



# **PUBLIC ACCOUNTS COMMITTEE**

## **DELEGATION BY THE MINISTER FOR HEALTH**



**Report No. 135**

**October 2002**

**[No. 17/52]**

This report was compiled using *Word 97*  
and printed by the Parliamentary Printing Services.

This report will also be available on the Internet via:

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### **New South Wales Parliamentary Library cataloguing-in-publication data:**

#### **New South Wales. Parliament. Public Accounts Committee**

Delegation by the Minister for Health / Public Accounts Committee. [Sydney, N.S.W.] : The Committee, 2002. –25p. ; 30 cm. (Report no. 135 / Public Accounts Committee) ([Parliamentary paper] ; no.17/52)

At head of title: Parliament, NSW.

Chair: Joseph Tripodi.

ISBN 0734766165

1. New South Wales. Minister for Health.
2. Medical care-New South Wales.
- I. Tripodi, Joseph.
- II. Title
- III. Series: New South Wales. Parliament. Public Accounts Committee ; no. 135
- IV. Series: Parliamentary paper (New South Wales. Parliament) ; no.52.17

DDC 362.1



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## Charter of the Committee

The Public Accounts Committee has responsibilities under the *Public Finance and Audit Act 1983* to inquire into and report on activities of government that are reported in the State's Public Accounts and the accounts of the State's authorities.<sup>1</sup> The Committee, which was established in 1902, scrutinises the actions of the Executive Branch of Government on behalf of the Legislative Assembly.

The Committee recommends improvements to the efficiency and effectiveness of government activities. The sources of inquiries are the Auditor-General's reports to Parliament, referrals from Ministers and references initiated by the Committee. Evidence is primarily gathered through public hearings and submissions. As the Committee is an extension of the Legislative Assembly, its proceedings and reports are subject to Parliamentary privilege.

## Members of the Committee

The Committee comprises members of the Legislative Assembly and assumes a bi-partisan approach in carrying out its duties.

**Chairman:** Joseph Tripodi MP, Member for Fairfield

**Vice-Chairman:** Pam Allan MP, Member for Wentworthville

**Members:** Ian Glachan MP, Member for Albury

Katrina Hodgkinson MP, Member for Burrinjuck

Richard Torbay MP, Member for Northern Tablelands

Barry Collier MP, Member for Miranda

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<sup>1</sup> See Part 4 of the Act – The Public Accounts Committee.



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## Committee Secretariat

Secretariat members involved in the Inquiry were:

Committee Manager:	David Monk
Project Officer:	Vicki Buchbach
Committee Officer:	Jacqui Isles
Assistant Committee Officer:	Mohini Mehta
Advisor to the Committee	John Viljoen

## To contact the Committee:

Public Accounts Committee	Telephone (02) 9230 2631
Parliament House	Facsimile (02) 9230 2831
Macquarie Street	E-mail <a href="mailto:pac@parliament.nsw.gov.au">pac@parliament.nsw.gov.au</a>
Sydney NSW 2000	



## Chairman's Foreword

The Auditor-General reports to Parliament each year on the results of audits of the accounts of Authorities of the State and the State's public accounts.

The matter of the Minister delegating the power to allocate funds to public health organisations was raised in the *Auditor-General's Report to Parliament 2001 – Volume 7*.

The Committee wished to be informed about the appropriateness of this delegation, whether it posed any risks to the Government, complied with best practice and was consistent with relevant legislation.

Initially, the Committee expected this inquiry would be straight forward and revolve around the issue of whether the delegation should stay. However, it became clear that the delegation had been revoked at the time of the Auditor-General's report. The Committee's attention, therefore, turned to how this misreporting occurred, which included examining the reporting practices of the Audit Office and communication between the Department of Health and the Audit Office.

The Committee sought and considered the views of the relevant authorities and has provided three recommendations. These include an amendment to the *Health Services Act 1997* to preclude a similar delegation in the future, improved communication between the Audit Office and the Department of Health and better reporting by the Audit Office.

The Committee heard evidence from representatives of the Audit Office and the Department of Health on 26 June 2002.

The Committee thanks the representatives of the agencies for their co-operation and expert input.

Joseph Tripodi MP  
Chairman



## Executive Summary

### The Issue

In his *Report to Parliament 2001 – Volume 7*, the Auditor-General expressed concern that the Minister of Health had delegated his power under section 127 of the *Health Services Act 1997 (HSA)*. The Minister is required to approve the allocation of funds to public health organisations, after considering the recommendations of the Director-General of Health. The delegation was made to the Director-General of Health and certain more junior officers in the Department.

### The Inquiry

The inquiry sought to determine whether this delegation posed any risks to the Government; complied with best practice; and was consistent with the intention of section 127 of the *HSA*.

### Findings and Recommendations

#### *The Facts*

The Committee understands the facts surrounding this issue are as follows:

In September 1998 the Minister delegated his powers under s. 127 of the *HSA* to the Director-General of Health, Deputy Director-General Operations, and the General Manager Finance and Commercial Services.

The Audit Office identified this matter as an issue of concern the year after the delegation was made (ie during the 1999-2000 audit). Its concerns included the appropriateness of the delegation from an accountability and governance perspective and its legality.

In February 2001, the Crown Solicitor advised that whilst the delegation to the Director-General was legally invalid, the delegations to the other officers were valid. This advice was based on s. 21 of the *Health Administration Act 1982 (HAA)*, which gives the Minister a wide power of delegation.

In July 2001, the Minister revoked the delegation to all departmental officers. There is no evidence the Department ever advised the Audit Office of this revocation and so the Audit Office continued to believe the delegation existed.

Having provided clear notice of its concerns with the delegation and of its intention to publish them in its report to Parliament, the Audit Office did so in December 2001. Although it had the opportunity to physically verify whether the delegation still existed, the Audit Office relied rather on the report clearance process with the Department. As a result it remained unaware of the delegation's revocation until this inquiry commenced in June 2002.



## **Risks**

According to the evidence presented to the Committee, the delegated officers never used the delegation. However, it is clear the delegation had the potential to create certain risks and conflicts in the decision making process, if exercised. These included:

*1. Delegation of an important decision-making power.*

If the power had been exercised by delegated officers, the Director-General and more junior officers would have been responsible for allocating significant sums of money to public health organisations (approximately \$6 billion annually). Further, the Audit Office considered ministerial involvement, as required by s. 127 (although modified by the Parliament through the *HAA*), improved the efficiency and effectiveness of the allocation process.

*2. Inappropriate division of duties for officers junior to the Director-General to be given the power to determine funding allocations.*

The delegation was never used by junior officers, but the potential for its use existed. Delegated officers, junior to the Director-General, may have found it difficult to critically apply independent judgement to the Director-General's recommendations because of the nature of their relationship.

*3. The legislation does not specifically exclude delegation of s. 127(3) powers.*

Because the Minister's power in s.127(3) is predicated expressly upon considering a recommendation by the Director-General, it appears the *HSA* is attempting to establish a governance and accountability framework for the distribution of health funds. The effects of the general delegation power under the *HAA* (although necessary for the majority of the Department's operations) may not be consistent with this objective.

The legislation outlines a process where the Minister's independent mind can be brought to bear upon the recommendations made by the Director-General, but does not specifically preclude the Minister from delegating this responsibility. In the Auditor-General's opinion, it is inappropriate for a delegation of these powers, from an accountability and general governance perspective, because of the size of the sums of money involved.

Amending the *HSA* to specifically preclude delegation of s.127(3) powers would address the Audit Office's accountability and governance concerns about such a delegation.





### **Recommendation 1**

The *HSA* should be amended to specifically exclude the delegation of s. 127(3) powers. Because this amendment would only be a clarification, it would be most efficiently achieved under a Statute Law (Miscellaneous Provisions) Act.

#### ***Audit Office Reporting***

The “Significant Items” section of the *Auditor-General’s Report to Parliament 2001* states that recommendations made by the Director-General were being approved by less senior officers in the Department, acting under the Minister’s delegation.

The Committee finds that because the Audit Office failed to properly inform itself before reporting this matter, its reporting of the delegation issue to Parliament was factually wrong. Its report stated the delegation was being used, whilst the evidence indicates it was never used.

The Committee believes that, while a potential risk existed, it was unlikely to be significant and mention in the body of the report would have been sufficient.

### **Recommendation 2**

The Audit Office should review its quality control processes to ensure issues are reported accurately and their significance is more appropriately assessed.

#### ***Audit Report Clearance***

The Audit Office provided various reports detailing its concerns about the delegation, which it believed still existed, to the Department, the Minister and the Parliament. These included its Client Service Report (CSR); its Statutory Audit Report, with a copy of the CSR attached; its management letter; and the *Auditor-General’s Report to Parliament 2001*. Drafts of all reports were discussed with departmental officers prior to their issue.

These events indicate the Audit Office fulfilled its responsibilities in bringing the issue to the attention of all interested parties, but there is no evidence the department advised the Audit Office that, by revoking the delegation in July 2001, the issue had been addressed.

Communication between the Audit Office and the Department of Health, both formal and informal, was not effective in ensuring all parties knew the facts prior to the issue of the report to Parliament.



**Recommendation 3**

The Audit Office and Department of Health should look at measures to improve communication between the two organisations. These measures might include:

- improving the quality of the Department's responses to management letters;
- more frequent and regular meetings during the audit period, ensuring appropriate levels of management in both organisations attend, so that issues raised can be effectively dealt with; and
- a review of the effectiveness of audit committee meetings in promoting communication between the Audit Office and the Department.



## Chapter One

### Introduction

#### ***Terms of reference***

The Public Accounts Committee resolved to inquire into the matter of the Minister of Health delegating his powers under section 127 of the *Health Services Act 1997* (HSA) to certain officers within the Department of Health. This matter was raised in the *Auditor General's Report to Parliament 2001 – Volume 7*.

The Minister delegated his power, to approve the allocation of funds and determine the conditions for the payment of any subsidy to public health organisations, after considering the recommendations of the Director-General of Health, to the Director-General of Health and certain officers in that Department.

The inquiry sought to determine whether this delegation:

- posed any risks to the Government;
- complied with best practice; and
- was consistent with the intention of section 127 of the HSA.

#### ***The facts***

The Committee sought to clarify the history and nature of this issue. Its understanding of the facts is as follows:

Section 127 of the HSA 1997 gives the Minister the power to determine what amount (if any) is to be paid to each public health organisation, including area health services, out of money appropriated from the Consolidated Fund. This power may only be exercised “after considering any recommendation made under s.122(e) for the purpose”. That recommendation is one by the Director-General as to “what sums of money (if any) should be paid from money appropriated from the Consolidated Fund in any financial year to any public health organisation”.

On 28 September 1998 the Minister for Health delegated the exercise or performance of these powers, authorities, duties and functions to the Director-General, Deputy Director-General Operations, and the General Manager Finance and Commercial Services. This delegation was numbered F52.

It should be understood the Department has hundreds of individual delegations operational at any one time. The scale of the Department's financial operations is so large it would not be possible for it to function without making these delegations. The Department's delegations manual can be accessed at [www.health.nsw.gov.au](http://www.health.nsw.gov.au).

In December 1999 various amendments were made to the HSA which effectively



split the various funding determinations/provisions into four different categories:

- S 127(3) - the initial determination of funding allocations;
- S 127(3)(a) - variations to funding;
- S 127A - deferral of payment; and
- S 127B - provision of loans.

These amendments were effective from 14 January 2000, but did not change the requirement for the Minister to consider the recommendations of the Director-General before making his funding determinations.

The Audit Office did not identify this issue in the year the delegation was made (ie during the 1998-99 audit), but did so in the following year, during the 1999-2000 audit.

The Audit Office had concerns about:

- the appropriateness of the delegation (from an accountability and governance perspective); and
- its legality;

and sought advice from the Crown Solicitor with regard to the latter. The Crown Solicitor advised on 29 November 2000 that, in his view, the delegation was not valid.

On 21 December 2000, having received the Crown Solicitor's advice, the Director-General wrote to the Crown Solicitor and the Audit Office drawing their attention to s. 21 of the *Health Administration Act 1982 (HAA)*. This Act provides a broad delegation power that allows the Minister and the Director-General to delegate any of their functions under any Act to "any person".

#### s. 21 Delegation

(1) The Minister, Director-General or Corporation may, by instrument in writing, under seal (in the case of the Corporation), delegate such of their functions (other than this power of delegation) conferred or imposed by or under this or any other Act as are specified in the instrument to any person, and may, by such an instrument, revoke wholly or in part any such delegation.<sup>2</sup>

In February 2001, the Crown Solicitor provided an amended advice incorporating s. 21 of the *HAA*. His revised opinion was the delegation to the Director-General remained legally invalid, but the delegations to the Deputy Director-General Operations and the General Manager Finance and Commercial Services were valid.

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<sup>2</sup> *Health Administration Act 1982*



He came to this conclusion because any decision made under s 127(3) of the *HSA* requires the consideration of the Director-General's recommendation under s. 122(e). Therefore, the Legislature could not have intended for a delegation to the Director-General because he would then be required to consider his own recommendation.

The delegation issue was not included in the *Auditor-General's Report to Parliament 2000* or other reports to the Minister and the Department for that year, because the advice sought from the Crown Solicitor was still outstanding when those reports were compiled and tabled during 2000.

On 23 April 2001 the Director-General advised the Audit Office in writing, that the delegation would be changed by:

- revoking the delegation to the Director-General, but
- retaining the delegation to the Deputy Director-General Operations and the General Manager Finance and Commercial Services.

The Committee has been informally advised that on 1 May 2001 the Audit Office wrote to the Director-General querying the impact of any delegation made by the Director-General under s. 122(e) of the *HSA* to officers junior to him.

On 24 July 2001, the Minister revoked delegation F52 completely. This effectively terminated the delegation to all departmental officers for the initial determination of funding allocations.

The Audit Office provided clear notice of its concerns with the delegation and its intention to publish those concerns in its report to Parliament. It did so through a Client Service Report, Statutory Audit Report, management letter and a draft copy of the report to Parliament. All these documents were provided between September and November 2001 to the Department.

There is no evidence the Department ever advised the Audit Office the delegation was no longer an issue because it had been revoked on 24 July 2001.

In December 2001, the Audit Office published its concerns with the delegation. Although it had the opportunity to physically verify whether the delegation still existed, the Audit Office relied rather on the report clearance process with the Department. As a result it was unaware of the delegation's revocation until this inquiry commenced in June 2002.



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## SCHEDULE OF EVENTS

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Date	Event
28 September 1998	Minister delegates power to officers in Department of Health – delegation F52.
1998-99 Audit	Audit Office (AO) does not identify or report the delegation as an issue.
3 December 1999	<i>HSA</i> amended effective 14 January 2000, but changes do not affect the delegation.
1999-2000 Audit	AO identifies the delegation as an issue.
10 November 2000	AO seeks advice from Crown Solicitor (Crown Sol) as to the legality of the delegation.
29 November 2000	Crown Sol advises AO that the delegation is invalid.
21 December 2000	Director-General of Health (DG) seeks amended advice from Crown Sol citing s. 21 <i>HAA 1982</i> .
November/December 2000	Issue not included in any AO reports as advice from Crown Sol still outstanding.
February 2001	Crown Sol provides amended advice – finding only the delegation to the DG is invalid.
23 April 2001	DG advises AO that the delegation to the DG is to be revoked, but not that to junior officers.
1 May 2001	AO queries the impact of the DG making any delegation to the officers junior to him under s. 122(e).
24 July 2001	Delegation F52 is revoked in its entirety.
19 September 2001	Independent Audit Report signed. Statutory Audit Report issued to Treasurer, Minister and DG with Client Service Report attached, which details the delegation issue.
5 November 2001	AO issues management letter detailing delegation issue after discussions with management.
December 2001	Auditor-General tables Report to Parliament detailing the delegation issue after discussions with management.

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## Chapter Two

### The Delegation

#### Risks

The delegation in question was revoked on July 24, 2001 and, according to the evidence presented to the Committee, was never used by the delegated officers:

**Ms HODGKINSON:** Do you know if delegation F52 was ever used in relation to the initial determination of subsidies to the Area Health Services?

**Ms SPRIGGINS:** For the past two years we were advised by the department in response to management letters that it had not been used. That it had not been used does not mean that it could not be used and I believed the control risk still existed.<sup>3</sup>

And:

**CHAIR:** You are familiar with the issues of what Auditor Generals look into when they are looking into an audit... What do you think is meant by the word that the delegation was not "appropriate"? What do you think he meant by that? Obviously there were discussions about it.

**Mr BARKER:** I think they were taking a view that their fear was actually happening, and their fear was that the Director General was making recommendations, as they put it, to less junior officers to approve. The reality is that it does not happen that way and has never happened that way over 17 years.<sup>4</sup>

It is clear the delegation had the potential of creating certain risks as well as conflicts in the decision making process, if exercised.

**Mr GLACHAN:** Could I ask you, some of this I am finding difficult to follow, there was a provision for this delegation which you did not use, the department did not use, but the provision was there and the Auditor General highlighted the availability of this provision, which was that a junior officer had to make a decision about a recommendation from a senior officer.

**Mr BARKER:** Yes.

**Mr GLACHAN:** You have changed that. Did you change it so you could not be pinned on a technicality by the Auditor General in the future or did you change it because you thought it was inappropriate that that possibility might exist?

**Mr BARKER:** I have already said, so it was not raised again so clearly it was to stop the pinning and to stop inappropriate use in the future if the players change.

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<sup>3</sup> Ms Spriggins – Director of Audit, Audit Office of NSW. Transcript of hearing, 26 June 2002, p2

<sup>4</sup> Mr Barker – Acting Deputy Director-General, Department of Health. Transcript of hearing, 26 June 2002, p5



**Mr GLACHAN:** Did you think it was inappropriate, even though it was never used?

**Mr BARKER:** As it had never been used, as I said, it comes to a professional issue. I have other requirements delegated under the Public Finance and Audit Act to make sure payments of money and all those sort of things, and you have to be able to say to people above you at times that is not appropriate, you cannot use public moneys in that forum. I guess I have a little bit of a reputation around Health for doing that, but that is part of my job. That is not saying that someone who is in my job somewhere in the future might not have that approach.

**Mr GLACHAN:** There is a possibility?

**Mr BARKER:** In any area where you are dealing with moneys, there is going to be the chance that there is some officer or employee will try to subvert best practice or good governance issues.

**Mr GLACHAN:** You have taken steps to make sure that cannot happen?

**Mr BARKER:** Yes.

**CHAIR:** Were they initiated by yourself or the Director General or did the Minister instruct you?

**Mr BARKER:** No, it was done within the department.<sup>5</sup>

The potential risks included:

*1. Delegation of an important decision-making power.*

If the power had been exercised by delegated officers, the Director-General and more junior departmental officers would have been allocating significant sums of money to the various public health organisations (approximately \$6 billion annually).

**CHAIR:** ...In reporting the delegation by the Minister of Health of his powers under section 127 of the Health Services Act 1997 as a key issue, what were your concerns or the risks you perceived this delegation posed to Government or the department?

**Mr SENDT:** The concerns were that, firstly, the decisions as to payments to the Area Health Services represented a very large sum of money. We were concerned that the delegations initially perhaps were unlawful, but on subsequent advice by the Crown Solicitor were lawful in respect of positions in the Department of Health other than the Director General. Our concern was that it was not good practice to delegate a Minister's decision-making power of such importance to an officer more junior than the officer who was required to make a recommendation to the Minister on the specific issue. I suppose it fits within our general area of interest in governance arrangements as part of public accountability.<sup>6</sup>

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<sup>5</sup> Transcript of hearing, 26 June 2002, p10

<sup>6</sup> Mr Sendt – Auditor-General of NSW. Transcript of hearing, 26 June 2002, p1





Further, the Audit Office considered the ministerial involvement as required by s. 127 (although modified by the Parliament through the *HAA*) improved the efficiency and effectiveness of the allocation process.

**CHAIR:** What are the financial risks?

**Mr SENDT:** The financial risks are that resources may not be directed to the areas with the most need, whether defined politically, medically or otherwise.

**CHAIR:** That is not a financial risk?

**Mr SENDT:** It is a financial risk if resources are not devoted in the most appropriate way.

**CHAIR:** Why is that money placed at risk because of this delegation?

**Mr SENDT:** I think, Mr Chairman, you are interpreting risk in a narrow sense in terms of loss through fraud or embezzlement perhaps.

**CHAIR:** No. What controls do not exist? It is all about risk management. What controls have been lost? What financial risks arise because of a delegation of power?

**Mr SENDT:** Precisely what I have said, that moneys may not be applied in the most efficient and effective way.<sup>7</sup>

2. *Inappropriate division of duties for officers junior to the Director-General to be given the power to determine funding allocations.*

If officers junior to the Director-General had been required to exercise the power delegated to them, they may have found it difficult to critically apply independent judgement to the Director-General's recommendations because of the nature of their relationship.

**CHAIR:** On that, in relation to good governance, it is about controlling and managing financial risks. What are the financial risks you are concerned about?

**Mr SENDT:** The risk, I suppose, is that a more junior officer of the department may not feel that he or she is in a position to rebut the recommendation of their Director General, even if they perhaps had concerns about the appropriateness of those recommendations, and hence the best decision as to allocation of resources may not be made.<sup>8</sup>

Even though the delegation was never used by the delegated officers and has subsequently been revoked to the satisfaction of the Audit Office -

**Mr GLACHAN:** ...do you believe that current arrangements now comply with the legislation, allow for the effective division of duties between the recommendation process and the approval process and do they satisfy your concerns?

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<sup>7</sup> Transcript of hearing, 26 June 2002, p1

<sup>8</sup> Transcript of hearing, 26 June 2002, p1



**Ms SPRIGGINS:** Yes, they do satisfy my concerns and, yes, I do believe that there is now appropriate segregation of duties.<sup>9</sup>

- the potential for its use existed whilst it was in place:

**Mr SENDT:** I get back to the issue that while the delegation may never have been used, it did exist for some period of time and I must ask: Why did it exist if it was never the intention that it be used, or there was never the opportunity or the possibility that it might be used envisaged? I presume delegations are reviewed from time to time and if a delegation had not been used for a decade or more, why was it not removed?<sup>10</sup>

3. *The legislation does not specifically exclude delegation of s. 127(3) powers.*

It is possible a similar delegation may be made in the future, as the legislation does not specifically preclude the delegation of s. 127(3) powers.

In the Crown Solicitor's opinion, which is supported by this Committee,

...it would be illogical for a power to be intended to be given to a person who is also required to make a recommendation upon the making of which the exercise of the power is predicated.

In his opinion it also

...seems undesirable that the decision maker could be a departmental officer junior to the person making the recommendation.<sup>11</sup>

Because the Minister's power in s.127(3) is predicated expressly upon considering a recommendation by the Director-General, it appears the *HSA* is attempting to establish a decision-making framework for the distribution of health funds. The effects of the general delegation power under the *HAA* (although necessary for the majority of the Department's operations) may not be consistent with this objective.

Whilst the legislation outlines a process where the an independent mind can be brought to bear upon the recommendations made by the Director-General and matters relevant to them (ie that the Minister critically review and assess the recommendations of his Director-General when making his determinations) it does not specifically preclude the Minister from delegating his power under s. 127(3).

In the Auditor-General's opinion, from a decision making perspective, it is inappropriate for these powers to be delegated because of the size of the sums of money involved.

It is the Committee's view that there is a need for a clear legislative division of responsibility and authority for the allocation of funds to public health organisations

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<sup>9</sup> Transcript of hearing, 26 June 2002, p3

<sup>10</sup> Transcript of hearing, 26 June 2002, p12

<sup>11</sup> Crown Solicitor's Advice to the Department of Health, 6 February 2001



between the Director-General and the Department on the one hand and the Minister on the other.

**Mr GLACHAN:** Did you think [the delegation] was inappropriate, even though it was never used?

**Mr BARKER:** As it had never been used, as I said, it comes to a professional issue... That is not saying that someone who is in my job somewhere in the future might not have that approach.

**Mr GLACHAN:** There is a possibility?

**Mr BARKER:** In any area where you are dealing with moneys, there is going to be the chance that there is some officer or employee will try to subvert best practice or good governance issues.<sup>12</sup>

Amending the *HSA* to specifically preclude any delegation of s.127(3) powers would address the Audit Office's concerns about the appropriateness of delegating these powers to the Director-General or officers junior to him.

#### **Recommendation 1**

The *HSA* should be amended to specifically exclude the delegation of s. 127(3) powers. Because this amendment would only be a clarification, it would be most efficiently achieved under a Statute Law (Miscellaneous Provisions) Act.

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<sup>12</sup> Transcript of hearing, 26 June 2002, p10



## Chapter Three

### Audit Office Reporting

#### The Audit Office misstated and over-emphasised the audit finding

As well as an opinion on the agency's annual financial statements, the Auditor-General provided reports to the agency's management, the Minister, the Treasurer and the Parliament. These reports provided levels of detail in decreasing order in respect of audit findings on accounting, control and compliance issues.

The "Significant Items" section of the report to Parliament states:

Recommendations made by the Director-General are being approved by less senior officers in the Department, acting under delegation from the Minister. The Audit Office does not believe this process is appropriate.<sup>13</sup>

This wording implies the officers were in fact exercising the delegated power under s. 127, but according to evidence given by the Audit Office and the Department, the delegation was never used:

**Ms HODGKINSON:** Your understanding is that [the delegation] had not been used but it could have been used if necessary?

**Ms SPRIGGINS:** Yes.<sup>14</sup>

Also, according to the Department's response to the management letter, the Minister had made his funding determinations in accordance with the provisions of the *HSA*:

...it is the practice of the Department to seek the Minister's approval for the initial budget allocations and such approval was duly sought and obtained in both 2000/01 and 2001/02.<sup>15</sup>

The Committee finds that because the Audit Office failed to properly inform itself before reporting this matter, its reporting of the delegation issue to Parliament was factually wrong. Its report stated the delegation was being used, whilst the evidence indicates it was never used:

**CHAIR:** Just following up from that, in the blue section, which is the most important part of the audit report, it says, "Recommendations made by the Director General are being approved by less senior officers in the Department". That means that it has happened, "are being approved"?

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<sup>13</sup> Auditor-General's Report to Parliament 2001, Volume 7

<sup>14</sup> Transcript of hearing, 26 June 2002, p2

<sup>15</sup> Audit Office Management Letter for year ended 30 June 2001



**Ms SPRIGGINS:** In hindsight perhaps the wording in that significant item could have been expressed differently.

**CHAIR:** It is probably wrong?

**Ms SPRIGGINS:** Based on the last two years, I would have to say it was not well expressed.

**CHAIR:** Is it wrong? It says, "they are being approved"?

**Ms SPRIGGINS:** They had not been for the past two years.<sup>16</sup>

And:

**CHAIR:** I think in hindsight probably this issue did not warrant the attention it received in the report and the position it received in the report. It is in the blue section. It was never used. I cannot see what the immediate financial risks are. I think it probably got a lot more attention than it deserved.<sup>17</sup>

The Committee believes it would have been more appropriate if the audit finding had indicated:

- the Minister for Health had delegated his power to determine the allocation of moneys to public health organisations to officers within the Department of Health;
- the delegation had the potential for recommendations made by the Director-General to be approved by less senior officers in the Department, but there was no evidence to suggest that this power had been exercised by the delegated officers; and
- although legal, the Audit Office did not believe this approval process was appropriate from an accountability and governance perspective.

The Committee does not believe that the risks posed by this delegation, particularly as it had never been used, were of a magnitude that deserved mention in the "Significant Items" section of the report. The Committee believes that, while a potential risk existed, it was unlikely to be significant and mention in the body of the report would have been sufficient.

### **Recommendation 2**

The Audit Office should review its quality control processes to ensure issues are reported accurately and their significance is more appropriately assessed.

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<sup>16</sup> Transcript of hearing, 26 June 2002, p2

<sup>17</sup> Transcript of Hearing 26 June 2002, p13



## Chapter Four

### Audit Report Clearance

#### Report Clearance

The Audit Office provided various reports detailing its concerns about the delegation, which it believed still existed, to the Department, the Minister and the Parliament.

- In September 2001 the Audit Office advised the Department of its concerns about the delegation in its Client Service Report (CSR) prior to signing the Independent Audit Report.
- On 19 September 2001 the Audit Office issued its Statutory Audit Report, sending copies to the Treasurer, Minister and Director-General of Health. Attached to this report was a copy of the CSR detailing the delegation issue.
- On 5 November 2001 the Audit Office issued its management letter to the Department, again detailing its concerns about the delegation. A draft of this letter was discussed with management prior to its issue.
- In December 2001 the Auditor-General tabled a report to Parliament in which he again recorded his concerns about the delegation. A draft of this report was discussed with the Director-General and officers from the Department prior to tabling.

These events indicate the Audit Office fulfilled its responsibilities in bringing the issue to the attention of all interested parties. The Audit Office discussed drafts of these reports with departmental officers prior to their issue, but there is no evidence to indicate the department advised the Audit Office that, by revoking the delegation on 24 July 2001, the issue had already been addressed.

The Audit Office remained unaware of this fact until the inquiry by this Committee was initiated in June 2002.

Communication between the Audit Office and the Department of Health, both formal and informal, was not effective in ensuring all parties knew the facts prior to the issue of the report to Parliament.

**CHAIR:** Was the Department given the opportunity to review the report and the matters raised in it before it was issued?

**Mr SENDT:** Yes, it was. Ms Spriggins can provide details.

**Ms SPRIGGINS:** Yes, it was forwarded to the Deputy Director General some two weeks prior to the close-off for our pass to press deadline. It was discussed in full



with members of the department, as were all of the health comments.

**CHAIR:** They did not communicate the fact that they had taken remedial measures to address that issue?

**Ms SPRIGGINS:** No, if it had been raised as incorrect at the time of one of those meetings, the report would have been amended.<sup>18</sup>

And:

**CHAIR:** There was a chance for the Department of Health to respond to this issue formally. It is not what happens in practice, you do not actually formally advise the audit office that you did correct it?

**Mr BARKER:** No.

.....

**CHAIR:** ...Had you effectively conveyed that you had taken some remedial measures? There is a big chance this would not be in the audit report.

**Mr BARKER:** I cannot determine what he puts in and does not put in his report.

**CHAIR:** The point is that it was not formally, or even informally, to the best of our knowledge, conveyed that corrections have been made.

**Mr BARKER:** We have got no evidence that we formally advised of the change. Whether it has been advised informally and has not been understood by either party, I can not comment.<sup>19</sup>

### Recommendation 3

The Audit Office and Department of Health should look at measures to improve communication between the two organisations. These measures might include:

- improving the quality of the Department's responses to management letters;
- more frequent and regular meetings during the audit period, ensuring appropriate levels of management in both organisations attend, so that issues raised can be effectively dealt with; and
- a review of the effectiveness of audit committee meetings in promoting communication between the Audit Office and the Department.

<sup>18</sup> Transcript of hearing, 26 June 2002, p2

<sup>19</sup> Transcript of hearing, 26 June 2002, p6 and 7



## Appendix A

### Submissions and Documents Received by the Committee

No.	Submitted or Tabled by:	Subject
1.	Mr Kenneth Reginald <b>BARKER</b> , Acting Deputy Director-General Operations, Department of Health	Instrument of Delegation by the Minister for Health, effective September 1998 with copies of delegations F46, F48, and F52.
2.	Mr Kenneth Reginald <b>BARKER</b> , Acting Deputy Director-General Operations, Department of Health	Instrument of Delegation by the Minister for Health, effective July 2001 with copies of delegations F48, F52, F92, F93, F94 and F95.
3.	Mr Kenneth Reginald <b>BARKER</b> , Acting Deputy Director-General Operations, Department of Health	Audit Office Management Letter to the Department of Health for the year ended 30 June 2001.
4.	Mr Kenneth Reginald <b>BARKER</b> , Acting Deputy Director-General Operations, Department of Health	Health Department letter to the Audit Office advising that the delegation would be amended to exclude the Director- General only.
5.	Mr Kenneth Reginald <b>BARKER</b> , Acting Deputy Director-General Operations, Department of Health	Crown Solicitor's advice of 7 February 2001 advising that delegation to Director-General is invalid but delegation to junior officers is valid.

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## Appendix B

### List of Witnesses Appearing Before the Committee

Witness	Position and Organisation	Hearing Date
Mr Kenneth Reginald <b>BARKER</b>	Acting Deputy Director-General Operations, Department of Health	26 June 2002 Sydney
Ms Leanne <b>O'SHANNESY</b>	Deputy Director of Legal and Legislative Services, Department of Health	26 June 2002 Sydney
Mr Robert John <b>SENDT</b>	Auditor-General of NSW	26 June 2002 Sydney
Ms Maria Therese <b>SPRIGGINS</b>	Director of Audit, Audit Office of NSW	26 June 2002 Sydney