# Audit Reports Summaries

## Audit Report No. 14 1995-96

### Summary

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### THE SALE OF CSL

### COMMONWEALTH BLOOD PRODUCT FUNDING AND REGULATION

### Performance Audit

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## Purpose of the Audit

The ANAO's objectives in auditing the sale were to: review the extent to which the Government's objectives for the sale were achieved; review the management of the sale process; and to assess ongoing Commonwealth exposures and responsibilities.

## CSL Share Offer

The sale of CSL Ltd was the first 100% offering of shares undertaken by the Commonwealth. The flotation of CSL on the Australian Stock Exchange was completed on 30 May 1994.

The sale was conducted by the Department of Finance's (DoF) Task Force on Asset Sales (B) with policy input from the Department of Human Services and Health (DHSH).

The CSL float attracted interest from 37 500 retail investors, 1050 CSL employees and 124 Australian and overseas institutions.

The constrained offer pricing structure selected for the CSL sale provided a simple and understandable structure for investors. The institutions and brokers tendering process assisted in maximising proceeds.

The final issue price was $2.30, ten cents below the top of the price range initially set. The CSL share price closed on the first day of trading at $2.43, which represented a 5.7% premium on the issue price. By the end of October 1995, the CSL share price had risen by 42% above its issue price, significantly outperforming the All Industrials Index.

The inclusion of forecast earnings in the CSL prospectus assisted in providing increased certainty to the market and allowed for more informed decisions to be made in pricing the issue. Actual earnings of CSL in 1993-94 and 1994-95 exceeded the prospectus forecasts.

## Commonwealth Indemnities

On 23 December 1993 CSL and the Commonwealth entered into formal agreements which provided indemnities for claims arising from use of some CSL products both pre and post-sale.

The Commonwealth indemnities provided to CSL highlight the need for appropriate accountability processes given:

- the potential size of Commonwealth exposure to legal claims against indemnified CSL products is unknown; and
- the indemnities are effectively uncapped for the duration of the blood product supply contracts.

## Plasma Fractionation Agreement (PFA)

Under the PFA the Commonwealth funds CSL fractionation of the national blood products supply to 30 June 2004 at an estimated cost of $1 billion. The average price of fractionated products increased by 147% from 1 January 1994.

Commonwealth funding for blood products increased by 143% between 1992-93 and 1994-95 due in large part to higher prices provided for under the PFA. A 72% increase in Commonwealth payments for fractionated blood plasma products occurred in 1993-94, reflecting the half-year price effect which commenced on 1 January 1994. The full-year price effect of the agreement occurred in 1994-95 when Commonwealth payments for fractionated products increased by a further 46%.

The price structure for blood products produced by CSL at the original Parkville site was not a commercial pricing arrangement, while the PFA was a negotiated outcome between the Commonwealth and CSL that took account of various risks faced by CSL.

## Key Findings

### Government Sale Objectives

The ANAO found that Government objectives for the sale of CSL were met:

- the sale was completed on time and was fully subscribed;
- gross proceeds of the sale of the Commonwealth's 130 million shares were $299 million which approached reported shareholder's funds;
- total sale costs were $9.2 million, and were considered reasonable given that they amounted to some 3% of the total proceeds;
- a potential effect of the relatively high statutory declaration limit (500 000 shares) in the CSL offer was an increased risk of a breach of the 20% aggregate foreign ownership limit at point of sale;
- national interest provisions were adequately protected through the Commonwealth entering a long term contract with CSL to ensure continuous supply of national blood plasma products and under provisions of the CSL Sale Act 1993; and
- staff entitlements were protected under the sale arrangements.

### Management of the Sale

There was effective cooperation between the CSL Board and management and Commonwealth agencies during the sale.

The ANAO found that the administrative processes associated with due diligence were conducted in a timely and efficient way. Early in the sale processes the Due Diligence Committee endorsed a detailed planning framework which set out principles, materiality thresholds and a workplan with a sequence of explicit tasks.

The ANAO considered that, in order to ensure that Commonwealth interests were fully protected, the Therapeutic Goods Administration (TGA) should have had an enhanced role in providing input into the Commonwealth due diligence process while still having regard to any constraints contained in the Therapeutic Goods Act.

**Commonwealth Indemnities**

Insufficient information was available to the ANAO to determine whether the issue of indemnities to CSL outweighed the financial and supply risks that the Commonwealth would have been exposed to if other options had been pursued.

There was no quantitative assessment of the potential liability of the Commonwealth for product indemnities provided to CSL pre-or-post sale.

**Accountability**

DHSH did not provide a documented briefing to the then Minister before committing to the PFA, nor was the contract raised with Cabinet prior to its execution. Public reporting of the outcome of the CSL sale was provided in press releases and commentary in Annual Reports of DoF and DHSH. For improved accountability reasons, the ANAO considers that the outcomes of major asset sales should be timely and comprehensively reported, including the financial outcomes and full details of any ongoing Commonwealth commitments.

**Blood Processing Regulatory Arrangements**

The ANAO found that unlike its Code for blood collection, the TGA does not have a specialised Code of Good Manufacturing Practice (cGMP) for fractionation of blood plasma products.

The audit found that TGA access to information on the sources of overseas plasma and the quantity fractionated could enhance its role in safeguarding the national interest.

## Recommendations

The ANAO made 15 recommendations which were largely accepted by the agencies involved. Agencies agreed or agreed in principle with recommendations on engagement of consultants, due diligence reporting, completion of external regulatory audits, development of bench market indicators, preparation of timely and comprehensive public report by relevant agencies on asset sales; seeking relevant Minister's views before entering into indemnity agreements; the need to consider options for risk transference; commitment to material contracts; identification of potential conflicts of interests; developing strategies for a more market oriented demand framework for blood plasma products; review of management information systems; and review system for regulating foreign-sourced plasma processed in Australia.

DoF disagreed with the recommendation on claw back arrangements to the Commonwealth from future property sales. DHSH disagreed with the recommendation that the TGA seriously consider conducting a formal evaluation of the merits of adopting a specialised cGMP for fractionation of blood plasma products.