing use of 40-foot containers by the shipping industry.

DoTRS response

3.29 Agreed.

4. Payment of Redundancies

Background

4.1 The waterfront redundancy scheme was designed to assist with the restructuring of the stevedoring industry. This was to be achieved through offering voluntary redundancies to stevedoring-industry employees. The waterfront redundancy scheme has been successful in funding around 1530 redundancies, involving a total outlay of approximately \$181 million paid between August 1998 and December 1999. MIFCo was responsible for funding 1487 redundancies costing some \$178 million during this period, while the DoTRS loan to the Western Australian Government has funded an additional 45 redundancies in a number of Western Australian ports for a total cost of \$2.9 million. Funding for the latter was provided under a separate Commonwealth/State Agreement.

MIFCo redundancy payment process

4.2 The Minister for Workplace Relations and Small Business announced in April 1998 that

The redundancy program, to be funded by an industry levy will be administered by the Maritime Industry Finance Company, a wholly owned Commonwealth company limited by guarantee. ... The key role of MIFCo is to ensure that employees made redundant are paid the full value of their benefits by any stevedore that undertakes to commit to the Government's Seven Benchmark Objectives.¹¹

4.3 As a wholly owned Commonwealth company established to provide assistance in connection with the reform and restructuring of the stevedoring industry, MIFCo entered into a loan agreement with a commercial banking syndicate, guaranteed by the Commonwealth, to provide redundancy payments to eligible redundant employees.

¹¹ Minister for Workplace Relations and Small Business, press release dated 12 May 1998.

Audit findings

4.4 MIFCo's primary role is to administer the provision of funding to eligible redundant employees. In examining this function, the ANAO reviewed the control framework established and implemented by MIFCo. This framework was used to ensure the validity, accuracy and timeliness of payments. The payment process is combined with various reporting requirements imposed under the *Stevedoring Levy (Collection) Act 1998* and the Deed of Agreement between MIFCo and the Commonwealth.

4.5 The ANAO reviewed MIFCo's control framework for the redundancy payments and found the processes comprehensive, well developed and implemented within short time frames.

The MIFCo redundancy payment process

4.6 MIFCo sought confirmation from the Commonwealth that each individual stevedoring company was eligible to receive assistance under the scheme. This followed the approval of the stevedoring company as an eligible company by the Minister or the Government. In deciding the eligibility of a stevedoring company, the Commonwealth may have regard to:

- (i) *whether the employer is committed to the Government's waterfront reform objectives as announced by the Minister for Workplace Relations and Small Business on 8 April 1998; and*
- (ii) *whether the redundancies from the work force of the employer will contribute to the achievement of the reform or restructuring of the stevedoring industry (particularly by assisting in meeting those objectives).*¹²

4.7 For all applications made by stevedoring companies to the Minister for Transport and Regional Services, the ANAO sighted formal Ministerial Determinations that expressly approved those applications after having regard to the issues required by the Deed of Agreement between the Commonwealth and MIFCo.

4.8 For the application made to the Minister for Workplace Relations and Small Business, by the Patrick Group, the Secretary of DWRSB wrote to MIFCo at the direction of the Minister. He advised that the Government had confirmed that the framework agreement entered into by the Patrick Group was consistent with the Seven Benchmark Objectives for the reform of the stevedoring industry. He further advised that assuming the two remaining conditions were met by the Patrick Group, then MIFCo could arrange for the payment of redundancy funding to

¹² Deed of Agreement between Commonwealth of Australia and MIFCo, Attachment A, Clause 5.2 p. 15.

the companies in the group. The Direction from the Minister was not documented. However, the ANAO has examined the Cabinet Decision and found it to be consistent with the Secretary's letter.

4.9 In all cases, the stevedoring companies or their agents then provided MIFCo with a notice requesting the provision of redundancy funding. This notice incorporated details of all employees to receive a redundancy payment and the value of the proposed payment. The ANAO found that MIFCo had established comprehensive control processes that supported the calculation and provision of redundancy payments.

4.10 MIFCo entered into funding Deeds with the stevedoring companies. These included the agreed principles of payment or conditions of payment that were negotiated between MIFCo, the stevedoring companies and the two unions involved. The agreed principles were derived from the conditions imposed by the Deed of Agreement between the Commonwealth and MIFCo. The Deed states:

the Company will decide the amount of a Redundancy related Payment by having regard to relevant awards, agreements and past practice in the industry.¹³

4.11 Payments were made to the stevedoring companies who later disbursed the monies to the individual redundant employees. Where the stevedoring companies were no longer trading or were unincorporated, payments were made directly to the individual employees.

4.12 MIFCo engaged an accounting firm to undertake, on its behalf, a detailed review and audit of the redundancy calculations provided by the stevedoring companies. The ANAO is satisfied that the audit program was comprehensive. The quality of information provided by the stevedoring companies to support the redundancy calculation process varied. In particular this made the review and audit process more difficult for MIFCo for one group of companies. Appendix 1 provides further details in relation to MIFCo's extensive audit and review processes.

4.13 A thorough control process supported the payment of redundancies. In advance of the payments being made, the stevedoring companies provided the redundant employees with a provisional calculation notice and sample Deed of Release prepared for the Commonwealth and MIFCo. This allowed the redundant employees to seek independent legal and/or financial advice. If employees disputed the proposed payment, they had the opportunity to address this issue with the stevedoring company in the first instance. Where necessary, formal dispute or grievance resolution processes could be invoked. This is discussed later in this Chapter.

¹³ Deed of Agreement between Commonwealth of Australia and MIFCo, Section 5.3 p. 5.

4.14 Following the payment of all redundancies, the stevedoring companies were required to provide MIFCo with a detailed reconciliation report. These reports identified all payments made, brought to account any fees incurred, and interest earned in operation of the trust account established by the stevedoring companies. Creation of the trust accounts was a requirement of the Deeds between MIFCo and the stevedoring companies. The accounts were created to hold the funds advanced to the stevedoring companies. The accountants acting on MIFCo's behalf reviewed the reconciliation reports provided by the stevedoring companies and furnished MIFCo with reports on their findings.

Planning, monitoring and reporting

4.15 The ANAO noted that after MIFCo's incorporation, issues requiring resolution to allow for the payment of redundancies to stevedoring companies were identified, documented and implemented in a structured, systematic and effective manner.

4.16 The ANAO found that MIFCo had established processes to regularly monitor redundancy payments, loan costs including interest and current and future administrative costs. In monitoring its position, MIFCo seeks to re-affirm its ability to keep its total expenditure, including outlays on interest, below the cap of \$300 million imposed by the *Stevedoring Levy (Collection) Amendment Act 1999*. At the time of the audit MIFCo was considering various loan repayment options that would directly impact on when the company and the waterfront redundancy scheme can be wound up. This matter is discussed further in Chapter 5.

4.17 The ANAO examined how well MIFCo had complied with the reporting requirements required by Section 20 of the *Stevedoring Levy (Collection) Act 1998*. Under this Section of the Act, the Minister is required to table copies of the reports in both Houses of the Parliament. The ANAO concluded that those requirements had been met with MIFCo providing four reports to the Minister. The ANAO also found that MIFCo had provided DoTRS with four detailed reports on its activities since its inception in 1998, as required under Clause 9 of the Deed of Agreement between MIFCo and the Commonwealth.

Processing times, grievances and disputes

4.18 The ANAO observed that the Deeds allowed a period of seven days for the review of the stevedoring companies redundancy payment calculations by MIFCo. MIFCo was required to advise the stevedoring companies of the results of the review within two business days after the review was completed, and make provision for the payment of monies to the stevedoring companies. The Deeds document the formal dispute resolution processes between MIFCo the stevedoring companies and employees. Where disputes arose during the review process, the accountants acting on MIFCo's behalf, addressed the issues directly with the stevedoring companies. The ANAO also observed additional documentary evidence to support the calculations prepared by the stevedoring companies was requested on several occasions by the accountants.

4.19 The ANAO found MIFCo had established a relationship with the stevedoring companies that allowed it to meet the timeframes imposed by the Deeds. Where issues were unable to be resolved within this period, the ANAO noted agreement was reached between MIFCo and the stevedoring companies to extend the period, to allow the matters to be resolved.

4.20 The ANAO noted the payment process incorporated a number of stages that allowed the redundant employees to seek redress on relevant matters. The process is outlined as follows:

- The stevedoring companies provided the redundant employees with a sample Deed of Release and provisional calculation notice, setting out the various entitlements and how they had been calculated.
- The employees then had the opportunity to seek legal and/or financial advice pertaining to either the Deed of Release in favour of the Commonwealth and MIFCo or calculation of the redundancy payment.
- The employees had the opportunity to challenge the calculations with the stevedoring company concerned. As part of this process, the employees could seek the assistance of the relevant union.
- Unresolved disputed claims were referred to an independent third party for settlement. The decisions of the mediator, a Senior Counsel with a background in industrial relations, were used in the calculation of the final payments. Associated costs were shared between MIFCo and the relevant stevedoring company.

4.21 The ANAO found the grievance and dispute resolution processes were effective.

Previous scheme's problems avoided

4.22 The 1977 scheme was managed by the Stevedoring Industry Finance Committee (SIFC). A key issue for the Commonwealth and MIFCo arising out of the previous scheme, was to limit any future legal liabilities by ensuring the existing employment relationships between the stevedoring companies and their employees were maintained. For example, an issue for SIFC, is its future legal liability for claims relating to asbestosis, arising from waterside workers handling asbestos during their employment in the stevedoring industry, prior to the introduction of company employment. A recent New South Wales Court of Appeal decision found that SIFC was liable to a waterside worker who handled asbestos, and awarded a payment of \$100 000 in damages. Following the success of the case a number of subsequent claims are expected.¹⁴ The ANAO found that in the implementation of the current scheme the Commonwealth and MIFCo achieved the aim of limiting future legal liabilities, by ensuring the relationship between MIFCo and the employees was at arms length. MIFCo and the Commonwealth have established processes to ensure that the redundant waterside workers release them from any claims prior to the receipt of a redundancy-related payment and, further, that the stevedoring companies made the redundancy payments, effectively maintaining their employer/employee relationship. Although MIFCo facilitated the payment of redundancies, in the majority of cases the funds were provided to the stevedoring companies and not directly to the individual redundant employees.

Conclusion

4.23 The ANAO concluded that MIFCo had established a well designed control framework to manage the redundancy payments to eligible stevedoring companies. The ANAO found that the framework included effective controls, which adequately supported the review, payment and reconciliation processes. The controls were extensive, well developed, properly implemented, and ensured the accuracy, validity and timeliness of payments.

¹⁴ Jackson A 2000, *Court Victory on Asbestos to Open Floodgates: Union*. Sydney Morning Herald 22 July 2000.

4.24 The relevant legislation and the Deeds of Agreement between MIFCo and the Commonwealth imposed various reporting requirements. The ANAO concluded that both MIFCo and DoTRS have complied with those requirements. Comprehensive details have been provided to the Minister and the Parliament in relation to the operation of MIFCo and the operations of the scheme in general.

4.25 The ANAO noted that the variability in the information provided to MIFCo by the stevedoring companies, made the review and audit process more difficult for MIFCo in relation to some stevedoring companies. In respect of any future similar initiatives to restructure industry, the ANAO sees advantages in the development of a minimum data set and standards as part of the program design. This would include a detailed description of data/information requirements, as well as the format in which this data should be provided. Making compliance with the minimum data-set a pre-requisite for government assistance would encourage recipients to provide the relevant information within the required time frame. Creation of a minimum data set and standards should streamline any review and audit processes and reduce the possibility of inaccurate payments by the Commonwealth. It would also enhance the responsible Department's monitoring and reporting abilities, without any substantial additional cost to the applicants.

4.26 The ANAO found that the Commonwealth and MIFCo have avoided the administrative problems that occurred with the previous scheme. The design and implementation of the redundancy payments processes, has limited the exposure of the Commonwealth to future legal liabilities.

Recommendation No.2

4.27 The ANAO recommends that, for any future similar initiatives, agencies should develop minimum data set requirements and standards that would provide detailed guidance to claimants seeking funding from industry restructuring schemes, which would have due regard to compliance costs to claimants. This should ensure the consistency and quality of information provided and result in streamlined review and auditing processes, and enhanced monitoring and reporting capabilities.

DoTRS response

4.28 Agreed.

Western Australia redundancy scheme

4.29 The waterfront redundancy scheme, as originally announced, was focussed on improving productivity at those major ports typically equipped to handle containers. It was not envisaged that it would be applied to other forms of cargo handling, such as bulk cargo, where previous industry restructuring had already resulted in the achievement of internationally competitive practice. In August 1998, the Minister for Workplace Relations and Small Business wrote to the Western Australian Minister for Transport indicating that the Commonwealth would provide financial assistance with stevedoring reforms being initiated at several of Western Australia's regional ports. The assistance was later sought by the Western Australian Minister for Transport to provide enhanced redundancy funding to that State, which would bridge the gap between the relevant Western Australian Award and the Federal award in terms of redundancy payments available to stevedoring employees employed in Western Australian state ports. Later, the proposal to provide funding of \$4 million for enhanced redundancy packages in Western Australia was included by the Minister for Transport and Regional Services in the explanatory material provided to Parliament in the course of seeking amendments to the *Stevedoring Levy (Collection) Act 1998* in 1999.¹⁵

Audit Findings

Loan Agreement

4.30 In October 1998 the Western Australian State Government responded to the earlier Commonwealth offer and asked that the waterfront redundancy scheme also be extended to fund restructuring at Geraldton, Wyndham and Bunbury, which handled a range of bulk cargoes as well as general cargo. However, the Deed of Agreement between MIFCo and the Commonwealth restricted MIFCo to funding redundancies to the limit available under the relevant awards. Given this, after obtaining three legal opinions (which addressed the Minister's powers to approve such funding under Section 18 of the then *Stevedoring Levy (Collection) Act 1998*) the Minister for Transport and Regional Services entered into an Agreement on 30 April 1999 with the Western Australian State Government to fund nearly 50 redundancies in the WA ports under the scheme. Under that Agreement, the Commonwealth agreed to provide an interest free loan of up to \$4 million to Western Australia, repayable in four equal instalments between June 2002 and June 2005.

¹⁵ Second Reading Speech in support of the *Stevedoring Levy (Collection) Bill 1999*, Hansard p. 5749 of 2 June 1999 and Senate Rural and Regional Affairs and Transport Legislation Committee Report on 1999 Amendment Bill pp. 22-23.

4.31 On 8 June 1999, the Western Australian Minister for Transport wrote to the Commonwealth Minister for Transport and Regional Services, asking that an amount of \$1.6 million be advanced to Western Australia under the Agreement. That advance was to be used to fund redundancies to be offered to stevedoring employees employed at Geraldton and Wyndham. Later in June 1999 the DoTRS Division responsible for administering the waterfront redundancy scheme then prepared a payment voucher for the amount requested by Western Australia and the funds were drawn on 30 June 1999. A request that the Minister approve the payment retrospectively was prepared by the Division on 6 July 1999 and the Minister approved the payment on 7 July 1999.

4.32 The ANAO examined both the Act and the three legal opinions obtained to advise the Minister on his capacity to approve payments under Section 18 of the *Stevedoring Levy (Collection) Act 1998*. The legal opinion, on which the Minister relied to agree to the payment to Western Australia, argued that such a payment could only be made under Section 18 (1) (a) of the Act. From its examination of the *Stevedoring Levy (Collection) Act 1998* and legal opinions, the ANAO agreed that authorisation of the payment of the \$1.6 million could only be made under Section 18 (1) (a). The ANAO found that no delegation has been issued by the Minister that enables departmental officers to approve such payments under Section 18 (1) (a). Strictly speaking, this was a breach of the legislation.

4.33 The official who authorised the payment of the \$1.6 million on 30 June 1999 advised the ANAO that DoFA had advised DoTRS that, with the change to accrual budgeting, any funds collected through the Stevedoring Levy in 1998–99 but unspent as of 30 June 1999 would not be able to be carried over to 1999–2000. Noting that the Minister’s Office had received the claim from the Western Australian Government on 8 June 1999; after discussion with the Minister’s Office, the official advised that the Department decided that the payment to the Western Australian Government should accompany the letter of reply by the Minister. Given the pressure of competing workload commitments, it was decided that the formal advice to the Minister and the associated draft reply to the Western Australian Government could be deferred until early in July 1999. The Department sent the advice to the Minister on 6 July and the cheque, together with the letter from the Minister, was forwarded to the Western Australian Government on 7 July 1999.

4.34 On 17 September 1999, the Western Australian Minister wrote to the Commonwealth Minister asking for a further advance under the loan to fund redundancies estimated to cost \$1.3 million to be offered to stevedoring employees at Bunbury. That request was met in November 1999 after its approval by the Minister on 15 November 1999.

Requirements under the Loan Agreement

4.35 Under the agreement reached with the Commonwealth, the Western Australian Government agreed to supply the Commonwealth Minister with the following one month before the funding was made available for each of the three ports:

- audited statements for qualifying redundancies;
- documentation explaining how reform and restructuring would go towards meeting the benchmark objectives; and
- the key performance indicators relevant to the scheme for each port, with these indicators incorporating the benchmark objectives and movements in port and stevedoring charges.

4.36 The Western Australian Minister further agreed to provide the Commonwealth, before September 30 following each of the financial years 1999–2000 to 2004–2005, with an audited statement of receipts and expenditure of the funding provided under the Agreement, and a report of outcomes of performance by the ports in terms of the key performance indicators.

4.37 An examination of the Departmental files and records by the ANAO found that for the ports at Wyndham and Geraldton, for which funding was requested by the Western Australian Government on 8 June 1999:

- an audit certificate for qualifying redundancies was provided for Geraldton on 12 July, five days after the funds were advanced. At the time of the audit fieldwork, no audit certificate had been provided for Wyndham;
- for neither port was documentation provided on how the proposed reforms and restructuring were to be directed at each of the ports towards meeting specific benchmark objectives; and
- while, for the port at Wyndham, key performance indicators were supplied which related to the Seven Benchmark Objectives, including movements in port and stevedoring charges, for Geraldton, the indicators outlined were not related to the benchmark objectives nor were they in most cases quantified.

4.38 For the third small port at Bunbury, for which funding was requested on 17 September 1999 and approved by the Minister on 15 November:

- an audit certificate was provided on 5 November 1999, 10 days before the Commonwealth advanced the funds;

- an extensive explanation was provided on the port's proposed reforms and restructuring which were to be directed towards meeting specific benchmark objectives; and
- key performance quantified indicators were supplied which related to the Seven Benchmark Objectives, including movements in port and stevedoring charges.

Conclusion

4.39 From its examination of the implementation by DoTRS of a separate Agreement with the Western Australian Government to fund redundancies in three small ports, the ANAO found that:

- the authorisation of a payment of \$1.6 million had been incorrectly made. Strictly speaking, this was a breach of the legislation; and
- compliance with some of the administrative requirements of the Agreement had not been effectively sought by DoTRS. This meant that, in the case of two of the three ports, DoTRS was not able to assess how the proposed redundancies would contribute to the achievement of the Government's Seven Benchmark Objectives expected from the redundancy payments.

5. Funding the Scheme

Background

Funding sources

5.1 The waterfront redundancy scheme is funded by three major sources:

- drawdowns from MIFCo's Cash Advance Loan Facility, totalling \$180 million¹⁶ as at 15 July 2000—repayment of the Cash Advance Loan facility is guaranteed by the Commonwealth;
- funds collected by the levy imposed under the *Stevedoring Levy (Collection) Act 1998*. As at the 30 June 2000, a total of some \$38.3 million has been collected since the scheme began. Of these funds, \$34.9 million has been transferred from DoTRS to MIFCo to meet the loan repayments. An amount of \$8.3 million was transferred in June 1999 and \$26.6 million in June 2000. In addition, \$2.9 million of the levy collected was transferred to the Western Australian Government to meet the cost of redundancies in three ports in WA as described in Chapter 4, and the balance used to meet some of DoTRS' administrative expenses; and
- funds from the budget comprising:
 - an initial advance to MIFCo of \$2.75 million in 1998 from the Advance to the Minister for Finance and Administration to provide working capital for use by the Company;
 - administrative expenses incurred by the sponsoring departments in supporting the scheme, for example organising levy collections; and
 - \$12.9 million being the early drawdown of the Special Appropriation, *Payments to MIFCo 2000–01*, to enable MIFCo to repay a portion of the Cash Advance Loan Facility in July 2000 and to provide a \$2.5 million buffer for its future loan repayments.

¹⁶ Does not include capitalised interest estimated to total \$16.3 million before offsets, at 15 July 2000.

Audit findings

Budget assistance to MIFCo

5.2 Following the establishment of MIFCo on 8 April 1998, an advance of \$2.75 million by way of working capital was provided to MIFCo, initially from the Advance to the Minister for Finance and Administration, and ultimately from the 1998–99 Appropriation, Department of Workplace Relations and Small Business under: Division 911—Other Services—*Maritime restructuring facilitation scheme*. This was to cover MIFCo's establishment and initial operating costs. In announcing this on 12 May 1998, the Minister for Workplace Relations and Small Business advised that this initiative, along with several others would form *part of the 1998 budget process*¹⁷. Given the Government's intention that the scheme be totally financed 'off-budget', any 'on-budget' assistance to the administration of the scheme should result in the Budget being reimbursed for such costs directly from the Stevedoring Levy collections. MIFCo expended the advance in 1999–00 and has subsequently drawn an additional \$3 million from the Cash Advance Loan Facility to cover its ongoing operating costs. MIFCo estimated that its total administrative costs to 2010 would be approximately \$5.4 million.

5.3 In July 2000, MIFCo made a lump sum payment of \$45.3 million to its Cash Advance Loan Facility. The payment consisted of \$34.9 million from the Stevedoring Levy collections and \$10.4 million from an early draw down of the Special Appropriation, *Payments to MIFCo 2000–01*. This allowed MIFCo to pay off the portion of the Cash Advance Loan Facility that was subject to a floating interest rate. An additional amount of \$2.5 million was also drawn down from the Special Appropriation and provided to MIFCo as a buffer for its loan repayment schedule due to commence on 15 August 2000. DoTRS estimates that the savings in interest costs to MIFCo from this action will be about \$0.694 million.

¹⁷ Press release by Minister for Workplace Relations and Small Business dated 12 May 1998.

Monitoring Financial Performance

5.4 As indicated earlier, the Government intended that the scheme be fully funded by the industry from levy collections. In addition it was intended that revenue and expenses would be matched each year. At the time of the audit, the ANAO found that DoTRS had not been formally monitoring the annual financial position of the waterfront redundancy scheme to ensure that the Government's requirements of the scheme's financial performance were being met. That is, once levy collections commenced in 1998–99, the annual revenues received should have been offset against the scheme's administrative costs and any surplus applied to funding the repayment of the 'off-budget loans'. Had such an approach been adopted, the \$2.75 million advanced to MIFCo in 1997–98 for initial administrative costs, should have been recovered by DoTRS from levy collections in 1998–99. Similarly the total loan of \$2.9 million made available to the Western Australian Government in 1999 from levy collections should have been identified for future recovery by DoTRS as apart of a formal ongoing monitoring process.

5.5 DoTRS has advised that it has been monitoring the scheme's cumulative financial performance and that the \$2.75 million will be recovered during the life of the scheme. DoTRS has also advised that the loan to the Western Australian Government has been identified for repayment as part of DoTRS administered revenue in 2001–02 and forward years. DoTRS explained that priority has been given to meeting MIFCo's needs with other calls being given less priority. Now that MIFCo's needs have been met, DoTRS will be ensuring matching from this year on.

5.6 The ANAO also found that DoTRS has acted consistently to recover the costs incurred by its representative directors on the MIFCo Board and the costs of providing the Company Secretary. However, the ANAO also found that the Department's accounting systems have not yet been able to identify the costs associated with the support to the waterfront redundancy scheme provided by other departmental staff on an ongoing basis. Examples here include the staff engaged in managing the Levy or engaged in accounting for its collection. The cost of providing these services was estimated to be \$350 000 in 1998–99 and \$150 000¹⁸ for each subsequent year the Levy is in place.

¹⁸ DoTRS Portfolio Budget Statements 1998-99 and 1999-00.

5.7 In Audit Report No.32, (1999–2000), *Management of Commonwealth Non-primary Industry Levies*, the ANAO made two recommendations relevant to the administration of the waterfront redundancy scheme. Both recommendations were agreed by DoTRS. They were as follows:

- Recommendation No.2 *entities identify levy collection costs on an accrual basis to the extent consistent with cost-effective data capture, as a means of ensuring efficiency in resource allocation and achieving greater transparency of these costs; and*
- Recommendation No.6 *entities review and develop capabilities within ...(their)...financial management information systems in relation to levies that will provide management with adequate and timely costing information on a full accrual basis for both input and output costs.*

5.8 DoTRS has advised the ANAO that, as an interim measure, it estimates the time committed by its relevant officers to the administration of the Stevedoring Levy. DoTRS further advised that administrative costs incurred since responsibility for the scheme transferred to the Department in 1998, have been recovered from Stevedoring Levy collections.

Conclusion

5.9 The ANAO noted that the Government intended that the scheme be fully funded by the industry from levy collections and that revenue and expenses would be matched each year. At the time of the audit, the ANAO found that DoTRS had not been formally monitoring the annual financial position of the waterfront redundancy scheme to ensure that the Government's requirements of the scheme's financial performance were being met. The \$2.75 million provided to MIFCo from the 1998–99 Budget by the Commonwealth to cover its initial administrative costs has not been repaid to the Commonwealth from Stevedoring Levy proceeds to date. Similarly, the total loan of \$2.9 million made available to the Western Australian Government in 1999 from levy collections should have been identified for future recovery by DoTRS as apart of a formal ongoing monitoring process. The ANAO also notes that the early drawdown of \$12.9 million from the Special Appropriation—*Stevedoring Levy (Collection) Act 1998*—in July 2000, to enable MIFCo to repay part of its Cash Advance Loan Facility, should be offset against Stevedoring Levy proceeds in 2000–01.

5.10 The ANAO concluded that the Government's intention, for the waterfront redundancy scheme to be funded totally 'off-budget', had not been achieved to date. DoTRS advised that it had been giving priority to meeting MIFCo's needs with other calls being given less priority. Now that MIFCo's needs have been met, DoTRS will be ensuring matching from this year on.

Recommendation No.3

5.11 The ANAO *recommends* that DoTRS in working towards the Government's requirement that the scheme be funded totally 'off-budget':

- fully implement previous ANAO recommendations 2 and 6 in ANAO Report No.32 of 1999–2000, which called for levy collecting agencies to identify their levy collection costs by developing their financial accounting systems to enable agency managers to receive regular adequate and timely costing information; and
- ensure the \$2.75 million received by MIFCo from the Advance to the Minister for Finance and Administration to assist MIFCo in meeting its establishment and initial administrative costs is returned to the Budget from the Stevedoring Levy collections.

DoTRS response

5.12 Agreed.

MIFCo's loan management

Audit findings

5.13 The ANAO reviewed the management of the loan facility by MIFCo in respect of minimising interest and other borrowing costs and found the process of loan raising and ongoing interest rate exposure was suitably managed. These are discussed later in this Chapter, as are loan repayment options that are based on actual and projected Stevedoring Levy collection data.

Structure of the loan

5.14 MIFCo was registered as a company 8 April 1998 and on 18 August 1998, it established a Cash Advance Loan Facility of \$155 million. This followed the resolution of matters relating to accessing commercial finance, including the finalisation of the Deed of Agreement between MIFCo and the Commonwealth that provided MIFCo with a Commonwealth Guarantee.

5.15 The *Stevedoring Levy (Collection) Amendment Bill 1999* was introduced into Parliament in June 1999 to increase the expenditure cap under the scheme. On 15 July 1999 the MIFCo Board renegotiated the loan arrangements and replaced the existing \$155 million facility with a \$220 million Cash Advance Loan Facility, of which \$195.3 million was utilised, with the undrawn amount cancelled on 17 July 2000. The interest rate applicable to the new facility was based on a floating rate until mid July 2000.¹⁹

¹⁹ During 1999-2000 the floating rate varied between 5.1933 per cent and 6.4150 per cent.

5.16 In September 1999, the MIFCo Board fixed the interest rate, with effect from 17 July 2000, on \$150 million of the \$220 million facility, at a rate of 7.69 per cent per annum. The Amendment Bill came into effect in November 1999, raising the expenditure cap imposed by the legislation from \$250 million to \$300 million.

5.17 As noted earlier, in July 2000 MIFCo made a lump sum payment of \$45.3 million. This reduced the Cash Advance Loan Facility capital to \$150 million and eliminated the variable interest component. Commencing on 15 August 2000, the Cash Advance Loan Facility will be repaid in monthly instalments of approximately \$1.3 million in 2000–01 rising to \$2.4 million in 2009–10.

5.18 The ANAO found the structure of the Cash Advance Loan Facility has enabled MIFCo to make multiple drawdowns. The ANAO noted that as at 17 July 2000, MIFCo had made 16 drawdowns from the Cash Advance Loan Facility. This approach has allowed MIFCo to draw funds only as required, thereby minimising interest costs.

Interest costs

5.19 The interest costs associated with accessing commercial finance by MIFCo can be reviewed through a comparative analysis to the 10-year Treasury bond rate applicable at the time of fixing the interest rate. In September 1999, when the loan rate was fixed, the 10-Year Treasury bond rate was 6.30 per cent²⁰, while the rate at which the \$150 million of the Cash Advance Loan Facility was fixed, was 7.69 per cent.²¹ That is an additional cost of some 140 basis points over that of ‘on-budget’ loan raising. The interest rate on MIFCo’s Cash Advance Loan Facility was calculated by adding a risk margin to a market reference rate for the pricing of interest rate swap transactions²². In comparison, the Commonwealth generally borrows at interest rates that are below such rates.

²⁰ Reserve Bank of Australia Bulletin January 2000, p. 43.

²¹ *Maritime Industry Finance Company Limited*, Annual Report 1998-99 p. 13.

²² Interest rate swap transactions—involves two parties exchanging their interest payment obligations, usually involving a ‘swapping’ of fixed interest rates for floating/variable interest rates.

5.20 In raising the loan and in ongoing management of the Cash Advance Loan Facility, the MIFCo Board sought independent professional financial advice. That advice indicated, that, the higher interest rate payable by MIFCo compared to standard Commonwealth guaranteed issuance was attributable to the structure of the transaction, the credit rating of the lending institutions and the volume of transactions in the bank market at that time as opposed to the bond market. The advice indicated the interest rate and other fees were reasonable given the structure of the loan.

Establishment costs

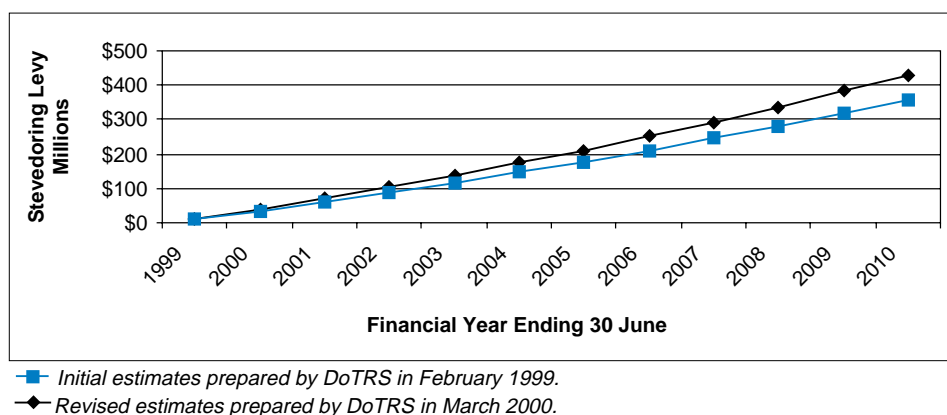
5.21 MIFCo incurred a number of costs as a result of the use of 'off-budget' commercial finance. These costs included a loan establishment fee of \$150 000, an arranger's fee of up to \$25 000 and legal and financial advice expenses incurred by MIFCo. MIFCo was also responsible for meeting the legal and financial services costs incurred by the Banking Syndicate.

Loan repayment

5.22 As noted earlier, the MIFCo Board has recently made significant decisions regarding future finance arrangements and made a lump sum payment of \$45.3 million. The MIFCo Board's ability to review its loan term options and assess its long term financing strategy is directly linked to its ability to access timely and accurate estimates of Stevedoring Levy revenue. The MIFCo Board is entitled to look to DoTRS for this information. The ANAO recognises that Stevedoring Levy collection information is periodically provided to the MIFCo Company Secretary. However, DoTRS should be formally providing the MIFCo Board with timely and accurate information on Stevedoring Levy receipts and estimates based on historical industry trends and current payment data. The provision of formal estimates would enhance the transparency of MIFCo decision making and provide a clear management trail. The estimates should be further supported by sensitivity analysis of the possible variability of the Stevedoring Levy collections, having regard to changing patterns in both world and domestic shipping trends. The ANAO considers this would be cost-effective given the ready availability of the data.

5.23 The ANAO found the original Stevedoring Levy collection estimates prepared in February 1999 by DoTRS were understated. Subsequent revisions to the estimates have been developed by DoTRS and these have been principally based on levy payment trends experienced since the imposition of the Stevedoring Levy in February 1999. The original and revised DoTRS estimates prepared in March 2000 are presented in Figure 1. The ANAO notes similar estimates were prepared by DoTRS in December 1999.

Figure 1
DoTRS Stevedoring Levy estimates

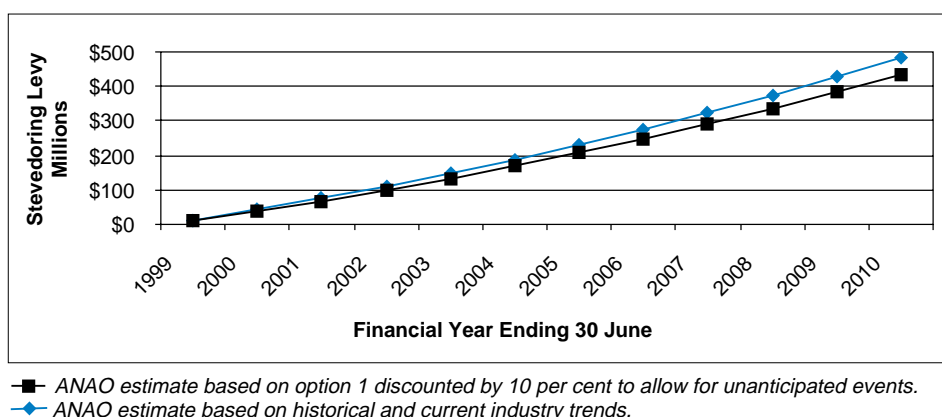


Source: DoTRS

5.24 The ANAO undertook an industry analysis and prepared its own Stevedoring Levy estimates based on both historical data over the last decade and recent levy payment data. Two alternative ANAO estimates are presented in Figure 2. Based on this analysis, the ANAO concluded that the total Stevedoring Levy collections will have reached the legislative expenditure cap of \$300 million before or during, 2006–07. The MIFCo Board should therefore be able to discharge the Cash Advance Loan Facility at that time. To test its analysis, the ANAO completed a sensitivity analysis based on differing levels of growth and baseline data and found that it supported its estimate that recovery of total costs should occur by 2006–07. The ANAO notes that the estimates prepared by DoTRS in December 1999, and the later revision prepared in March 2000, point to a similar conclusion.²³

²³ It should be noted that this analysis is based on an assumption that expenditure under the scheme will reach the expenditure cap of \$300 million. The current estimated level of expenditure, including interest on borrowings, is \$290 million. This does not impact on the estimated date of the loan repayment, that is, in 2006–2007.

Figure 2
ANAO Stevedoring Levy estimates



Source: ANAO analysis

Savings from early repayment

5.25 The ANAO found an earlier full repayment of the Cash Advance Loan Facility by MIFCo would result in substantial savings, lowering total scheme costs to below the \$300 million cap and reduce the amount to be recovered through the Stevedoring Levy. The ANAO notes that the Loan Agreement incorporates flexibility to allow for early repayment of the loan. There will be either a possible break benefit²⁴ or a break cost²⁵, depending upon the market interest rate applicable at that time. Based on a 10-year repayment schedule prepared on MIFCo's behalf, early repayment of the loan could potentially result in an interest saving of approximately \$8.6 million. This represents the interest payable on the loan between July 2007 and June 2010 should the loan run its full term. The ANAO found that MIFCo is continually reviewing its loan repayment options. DoTRS advised that the MIFCo Company Secretary was kept informed of the changes in revenue. However, as indicated earlier, the ANAO considers formal advice should be prepared and submitted to the Board on a regular basis to enhance the transparency of MIFCo's decision making and provide a clear management trail.

²⁴ A break benefit would occur in a time of rising interest rates with the banks able to re-lend at a higher rate.

²⁵ A break cost would occur in a time of falling interest rates with the banks re-lending at a lower rate.

5.26 Early repayment of the Cash Advance Loan Facility will result in various direct and indirect benefits to the Commonwealth and the stevedoring industry including:

- the ability to wind up MIFCo earlier than planned and the associated savings in administrative expenses for MIFCo and DoTRS, on average approximately \$227 000 and \$150 000 per year respectively; and
- the early cessation of the collection of the Stevedoring Levy, leading to reduced direct outlays and compliance costs for industry.

5.27 Alternatively given that the monthly Stevedoring Levy collections are expected to exceed MIFCo's fixed loan repayments, MIFCo could consider developing a short to medium term investment strategy for surplus Stevedoring Levy collection proceeds. Under such a strategy, the excess funds received by MIFCo could be invested on a short to medium term basis and later used to assist MIFCo in an earlier repayment of the Cash Advance Loan Facility. Such decisions are matters for the MIFCo Board.

Conclusion

5.28 Accessing commercial finance 'off-budget', as required by the Government to ensure an adequate separation between the Commonwealth and the employees of the stevedoring companies, incurred additional costs including an interest rate margin of some 140 basis points over that of 'on-budget' loan raising. In addition, loan establishment fees, legal fees and financial advisers' fees were also incurred for both MIFCo and the Banking Syndicate.

5.29 The ANAO found MIFCo had properly managed the process of loan raising, and interest rate risk exposure and had drawdown funds only as required. MIFCo's ability to manage its exposure to the risk that loan costs might escalate through an extension of the loan term, is linked to the provision by DoTRS of timely, comprehensive and accurate data on actual Stevedoring Levy collections and estimates for future Levy collections. Estimates prepared by the ANAO, based on long term container and vehicle movements, indicate that the \$300 million estimated cost of the scheme could be repaid by 2006–07, or earlier. That is, repayment could be made before 2008–2009 as originally estimated by DoTRS in 1999, or 2010 as expected at the time the legislation was introduced into the Parliament. The Cash Advance Loan Facility Agreement entered into with the Banking Syndicate in 1998 called for the loan to be repaid by 2010. The earlier repayment of the Cash Advance Loan Facility would result in substantial savings to the industry through a lowering of total scheme costs. The ANAO notes, that DoTRS had revised its estimates in late 1999 and early 2000, and determined that there was a possibility that the scheme could be wound up by 2006–07.

Recommendation No.4

5.30 The ANAO *recommends* that in relation to the management of the loan facility:

- DoTRS provide regular formal reports to the MIFCo Board regarding Stevedoring Levy collections, including for example, details of payments received for the previous period, cumulative and year to date information compared with revised Stevedoring Levy estimates based on historical and anticipated future industry trends and current Stevedoring Levy payment data. This should enhance the transparency of MIFCo's decision making and provide a clear management trail.

DoTRS response

5.31 Agreed.



Canberra ACT
4 December 2000

P. J. Barrett
Auditor-General

Appendices

Appendix 1

Management of the redundancy payment process

Review/audit control process

The accountants contracted by MIFCo to review the proposed redundancy payment calculations, undertook a detailed review/audit of the calculations provided by the stevedoring companies. Their audit program involved:

- checking of formulae used in the calculation of redundancy payments and reconciliation of the formulae to the Agreed Principles of payment outlined in the Deeds of Agreement between MIFCo and the stevedoring companies;
- the review of all payment calculations to check for consistency;
- checking of payroll data records to the calculation spreadsheets and verification to other stevedoring company records as required;
- verification of selected employee details to print-outs from the stevedoring companies payroll systems;
- resolution of disputed claims through liaison with the stevedoring companies or their representative and verification of employee data to independent records where required;
- provision of a certificate to the Directors of MIFCo setting out the names of each redundant employee, the amount of the redundancy payment and details of any disputes which had arisen during the audit process; and
- update of the redundancy calculations for leave accrued or taken during the review period prior to payment being made to redundant employee.

Payment of redundancies

The controls established by MIFCo to support the disbursement process included:

- a partner from the accountants representing MIFCo together with representatives from the stevedoring companies and the two unions involved supervised payment of redundancies;
- the redundant employee was required to provide photographic identification, confirmation of address details and sign the Deed of Release in favour of MIFCo and the Commonwealth;

- on compliance with these requirements, the MIFCo representative then checked the amount of the redundancy payment recorded in the Deed of Release with the audited spreadsheet; and
- if the details matched, the MIFCo representative then signed the Deed, thus giving the stevedoring company approval to make payment to the redundant employee. MIFCo's representative was provided with this authority under a power of attorney.

Appendix 2

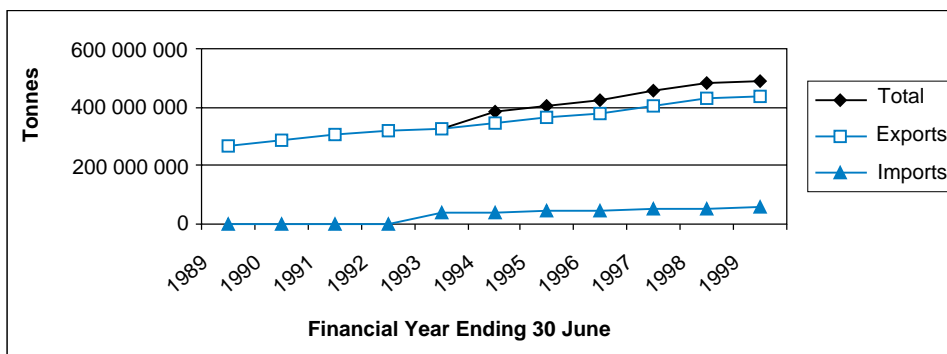
Historical trends in freight movement in Australia

In developing the revised Stevedoring Levy estimates, the ANAO considered the following issues:

- Historical freight movement in Australia, Figures 1 and 2, show both weight and number of containers and demonstrates a sustained pattern of growth. Over the period 1992–93 to 1997–98, the average annual growth in the handling of containers was approximately seven per cent.
- Increasing trend in the use of 40-foot containers, Figure 3, shows that for the five major Australian ports, between December 1998 and September 1999, 40-foot containers accounted for approximately 28 per cent of all containers handled, with the proportion likely to increase over time.
- Coastal freight movement in Australian for four of the five major Australian ports, Figure 4, shows coastal freight movement growing at a rate proportional to the overall growth in the handling of containers. For the ports reviewed, on average, the handling of coastal containers represented 10.5 per cent of containers handled each year, between 1996–97 and 1998–99.
- Import and export of motor vehicles by Australia between 1988–89 and 1998–99, Figure 5, shows the import and export of motor vehicles has fluctuated over this period. However, since 1996–97 substantial growth has been experienced. In the calculation of its own revised estimates, the ANAO used the average number of motor vehicles imported and exported between 1993–94 and 1997–98.

Figure 1

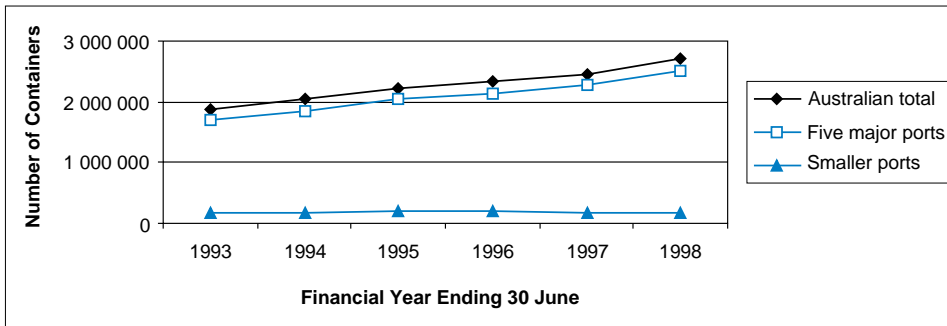
Total imports and exports by weight 1988–89 to 1998–99



Source: Australian Bureau of Statistics

Figure 2

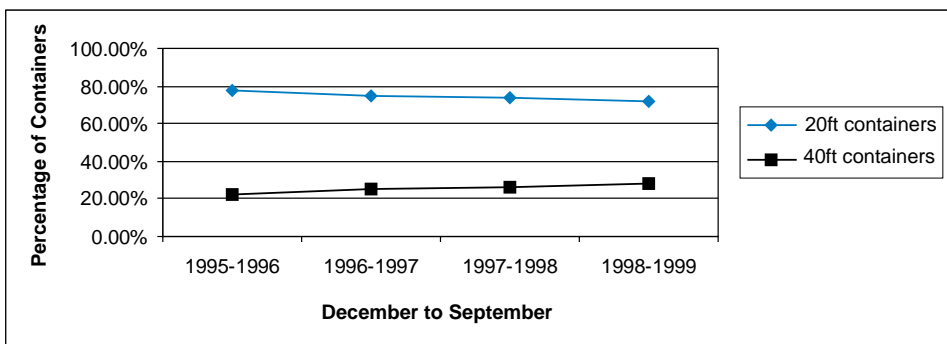
Handling of containers by Australian ports 1992–93 to 1997–98



Source: Shipping Statistics Yearbook 1998—Institute of Shipping Economics and Logistics
Adelaide 1997–98 Waterline
Hobart 1997–98 Hobart Ports Corporation

Figure 3

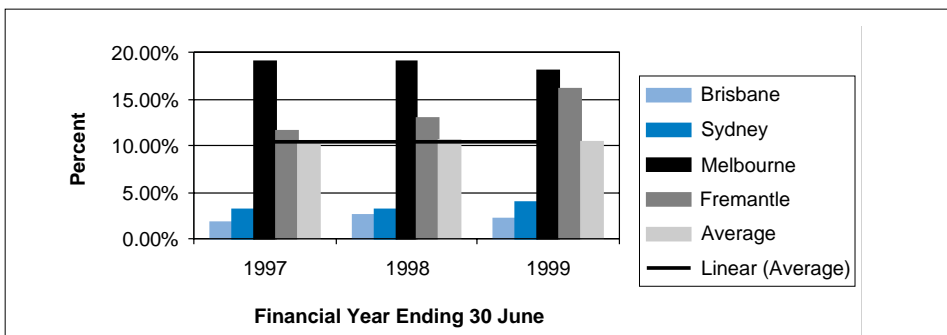
Handling of 20ft and 40ft containers by the 5 major Australian ports



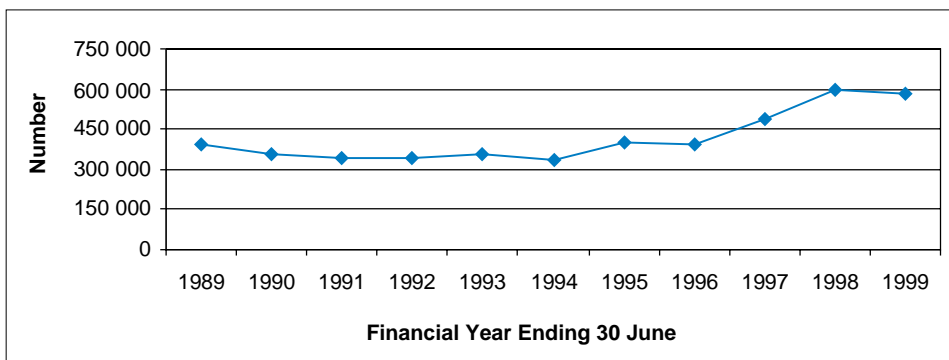
Source: Bureau of Transport Economics

Figure 4

Handling of coastal containers 1996–97 to 1998–99



Source: Bureau of Transport Economics and Port Authorities

Figure 5**Import and export of motor vehicles 1988–89 to 1998–99**

Source: Australian Bureau of Statistics

Definition of Motor Vehicles:

8702 Motor vehicles used for the transport of 10 or more persons, including the driver;

8703 Motor cars and other motor vehicles principally designed for the transport of persons (other than public transport type), including station wagons and racing cars; and

8704 Motor vehicles for the transport of goods.

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