The Auditor-General
Audit Report No.21 2003–04
Performance Audit

Special Employee Entitlements Scheme for Ansett Group Employees (SEESA)

Department of Employment and Workplace Relations

Department of Transport and Regional Services

Australian National Audit Office

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Australian National
Audit Office

Canberra ACT
22 December 2003

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Department of Employment and Workplace Relations and the Department of Transport and Regional Services in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit and the accompanying brochure. The report is titled *Special Employee Entitlements Scheme for Ansett Group Employees (SEESA).*

Following its presentation and receipt, 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

Administrator	A person appointed personally to take charge of the affairs of a company in place of the Board of Directors.
Air Passenger Ticket Levy	A levy that applied to the purchase of air passenger tickets from 1 October 2001 to 30 June 2003.
ABS	Australian Bureau of Statistics
ACTU	Australian Council of Trade Unions
AGS	Australian Government Solicitor
ASIC	Australian Securities and Investments Commission. ASIC has responsibility for administration of the insolvency provisions of the *Corporations Act 2001*.
ATO	Australian Taxation Office
Bentleys MRI, Sydney	A Sydney-based private firm of chartered accountants providing accounting and related services.
Centrelink	A Commonwealth statutory agency, which delivers a range of Commonwealth services to the Australian public, most particularly for DEWR and for FaCS.
CBA	Commonwealth Bank of Australia
CRF	Consolidated Revenue Fund
DEWR	Department of Employment and Workplace Relations
DEWRSB	Department of Employment, Workplace Relations and Small Business
DOCA	Deed of Company Arrangement
DOTARS	Department of Transport and Regional Services
EESS	Employee Entitlements Support Scheme
FaCS	Department of Family and Community Services
Finance	Department of Finance and Administration
GEERS	General Employee Entitlements and Redundancy Scheme
Insolvency	Situation where an individual or a business is unable to pay debts as and when they fall due for payment.
JCPAA	Joint Committee of Public Accounts and Audit
Liquidation	The process of terminating, or 'winding–up', an incorporated business. This involves ceasing business operations, realising its assets, discharging its liabilities and distributing any surplus assets among its members.

MOU	Memorandum of Understanding
PAES	Portfolio Additional Estimates Statement
PBS	Portfolio Budget Statement
PILN	Pay in lieu of notice
PSE	Private sector entity
RFP	Request-for-proposal
SEESA	Special Employee Entitlements Scheme for Ansett group employees
SEES Pty Ltd	A company established by Bentleys MRI, Sydney, to undertake work under contract for DEWR to implement SEESA.
WalterTurnbull	A Canberra-based private firm providing accounting and related services.

Summary and Recommendations

Summary

Background

1. On 12 September 2001, the Ansett group of companies began to be placed under external administration and its 15 000 employees faced possible retrenchment.

2. The Prime Minister first announced that a Special Employee Entitlements Scheme for Ansett group employees (SEESA) would be established at a press conference on 14 September 2001. SEESA was to provide a safety net arrangement for the Ansett staff who were terminated on or after 12 September 2001 owing to their employer's insolvency. The Department of Employment and Workplace Relations (DEWR) is responsible for administering SEESA.

3. To meet the cost of the Scheme a special Air Passenger Ticket Levy was placed on airline tickets. The Levy, which was administered by the Department of Transport and Regional Services (DOTARS), applied to air passenger tickets purchased on or after 1 October 2001 until 30 June 2003. From the outset, the Government made it clear that the existence of the Levy would not relieve the company of its responsibilities. The Government would pursue recovery from the administrator.

4. The Government's objectives for SEESA were to achieve both early payment of unpaid entitlements (up to the community standard) and to 'stand in the shoes of the employees' to recover from Ansett's assets the funds advanced under the Scheme. SEESA was to use the private sector to administer payments and be designed in such a way as to minimise the impact on the Commonwealth budget, especially the underlying cash balance.

5. The Minister for Employment, Workplace Relations and Small Business provided details of SEESA in a press release on 18 September 2001. On 9 October 2001, he made a formal determination specifying the companies and entitlements to be covered by SEESA and terms on which payments were to be made.

6. The *Air Passenger Ticket Levy (Collection) Act 2001* provided a special appropriation of $500 million for SEESA.

SEESA: key questions and where addressed in this report

How much was owed to the Ansett employees who were terminated due to the collapse of that group of companies?

In their third report to creditors, the Ansett Administrators estimated that unpaid entitlements amounted to $735.8 million. The ANAO's analysis shows that the mean value of all employee entitlements owed to Ansett group employees upon termination was about $53 800 and the median was $38 400. The distribution of entitlements varied widely. About 50 workers were owed less than $1000 each and over 120 workers were owed over $250 000 dollars each. The highest individual unpaid entitlement at termination was just over $625 000. *An analysis of the relevant statistics is set out in Appendix 1.*

How was SEESA established?

SEESA was formally announced by the Government on 18 September 2001. The proposed scope and level of financial assistance under SEESA was advertised widely in newspapers in mid-September 2001. SEESA was formally established under a section of the *Air Passenger Ticket Levy (Collection) Act 2001*. This gave the Minister for Employment and Workplace Relations the authority to decide the business rules under which the Scheme would operate. He did this by a determination under the Act, which set out the entitlements that would be covered under the Scheme. *This is explained in Chapters 2 and 3.*

What does SEESA cover?

SEESA is a safety-net scheme that provides payment of all unpaid wages, all unpaid annual leave, all entitlements for pay in lieu of notice (PILN); all long service leave, and up to eight weeks' unpaid redundancy leave, regarded as the community standard, to former employees of the Ansett group of companies who were terminated due to Ansett's collapse. *See Chapters 2 and 3.*

What is NOT covered by SEESA?

SEESA does not cover redundancy pay in excess of 8 weeks. At their termination, some Ansett employees were owed up to 104 weeks' redundancy pay. *See Chapters 2 and 3.*

What has been paid under SEESA to the former Ansett employees?

Under SEESA, $336.1 million has been loaned to the Ansett and Hazelton administrators to pay 12 994 terminated employees (a mean payment of $25 868). This covers all unpaid wages, all unpaid annual leave, all entitlements for pay in lieu of notice (PILN); all long service leave, and up to eight weeks' unpaid redundancy leave for terminated employees. The first payment ($80 million for 3847 employees) was made to the Ansett Administrators on 18 December 2001. Subsequently, as each group of employees has been terminated, the administrators have made a claim in respect of that group and a SEESA payment has followed. Towards the end of the audit, DEWR provided the ANAO with a letter from the Ansett Administrators that certifies that all SEESA funds forwarded to them have been distributed to eligible claimants. *More detail on amounts, dates and employee numbers are set out in Chapter 5 and Appendix 1.*

What entitlements—other than SEESA—are yet to be paid?

Although 12 994 terminated employees have been paid their SEESA entitlements, around 9500 of these are awaiting payment of entitlements for redundancy pay in excess of 8 weeks. Only when Ansett assets can be disbursed can payments be made by the Administrators to meet these further entitlements. On 25 November 2003, the Ansett Administrators announced that they had sought and received Federal Court approval of an agreement which would clear the way for further payments to Ansett staff. *See Appendix 1.*

Where did the SEESA funds come from?

The funds to pay SEESA were borrowed from the Commonwealth Bank of Australia (CBA). They were borrowed by a private company, SEES Pty Ltd, with a Commonwealth guarantee, and advanced as a loan to the administrators. SEES has done this acting under a contract with the Department of Employment and Workplace Relations. *Chapter 4 discusses the outsourcing of the SEESA arrangements.*

What has become of the funds raised by the Air Passenger Ticket Levy?

Under the Constitution, all revenue—such as that raised by the Air Passenger Ticket Levy—must be paid into the Consolidated Revenue Fund (CRF). Under a special appropriation of up to $500 million in the Air Passenger Ticket Levy (Collection) Act, DEWR has been paying regular instalments of $8 million a month from the CRF to SEES, which the latter has used to repay the loan from the CBA. DEWR has also been meeting the costs of the collection of the Levy and operation of SEESA under the appropriation. In effect, the revenue from the Levy is funding repayments of the CBA loan and the administrative costs of raising the Levy and operating the scheme. It would not have been possible to rely wholly on the Levy to directly offset SEESA payments as, for example, by early June 2002, when over $300 million had been advanced to pay employee entitlements, only $87 million had been raised by the Levy.

What about Ansett's assets?

The Ansett Administrators are reported as having some $400 million 'in the bank'. This can only be distributed to creditors as various legal disputes are resolved. When repayment can be made, the priority regime contemplated by ss. 556 and 560 of the Corporations Act will apply. This means that the Commonwealth 'stands in the shoes' of the employees to be repaid an equivalent amount to the funds advanced under SEESA to the Administrators. It also means that, following the priorities set out in s. 556, funds advanced to cover wages and leave must be repaid before redundancy payments. After that, the funds advanced under SEESA for PILN and up to 8 weeks of redundancy will be repaid at the same rate as payments to terminated employees for redundancy in excess of 8 weeks.[1] *See Chapter 2.*

Key audit findings

Inception of the Scheme (Chapter 2)

7. The period from October to early December 2001 was characterised by two parallel streams of activity. These were:

(a) discussions between the Government, and its advisers, and the Ansett Administrators over certain key aspects of the Scheme; and

(b) putting the SEESA administrative arrangements in place (this is discussed below).

[1] In a joint media release on 26 November 2003, the Deputy Prime Minister and Minister for Transport and Regional Services, the Hon. John Anderson MP and the Minister for Employment and Workplace Relations, the Hon. Kevin Andrews MP, announced that the Government had both agreed to a 'lesser return for the funds advanced under SEESA' and to 'defer the repayment of $67 million from the first distribution of Ansett assets'.

8. In relation to the former, the most important issues that were addressed were:

- the use to be made of a $150 million payment received by Ansett from Air New Zealand in early October; and, more particularly,
- the priority that the Government was willing to accept for repayment of SEESA advances made to the Ansett Administrators. The Administrators had made representations to the Government for it to subordinate repayment of SEESA advances to rank in a lesser priority than the Government had proposed.

9. The first issue was resolved with agreement that 4–5 weeks pay in lieu of notice would be funded from Ansett resources at an estimated cost of $35 million.

10. The second issue was resolved by a deed (the SEESA Deed) executed on 14 December 2001. This both protected the Ansett Administrators from any personal liability arising from the advance of SEESA funds and secured the Government's priority position equal to the former employees. The Deed was confirmed by the Federal Court.

11. Only after the resolution of the second matter could SEESA payments flow. The process of negotiation delayed SEESA payments to Ansett employees, many of whom had been stood down in September. However, for the Government to have agreed to the Ansett Administrators' proposals would have required it to compromise its other primary objective, concerning priority in recovery. The outcome maintained the Government's original policy position.

12. The SEESA Deed made safe the legal priority for recovery of SEESA advances by the Commonwealth. However, the final distribution of Ansett resources remains subject to a range of other contingencies, including legal disputes. These could, for example, deplete the amount of the assets available in due course for recovery of SEESA advances. Thus the effectiveness of the overall recovery strategy cannot be finally assessed until completion of all action.

Risk management during the implementation of SEESA (Chapter 3)

13. The Government put a policy framework in place for SEESA promptly after the announcement of the Scheme. An interdepartmental task force of officials supported the Government during the period of establishment of the operational apparatus of the Scheme and the simultaneous negotiation with the Ansett Administrators. The Task Force also provided advice on the risks associated with the various possible courses of action.

14. Putting SEESA in place involved engaging a private sector entity (SEES Pty Ltd) to undertake most of the work, including borrowing funds and advancing payments to the administrators after verifying claims received from them. The Task Force advised on, and the Government accepted, certain risks associated with this approach, that is, those of additional cost and possible delay in making payments.

15. DEWR was responsible for implementing the Scheme and was required to deal with many risks, including the timely provision of SEESA assistance. This latter risk was well managed. However, three particular risks that arose during the implementation of the Scheme which, in the ANAO's view, could have been managed more effectively by DEWR. These related to:

- the incidence of tax;
- repayment of the loan; and
- interaction between SEESA and other Commonwealth payment programs.

16. The first such risk concerned the incidence of tax on the various SEESA transactions. SEES raised concerns about the tax risks with DEWR early in the life of the Scheme. The Australian Government Solicitor assessed those risks as low but advised that the matter be resolved with ATO rather than risk a contrary outcome. DEWR, although it clearly saw the tax risk as serious, did not take this action before finalising arrangements and proceeding to make the initial SEESA advances in December 2001. To facilitate progress, and avoid the risk of further delays to payment, DEWR accepted contractually, for the Commonwealth, the tax risk that would fall upon SEES. That risk crystallised in April 2002, when Commissioner of Taxation ruled that the payments by DEWR to SEES are assessable income in the hands of SEES. A range of other consequences and costs flowed from this outcome.

17. It should be emphasised that the net effect is only a small increase in the overall cost of the Scheme. However, addressing all of the unintended tax consequences has taken substantial time and effort, and therefore cost, if only on an opportunity cost basis. As well, the cost implications were unknown, which was a risk in itself. The ANAO concludes that a better approach would have been for DEWR to have advised its minister of the tax risk *before* execution of the contract in December 2001. That would have enabled the minister to balance the priority attributed to making initial SEESA payments before Christmas 2001 with the then known tax risk, or even whether he and/or the Government wished to reconsider broader options for implementation. In the event, the matter was first drawn to the attention of the minister's office only in May 2002.

18. The Levy raised revenue at a rate higher than was originally expected. This could have allowed DEWR to set a higher monthly rate of repayment of the SEESA loan facility or, later, to have increased it. Doing so would have reduced the amount of interest paid by the Commonwealth and, hence, the total cost of the Scheme. However, in March 2002 DEWR set a repayment rate ($8 million a month) that was substantially lower than the then established pattern of revenue ($13 million a month) without any apparent consideration of the interest costs. Later, it maintained the same rate of repayment because of its concern to meet the unanticipated tax liability. When a strategy for avoiding meeting the tax liability from Levy revenue had been devised, and agreed to, the risk of reaching the limit of the appropriation caused DEWR to adhere to the same repayment rate. SEES has advised the ANAO that the additional interest paid to mid-September 2003 was $3.6 million. This is substantially more than the *cost* of payments made in the establishment and operation of the Scheme, which, from 1 October 2001 to 31 March 2003, was reported as $1.98 million.[2]

19. In the ANAO's view, DEWR could have undertaken the necessary financial analysis early in 2002 that would have assisted it to manage better the funds available to it under the appropriation in the Collection Act.

20. DEWR has recognised that payments under its other employee entitlements programs, the Employee Entitlements Support Scheme (EESS) and its successor, the General Employee Entitlements and Redundancy Scheme (GEERS), can affect individual entitlements under other programs, such as social security income support payments delivered by Centrelink. To help to target Commonwealth assistance and avoid 'double-dipping', it has been DEWR's practice to advise Centrelink of EESS and GEERS payments promptly upon payment.

21. However, for SEESA, DEWR did not recognise this issue until March 2002, well after the program was under way and substantial advances had already been made. DEWR then found it difficult to make suitable arrangements with SEES. This was overcome when Centrelink approached the Ansett Administrators directly. However, the data Centrelink obtained in this way proved inadequate for Centrelink to use in its compliance work. If any overpayments are detected through post hoc compliance strategies, the recovery costs will be greater than would have been possible had DEWR made arrangements to provide prompt and full advice at the time payment was made. The costs to the Commonwealth could be determined only if, and when, such overpayments are detected.

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[2] These are payments authorised under s. 22(3)(b)(ii) of the Collection Act.

Outsourcing (Chapter 4)

22. In accordance with Government policy, DEWR outsourced the administration of SEESA, including the provision of finance, to a private sector entity. With a major objective of making prompt payment to employees terminated through Ansett's insolvency, DEWR proceeded rapidly with the process of selecting and engaging a suitable company to undertake these tasks.

23. The ANAO found that DEWR conducted the selection effectively and properly. The selection was made more challenging by the need for a speedy result and DEWR having to conduct the process during the caretaker period before the 2001 general election. The department also minimised the possibility of delays in making payments by making arrangements for the preferred tenderer to begin preparatory work as soon as practicable after the selection.

24. In contrast to the sound practice in the selection of the contractor, DEWR was not able to provide the ANAO with a documented decision on the selection of the financier for the Scheme. In the ANAO's view, it is unsatisfactory from an accountability viewpoint that DEWR was unable to provide a formal record of the decision (whether made by DEWR or by SEES with DEWR guidance) to select the Commonwealth Bank of Australia (CBA) to provide the finance. This is more so given that the CBA's successful bid stated: 'The Bank has been involved from a very early stage in structuring a financing package for the Scheme, including a number of informal discussions with Government and the submission of an unsolicited finance offer'.

25. The ANAO found that DEWR had stated its expectations of SEES under the contract in terms that made the major tasks clear. However, initially, DEWR had not articulated a clear statement of the standards of service or performance that it expected of its contractor. Thus, when the contractor proposed to undertake the claim verification work using an approach known as an 'agreed-upon-procedures engagement', DEWR did not recognise that this meant it would have to draw its own conclusions from the factual results presented by SEES nor did it realise that this effectively transferred risk back to the Commonwealth. During the course of the audit, DEWR has sought to clarify the standards of service with the contractor. In response to the draft of this report, SEES has stated to the ANAO that it was providing a high level of assurance to DEWR. Moreover, SEES has also shown that the procedures it followed comprised non-statistical sampling and the use of professional judgement.

26. From the ANAO's perspective, the important aspect is not now to determine, *ex post*, whether SEES was providing assurance nor, if it were, the degree of assurance being provided. Rather, the ANAO's observation is that,

at the commencement of the engagement, DEWR had not clarified the level of assurance being provided. The fact that DEWR had to refer to SEES for such clarification reinforces the view that insufficient attention was given to this aspect of accountability.

27. The ANAO noted extensive evidence on file of assiduous and co-operative effort by SEES staff and DEWR's principal project officer in managing the timely processing of each tranche of payments. DEWR's records show that this was motivated by the objective of achieving prompt payment of SEESA advances to the Ansett Administrators. This was clearly better practice.

28. On 6 March 2002, a ministerial press release stated that 'The Government expects to provide Special Employee Entitlements Support for Ansett Scheme (SEESA) monies to the Ansett Administrators for distribution to workers within five working days of receiving data from the Administrators about entitlements owed to individual workers.' However, there was no amendment to the contract or any record of an understanding, to reflect DEWR's expectation that SEES would maintain this standard.

29. Nonetheless, the ANAO found no evidence that the timeliness of SEES's verification work has been unsatisfactory. It has not impeded the process of advancing payments to the Administrators, which has usually been achieved within five days of receiving their claim for each tranche.[3] However, neither the contract nor the letter of engagement included a standard or a mechanism for applying a standard for timeliness to SEES's activity. This is not sound contract management practice as it could have placed at risk DEWR's ability to control a main objective of the Scheme to ensure required performance.

30. DEWR specified in the contract, and secured, regular, useful reports from its contractor on a range of relevant aspects of SEES's operations. Although these reports set out the numbers and categories of employee for each tranche payment made to the Ansett Administrators, they did not provide any 'details of the number of Eligible Employees to whom Eligible Employee Payments have been made', as specified in the contract. Towards the end of the audit, however, DEWR received an assurance direct from the Ansett Administrators allowing it to conclude that all terminated employees had been paid their SEESA entitlement.

31. A DEWR officer was present at, and closely involved in, SEES's verification of the first ten tranches of claims from the Ansett Administrators, and facilitated the work involved. However, the ANAO found no evidence of any systematic monitoring of the quality and cost of SEES's work by DEWR. Nonetheless, there

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[3] Actual performance is discussed in Chapter 4. There is some doubt about whether Tranche 6 achieved the timeliness requirement. However, any delay seems to have been only for a few days.

was at least evidence that DEWR scrutinised invoices and addressed apparent errors, including additional errors identified by the ANAO in the course of the audit. This was again an illustration of inconsistency in DEWR's approach, which put at risk the good practices that were actually put in place.

SEESA performance (Chapter 5)

32. SEESA has delivered employee entitlement payments to nearly 13 000 former Ansett employees much more quickly than would have occurred if those employees had had to await the distribution of funds from the assets of the Ansett group. At the time of preparation of this audit report, many employees who are entitled to further payments, not funded by SEESA, had yet to receive them from the Ansett Administrators.

33. While the existence of SEESA meant that former Ansett employees did not have to wait until assets were realised to receive certain of their employee entitlements, DEWR neither specified any target for timeliness of payment of former Ansett employees nor collected any data on how promptly it had been able to effect payment. The minister made a public undertaking in March 2002 that the verification and forwarding of SEESA funds to the Ansett Administrators would be effected within five days. This undertaking was relevant to public concerns at the time but was both too late and inappropriate to use as a credible measure of the promptness of payment overall, that is, the timeliness of payments to individual former Ansett employees.

34. It is the ANAO's opinion that public reporting on the performance of SEESA has been less than adequate. Two reports have been provided to the Parliament containing statements about expenditure and related activities under the special appropriation in the *Air Passenger Ticket Levy (Collection) Act 2001* (as required by that Act) and about the number of former Ansett employees who have benefited from SEESA. However, DEWR has not compiled any reports setting out empirical data on the timeliness or accuracy of SEESA payments to the Ansett Administrators, nor about SEESA payments through the Ansett Administrators to former Ansett employees.

Management of the Air Passenger Ticket Levy (Chapter 6)

35. DOTARS implemented an effective system for managing the Air Passenger Ticket Levy. Well-documented rules and guidelines assisted DOTARS in reducing the incidence of error in administering, collecting and remitting the Levy. The consultations held by DOTARS with the airlines and the travel industry assisted in ensuring the legislative and administrative frameworks were designed with the needs of the industry also in mind. The Levy program was

implemented promptly by airlines with minimal disruption and a high degree of compliance.

36. The sound procedures implemented by DOTARS for monitoring airline compliance with the Levy legislation provided assurance that airlines collected and remitted the appropriate amount of Levy required under legislation. Regular checking of the airline industry enabled DOTARS to identify new entrants to the industry and the implementation of the airline audit program enabled DOTARS to monitor registered airlines for compliance with the ticket Levy regulations and legislation.

37. DOTARS and DEWR put effective liaison arrangements in place. This was of particular value to DOTARS in helping it to formulate advice on when the Levy could be terminated.

Conclusion

38. SEESA has been effective in delivering some $336.1 million in employee entitlements to former Ansett group employees terminated through their employer's insolvency. The arrangements for delivering these payments were put in place in a very tight timeframe.

39. SEESA payments have been made far more promptly and with greater certainty than if the employees had had to wait until assets were realised and creditors paid in the normal course. However, no specific data on the promptness of SEESA delivery has been compiled. As well, performance information on SEESA is limited.

40. Despite the assessed effectiveness of SEESA, DEWR could have been more efficient in its administration despite the tight timeframe. The tax issue is a case in point, which also added to costs. There were also opportunities, in the ANAO's view, for DEWR to have managed better the repayment of the SEESA loan and the interaction between SEESA and other Commonwealth payments.

41. Some aspects of DEWR's contract management (such as the engagement of SEES) were sound but others (such as the specification of performance requirements) were inadequate. The absence of key documentation on the choice of financier is not conducive to proper accountability, particularly on a matter of considerable public interest.

42. DOTARS put effective arrangements in place, promptly, for the implementation and operation of the Levy.

Recommendations

The ANAO has only one recommendation resulting from this performance audit of the Special Employee Entitlements Scheme for Ansett group employees (SEESA). This recommendation is directed at agencies that seek to implement a scheme with certain key characteristics in common with SEESA. It is especially relevant in cases where the timeline for implementation is short and, as such, demands discipline in planning and risk management as part of a sound control environment with commensurate accountability in a matter of considerable public interest.

Recommendation 1

The ANAO recommends that, where a scheme is to be implemented using outsourced administration, particularly involving substantial payments by the administering agency to the outsourced provider:

(1) any tax implications of these transactions should preferably be resolved *before* the commencement of implementation; and

(2) the proper allocation of risk between the agency and the outsourced provider should be clarified *before* any contract is signed.

DEWR response:

(1) Agreed with qualification.

(2) DEWR supports the need to give due consideration to the management of financial and other risks involved in the delivery of any Commonwealth program.

(3) The recommendation is, however, too broad and does not provide the necessary flexibility to address situations such as those encountered during the implementation of SEESA.

(4) The risks associated with possible tax implications for SEESA were effectively managed. The ANAO's finding that the realised tax risk resulted in only a small increase in overall costs supports DEWR's judgement and vindicates [*sic*] any suggestion that major risks were not managed effectively.

(5) The department's effective management of risks associated with its contract with SEES Pty Ltd also resulted in favourable outcomes for the program and the Commonwealth.

(6) A more detailed response to the ANAO report findings is contained in Appendix 6 of the ANAO report.

Note: It is not the ANAO's practice to comment on an organisation's response to a report where there are considered views following full and open discussion with the auditors and any differences in views or misunderstandings or inaccuracies are resolved. However, there may well be remaining differences in judgments and/or conclusions. This is accepted. However, while audit evidence, or lack of evidence, supports a conclusion that is contested, or misrepresentation of audit observations occurs, the ANAO considers that Parliament should be so informed. In this case, ANAO comments on some of DEWR's responses are included in Appendix 7.

Audit Findings and Conclusions

1. Introduction

This chapter introduces the Special Employee Entitlements Scheme for Ansett group employees and the performance audit of the Scheme. It sets out how the performance audit was undertaken and outlines the structure for the rest of the report.

Introduction

1.1 When the Ansett group, a major group of companies in Australia, collapsed in September 2001, the newly-appointed administrators ceased airline operations and immediately stood down most of Ansett's estimated 15 000 employees. Those employees faced the possibility of retrenchment.[4] The Government immediately announced the introduction of a Special Employee Entitlements Scheme for Ansett group employees (SEESA).[5]

1.2 SEESA was intended to address two risks facing the employees: the risk—to a certain limit—of a shortfall in their payments from Ansett and, the risk of delay in their being paid.

1.3 The Government also announced that any additional funding necessary to meet this commitment would be derived from a new levy on airline tickets (the Air Passenger Ticket Levy; hereafter, 'the Levy'). The Levy took effect on 1 October 2001. It was terminated with effect from 30 June 2003.

1.4 The legislative basis for SEESA's authority is set out briefly below. More detail on the design of the Scheme is set out in Chapter 2. Because of its complexity, a separate description of its operation, particularly the main cash flows, is set out in Appendix 2.

Authority and resources

1.5 SEESA was given a legislative basis through the enactment of the *Air Passenger Ticket Levy (Collection) Act 2001* (the Collection Act) on 27 September

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[4] Ansett Group (Administrators appointed): First Report by Administrators, 16 January 2002, p. 14. This report and an extensive range of other documents associated with the Ansett administration were available during the course of the audit on the Ansett Administrators' website. See http://www.ansett.com.au/Administrator/credmeet.htm

[5] Transcript of the Prime Minister, the Hon. John Howard MP, joint press conference with the Deputy Prime Minister and the Minister for Foreign Affairs, Parliament House, Canberra, 14 September 2001. See http://www.pm.gov.au/news/interviews/2001/interview1242.htm SEESA was one of a range of measures taken to address the consequences of the Ansett collapse. The Department of Transport and Regional Services has provided a full list, which is reproduced in Appendix 4, *Australian Government response to Ansett collapse*. See also the attachment to media release A250/2001 by the Deputy Prime Minister and Minister for Transport and Regional Services, the Hon. John Anderson MP, 'Government reaffirms position on Ansett', 22 November 2001. The current audit is concerned only with SEESA and the associated ticket levy.

2001. The Collection Act provides both for the collection of the Levy and for arrangements to establish SEESA. The related *Air Passenger Ticket Levy (Imposition) Act 2001* imposed a levy on all air passenger tickets originating in an Australian port for travel into or out of Australia purchased on or after 1 October 2001. The Levy was paid by the purchaser of the ticket and was payable at the time they purchased the ticket. The Collection Act states that the purpose of the Levy is to meet the cost of payments by the Commonwealth under SEESA.[6]

1.6 Section 22 of the Collection Act gives the Workplace Relations Minister[7] the power to authorise payments in connection with the Scheme.[8] That section appropriates the Consolidated Revenue Fund (CRF) for this purpose. The Collection Act limits expenditure under s. 22 to a maximum of $500 million. The Commonwealth can make payments not only for eligible employee entitlements to former Ansett employees but also for the costs of administering the Scheme.[9] Administrative costs incurred by the airlines and parties other than the Commonwealth are not paid for by SEESA.

1.7 Section 23 of the Act authorises the Minister for Transport and Regional Services to distribute any Levy in excess of what is needed for the Scheme.[10]

Responsibility

1.8 The operation of SEESA involves the co-operation of two Commonwealth departments. The Department of Employment and Workplace Relations (DEWR) has the responsibility for administering SEESA, including the authorisation of payments. The administration of SEESA is reported as an Administered Item under Outcome 2 in the DEWR *Annual Report 2002–03* (p. 16). The Employee Entitlements Branch within the department's Workplace Relations Services Group administers SEESA.

1.9 To implement SEESA, DEWR selected a private company by tender, Bentleys MRI of Sydney, which then created a special-purpose company,

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6 Air Passenger Ticket Levy (Collection) Act 2001, s. 7.

7 The Workplace Relations Minister, as referred to in the Act, is defined as the minister administering the *Workplace Relations Act 1996*. This is the Minister for Employment and Workplace Relations.

8 In the Act, the authorisation covers payments in connection with the Scheme, including 'payments to an entity for the purpose of helping the entity to meet payment obligations in respect of money borrowed for the purpose of making payments in connection with the Scheme.' In practical terms, this allows DEWR to make payments (funded by the levy) to SEES to enable it to pay off the loan facility from the CBA.

9 Air Passenger Ticket Levy (Collection) Act 2001, s. 22 (3).

10 Section 23 of the Act provides for the minister to make a determination about how the surplus is to be distributed. That section also provides a special appropriation for the purpose of such payments.

SEES Pty Ltd, to undertake the work.[11] SEES obtained a loan facility for up to $350 million from the Commonwealth Bank of Australia (CBA), which has been used to make advances totalling $336.1 million to the Ansett Administrators.[12] These advances have enabled the Administrators to pay certain employee entitlements to terminated workers.[13]

1.10 The Department of Transport and Regional Services (DOTARS) was responsible for administering the collection of the Levy, and for interaction with the airlines. The collection of the Levy was reported in the DOTARS *Annual Report 2001–02* under Output 1.4—Services to Industry, Revenue Collected. The Transport Programmes North and West Branch within the department's Transport Group administered the Levy.

Previous and proposed reviews

DEWR

1.11 There have been no previous reviews of SEESA. The ANAO is unaware of any intended reviews of the management of Scheme. We understand that DEWR is considering undertaking a post-implementation review of SEESA, although no firm timetable has been proposed.

DOTARS

1.12 As part of its 2001–02 internal audit program, DOTARS examined the management of the Levy. The audit was undertaken in February 2002, a few months after the Levy had commenced. The final report was produced in June 2002 and made seven recommendations to improve management. Primarily, the audit identified issues relating to the completion and formalisation of a number of procedures already in place, which DOTARS subsequently addressed.

1.13 The department also engaged the firm WalterTurnbull (formerly 'Walter and Turnbull') to develop and implement an Air Passenger Ticket Levy Audit Program. This program has examined registered airlines to check compliance with legislation when collecting the Levy. The first round of audits was undertaken by the end of May 2002. The report on that round

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[11] The name 'SEES' (although obviously derived from the name of the scheme, 'SEESA') is the full name of the company; that is, it is not an abbreviation.

[12] This figure includes all payments to 11 August 2003 (Tranche 20). At the conclusion of this audit an estimated further $8 million was expected to be paid under SEESA to fund the entitlement payments of further eligible employees. This would bring the total amount advanced under the Scheme to about $344 million.

[13] In addition to SEESA payments, the Ansett Administrators have paid certain amounts of pay in lieu of notice (PILN) entitlements direct from Ansett resources. This matter is discussed later.

was available at the end of June 2002. Airline audits have been ongoing, with the two large airlines audited six-monthly, the nine medium airlines audited annually, and small airlines (remainder) audited once each over a three-year period.[14] WalterTurnbull prepared draft audit reports and sent them to DOTARS following completion of the audit. DOTARS then wrote to the appropriate airline with a request that the airline act on the findings in the report. The Ticket Levy area within the Transport Programmes North and West Branch of DOTARS has monitored each airline's progress in implementing the recommendations.

Audit objective

1.14 The objective of the audit is to determine how efficiently and effectively the two key elements of the provision of entitlements to ex-Ansett employees under SEESA are being managed. The two key elements are:

- DEWR's management of SEESA; and
- DOTARS' management of the associated Levy.

1.15 All of the arrangements to implement SEESA were put in place very quickly to meet tight deadlines. The ANAO has taken this into account in its examination of, and comments on, the administration of the Scheme.

1.16 SEESA can be seen as one aspect of a very large project: the administration of Ansett. The history and analysis of that administration would include events such as the attempts to sell the mainline Ansett business as a going concern and the various legal disputes on matters such as priority in distribution to creditors. These go well beyond the scope of this report. However, extensive documentation is available from public sources, such as news reports and the Internet, including the Ansett Administrators' Internet website.[15]

Audit methodology

1.17 The audit was conducted by undertaking fieldwork in DEWR and DOTARS including reviews of extensive file documentation (including email records) provided by DEWR and DOTARS. The ANAO also observed the processes of calculation and verification undertaken by SEES for a tranche of SEESA payments. It analysed spreadsheets provided by DEWR that set out the payment calculations undertaken by SEES encompassing tranches 1 to 19 inclusive. The ANAO conducted a number of interviews with DEWR and DOTARS personnel,

[14] See Chapter 6, Management of the Air Passenger Ticket Levy, and Appendix 3.

[15] See the Ansett Administrators' website: http://www.ansett.com.au/administrator/index.html

and also interviewed a representative of SEES in Sydney. The ANAO also drew upon the extensive documentation made publicly available by the Ansett administration.

1.18 The ANAO also directed certain additional and consequential questions to the Department of Family and Community Services (FaCS) and Centrelink.

1.19 SEESA is not a continuing Scheme but is intended to address certain consequences of the Ansett collapse. This performance audit has taken place during the later part of SEESA's operation. As will be apparent from the findings set out in this report, some parts of the Scheme have been substantially completed (for example, advancing funds to the Ansett Administrators to enable payment of employee entitlements), and others have made little progress (notably, recovery of the funds so advanced from repayments made from the realised assets of Ansett). Therefore, the audit does not attempt to draw final conclusions about all aspects of the administration of the Scheme, particularly in relation to recovery.

1.20 The audit was conducted in accordance with ANAO auditing standards at a cost to the ANAO of $413 000.

Report structure

1.21 Chapter 2 (and Appendix 2) provide substantial detail on the inception and operation of SEESA and the associated Levy. This material is an important element in this report for the following two reasons.

(a) SEESA is complex. An understanding of how it works is essential to the remaining, more analytical, chapters of this report.

(b) The Ansett collapse was a prominent public event in Australia. As a consequence, SEESA has received public attention. However, some subsequent public discussion has been based on apparent misunderstandings of how the Scheme operates. Part of the purpose of this material is to help make the arrangements clearer and better understood.

1.22 Because of both the complexity of the Scheme and the propensity for misunderstanding, some key questions and brief answers are provided in the panel near the start of the Summary. That also includes references to more detailed analysis in the body of the report.

1.23 Chapter 3 examines the management of risks occurring during the implementation of SEESA.

1.24 Much of the operation of the Scheme has been outsourced by DEWR to SEES. Chapter 4 examines DEWR's contract management.

1.25 Chapter 5 examines performance of the Scheme, focusing on performance criteria and standards, the performance reports that have been made and drawing on data the ANAO has been able to obtain.

1.26 Chapter 6 deals with the Air Passenger Ticket Levy.

1.27 Appendix 1 provides statistics on the Ansett group employees terminated as a result of the Ansett collapse.

1.28 Appendix 2 explains the main transactions that underpin the Scheme. It does this by incrementally assembling a picture of the entire operation. The key processes that are mentioned in this appendix are analysed in the body of the report. SEESA has many distinct agreements and cash flows among a range of entities, including DEWR (which has principle carriage), DOTARS (which has responsibility for the Levy), the Commonwealth Bank of Australia (which provided the $350 million loan facility), Bentleys MRI (the Sydney-based firm which won the DEWR tender to undertake the SEESA work), SEES, the Ansett administrators (Messrs Mark Mentha and Mark Korda), a separate administrator for Hazelton (Mr Michael Humphris) and the airlines. There is also a range of others involved, including other agencies such as the Australian Taxation Office and Centrelink.

1.29 Appendix 2 also provides a copy of the diagram used by SEES and DEWR to explain the operations of SEESA to prospective financiers for the Scheme during the selection process.

1.30 Appendix 3 sets out the DOTARS program of airline audits, which it has carried out to gain assurance that the Levy has been collected and remitted correctly.

1.31 Appendix 4 provides a summary of the suite of measures taken by the Government in response to the collapse of the Ansett group of companies.

1.32 Appendix 5 sets out an account of the process or redundancy of the Ansett employees. The Ansett Administrators provided this account.

1.33 Appendix 6 comprises the responses provided by agencies to this audit report.

1.34 Appendix 7 provides audit responses to some comments by DEWR.

2. Inception of the Scheme

This chapter provides background information on the development of the policy framework for the Special Employee Entitlements Scheme for Ansett group employees (SEESA), including key events.

The Ansett group of companies

History

2.1 Before its collapse, the Ansett group of companies (Ansett), founded in 1936, had been a major participant in the Australian transport industry.[16] TNT and News Limited had acquired ownership of Ansett in 1979, each purchasing 50 per cent of the company. Air New Zealand, which owned Ansett at the time of its collapse, purchased TNT's 50 per cent stake in 1996 and News Limited shares in 2000.

2.2 When it collapsed, the Ansett group operated a fleet of 133 aircraft. These aircraft served 130 destinations with 900 flights across Australia daily. Ansett carried 14 million passengers in the 2000–01 financial year and carried 111 147 tonnes of cargo in that year. It had payroll and related costs for the year ending 30 June 2001 of approximately $1.2 billion. For the same year, Ansett generated revenue of approximately $3.2 billion and incurred a net loss after tax of $378 million.[17]

2.3 Ansett's employees were centred in Victoria (having nearly 40 per cent of Ansett's total workforce), particularly at Tullamarine Airport and at the headquarters in the Melbourne central business district. However, the remaining 60 per cent of employees were distributed nationally.[18]

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[16] A detailed chronology of Ansett history is available on-line from the Department of the Parliamentary Library at http://www.aph.gov.au/library/pubs/online/ansettchron_PartA.htm. The Ansett Administrators' website also contains a detailed document entitled *Ansett Milestones*, setting out a chronology to 2000. See: http://www.ansett.com.au/administrator/ansettattach1/milestones.pdf

Details of the structure of the Ansett Group of companies is set out in Appendix 3 to the First Report to Creditors by the Administrators. See: http://www.ansett.com.au/administrator/ansettattach1/appn3group.pdf

Forty-four companies in the Ansett Group are covered by SEESA. This is set out in the Minister's determination of 9 December 2001 under s. 22 of the *Air Passenger Ticket Levy (Collection) Act 2001*.

[17] Ansett Group (Administrators Appointed): First Report by Administrators, pp. 8–9.

[18] See Webber and Weller 2002, 'The post-retrenchment labour market experiences of Ansett workers', School of Anthropology, Geography and Environmental Studies, University of Melbourne, October. See: http://www.dtf.vic.gov.au/dtf/RWP323.nsf/0/2eed82af48dc725fca256c910020ffbe/$FILE/AnsettReport.pdf

Voluntary administration

2.4 On 12 and 14 September 2001, the boards of directors of various Ansett companies passed resolutions that the companies were, or were likely to become, insolvent. Messrs Gregory Hall, Allan Watson and Peter Hedge of PricewaterhouseCoopers were appointed as the administrators (the 'First Administrators').[19] They ceased airline operations and stood down most of Ansett's employees.[20]

2.5 On 12 September 2001, the Australian Securities and Investments Commission (ASIC) indicated that it would be holding early discussion with the administrators on issues of concern under the *Corporations Act 2001*. ASIC stated that it was concerned in particular to receive an early assurance 'that Ansett is able to pay in full all employee entitlements (including any redundancies)'.[21] On 14 September 2001, ASIC announced the commencement of a formal investigation into the collapse of Ansett. It reported that it had met with one of the First Administrators the previous day and he had had insufficient information to assure ASIC that Ansett would be able to honour its commitments to staff.[22]

2.6 On 17 September 2001, the First Administrators resigned.[23] The Federal Court appointed Messrs Mark Korda and Mark Mentha of the

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[19] A history of announcements made by the Ansett Administrators from the commencement of voluntary administration in September 2001 is available on-line at the Ansett Administrators' website. See http://www.ansett.com.au/timeline/timeline_f.htm

[20] According to one survey, the collapse came as a great surprise to most of the employees. Despite earlier difficulties (such as the grounding of the Ansett fleet the previous Easter by the Civil Aviation Safety Authority) some 80 per cent of the sample surveyed by Webber and Weller (2002, op. cit.) had, prior to the collapse, considered their job to be *secure* or *very secure*.

[21] See the media and information releases on ASIC's website: http://www.asic.gov.au/asic/asic.nsf

[22] On 11 July 2002, ASIC announced the closure of its investigation into the collapse of Ansett. It had already announced (1 March 2002) that no action would be commenced against Ansett or its former directors. It concluded that the public interest would not be served by incurring the cost and risk of commencing proceedings against Air New Zealand Limited, stating, that 'any action by ASIC would be of no assistance to former employees of Ansett'.

[23] Under s. 436E of the Corporations Act, an administrator must convene a first meeting of creditors within five business days of their appointment. At this meeting, creditors can vote to remove the administrator and appoint someone else. In the Ansett case, the First Administrators resigned before that meeting. The Federal Court decided that the relevant unions could vote as the proxy of their members, who comprised a very substantial body of creditors in the Ansett administration. The First Administrators were reported as stating that they did not have union support (see, for example, http://www.abc.net.au/am/s369127.htm). The ACTU reported that the resignation followed discussions with unions representing employee creditors.

See: http://www.actu.asn.au/public/news/1022630989_26474.html. Detailed accounts of these matters and the role of unions as representatives of employee creditors are provided in:

(1) Coudert Brothers, *Global Insolvency Review 2001*, pp. 1–2 (see http://www.coudert.com/publications/newsletters/global_insolvency_review.pdf); and

(2) Easdown, G. and Wilms, P. 2002, *Ansett: The Collapse*, Lothian Books, South Melbourne, Chapter 11.

firm Andersen, Chartered Accountants, (hereafter referred to as 'the Ansett Administrators') as administrators of the majority of the companies in the Ansett group. A separate arrangement was put in place for the Hazelton group[24] and Mr Michael Humphris of Sims Lockwood was appointed as its administrator.[25] These appointments took effect upon the resignation of the First Administrators.[26]

2.7 Section 435A of the Corporations Act requires administrators to maximise the chances of a business remaining in existence or to maximise the return to the creditors, including former employees.[27] The Ansett Administrators, in their first report to creditors, described the task facing them as substantial. Among other factors, they had concluded that Ansett had no available cash, senior management and the financial books and records were in New Zealand and the businesses of the Ansett and Air New Zealand groups were 'significantly entwined'.[28] Moreover, the Ansett Administrators estimated that asset realisations (particularly aviation assets) would take 2–3 years to complete, given the apparently unstable nature of the aviation industry after the events in the United States of America on 11 September 2001.[29] As Ansett needed to realise assets to fund the payment of substantial employee entitlements, the time taken for the realisation would delay such payment.

2.8 It was reported in September 2001 that the total of Ansett employees' unpaid entitlements was estimated to be about $700 million.[30] In their first

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[24] *In the matter of Ansett Australia Limited; Rappas v Ansett Australia Limited* [2001] FCA 1348. An administrator was appointed for the Hazelton group separately from the remainder of the Ansett group because of the possibility of a perception of a conflict of interest.

[25] Sims Lockwood Melbourne merged with Horwath Melbourne on 1 January 2003.

See: http://www.horwath.com.au/docs/insolvency/Insolvency_intouch_autumn_2003.pdf

[26] Most of the following discussion focuses on the contractual arrangements between the Commonwealth, SEES and the Ansett Administrators. There were also comparable contractual arrangements between the Commonwealth, SEES and the Hazelton Administrators prior to the advance of SEESA funds for terminated Hazelton employees.

[27] This duty falls on administrators by virtue of s. 435A of the *Corporations Act 2001*.

[28] Ansett Group (Administrators appointed): First Report by the Administrators, pp. 2 and 18. See: http://www.ansett.com.au/administrator/ansettattach1/credrept.pdf. See also Zwier, L. and Merkel, D. 2002, 'The Scope of the Court's Supervisory Jurisdiction under Part 5.3A: The Ansett Experience', paper given to the Insolvency Practitioners' Association of Australia National Conference, Melbourne, at: http://www.ipaa.com.au/publications.cfm?doc_category_id=1&category=7&page=27

[29] Ansett Group (Administrators appointed): First Report by the Administrators, p. 38.

[30] See ABC Lateline [television program], 21 September 2001, transcript at: http://www.abc.net.au/lateline/s373065.htm, and remarks in the House of Representatives by the Hon. David Jull MP, 19 September 2001, *Hansard*, p. 31010. In their third report to creditors, the Ansett Administrators provided a revised estimate of $735.8 million.

report to creditors in January 2002, the Ansett Administrators estimated that the amount was $730 million.[31]

2.9 Air New Zealand had written to three companies in the Ansett group on 8 August 2001 (this was referred to as the 'letter of comfort') confirming its policy to take such steps as were necessary to make sure that its wholly-owned subsidiaries could meet their debts as they fell due.[32] The initial Administrators had instructed solicitors to make a demand upon Air New Zealand for advances referred to in the letter of comfort. Even though the Ansett group had claims against Air New Zealand arising out of that letter, the Ansett Administrators did not take legal proceedings against Air New Zealand. The Ansett Administrators stated that 'this avoided the need for lengthy litigation that might also have forced Air New Zealand into insolvency and resulted in no return to Ansett.'[33]

2.10 The Ansett Administrators negotiated a memorandum of understanding (MOU) with Air New Zealand, signed on 4 October 2001, resulting in a commercial settlement of Ansett Group claims against Air New Zealand. This settlement included a cash payment to Ansett of $150 million and the forgiving of certain debts.[34] The payment was received from the New Zealand Government (which was substantially involved in a recapitalisation strategy for Air New Zealand) on 16 October 2001.[35] The agreement both obtained a cash injection for Ansett and disentangled it from Air New Zealand. The actions of the Ansett Administrators in entering the MOU were approved in the Federal Court.[36]

2.11 The Ansett Administrators stated that, as a part of their strategy, they would recommence Ansett's operations on main trunk routes to maintain

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31 Ansett Group (Administrators appointed): First Report by the Administrators, p. 72. This represents the total of employee entitlements for all of the 15 000 employees. This figure was subsequently revised by the Ansett Administrators and, in the Third Report to the creditors (section 3.7.1), was put at $735.8 million.

32 The letter of comfort is reproduced in Easdown, G. and Wilms, P. 2002, *Ansett: The Collapse*, Lothian, South Melbourne, p. 270. This book also gives a detailed account—in a journalistic style—of the Ansett collapse and subsequent administration to March 2002.

33 Ansett Group (Administrators appointed): First Report by the Administrators, pp. 4, 20–24.

34 The settlement also provided, *inter alia*, for the Air New Zealand group to waive various claims against the Ansett group and for the Ansett and Hazelton administrators to release Air New Zealand from any claims in relation to the letter of comfort dated 8 August 2001. See Schedule 4B to *In the matter of Ansett Australia Limited and Mentha* [2001] FCA 1439.

35 Ansett Group (Administrators appointed): First Report by the Administrators, p. 21. Extensive documentation on related events from the perspective of the New Zealand Government is at: http://www.treasury.govt.nz/release/airnz/

36 See the detailed documentation on the Ansett Administrators' website at: http://www.ansett.com.au/administrator/v3045.htm. An account is provided also by Zwier and Merkel 2002, op. cit., p. 7.

its customer base and confidence of key clients and stakeholders. Some Ansett flights had recommenced on 29 September 2001.[37] According to the Administrators, the expansion of this project, 'Ansett Kick-Start', became possible only through the funds derived from Air New Zealand.[38]

2.12 The Ansett Administrators, in a letter to the ANAO, stressed the size and complexity of the Ansett redundancy program. This program, they pointed out, was unequalled in terms of the size of the redundant workforce and employee entitlement liabilities. They also emphasised the large investment required in staff to support the processes:

> Complicating the task was the challenge of working with Ansett company human resource ("HR") records and databases which were, in many cases, not integrated, required updating, and regularly produced anomalies.
>
> Such was the volume of processing required, a significant investment was first required to build greenfields IT based systems fundamental to verification, auditing and reconciliation. No such systems were available within the Ansett infrastructure.[39]

Announcement of SEESA

2.13 The Prime Minister first announced the establishment of SEESA at a press conference on 14 September 2001. He stated that the Government was concerned about Ansett employees' entitlements and wished to see those entitlements paid up to 'the community standard'.[40] To meet the cost there would be a special levy on airline tickets. This would not relieve the company of its responsibilities and recovery from the administrator would be pursued.

2.14 Nearly two years earlier, the Government had implemented a general scheme to provide safety net assistance to employees terminated because of insolvency without being paid their employee entitlements. That scheme, the Employee Entitlements Support Scheme (EESS), had commenced in early 2000. At the same time as announcing SEESA, the Prime Minister also foreshadowed an announcement that EESS would be replaced by a revised

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[37] Ansett Group (Administrators appointed): First Report by the Administrators, pp. 15–17. This was sometimes referred to as 'Ansett Mk. II'.

[38] The Australian Government took a number of measures in response to the collapse of the Ansett group of companies, of which SEESA was one element. The Department of Transport and Regional Services has provided the summary of those measures reproduced at Appendix 4.

[39] Letter from KordaMentha to the ANAO, 6 October 2003.

[40] The community standard referred to was eight weeks' redundancy pay. Some Ansett workers had up to 104 weeks of redundancy pay due to them. This makes up a substantial proportion of their unpaid entitlement in many cases. See Appendix 1.

general scheme.[41] SEESA, however, was a special-purpose scheme directed only to assisting employees of the Ansett group of companies.

Development of the policy framework

2.15 The Government decided on 18 September 2001 that the proposed Ansett scheme should use the private sector to administer payments of employee entitlements. The Government's policy objectives were:

- to 'stand in the shoes' of former employees to recover from Ansett's assets the funds advanced under the Scheme; and
- to ensure early payment of unpaid entitlements to employees terminated through the insolvency.

2.16 A further, subsidiary objective was that the Scheme should be designed in a way that would minimise the impact on the Commonwealth budget, especially the impact on the underlying cash balance.[42] This budget treatment was viewed as a 'key policy driver' in setting up the arrangement to use a private sector entity to pay employee entitlements to terminated employees.[43]

2.17 The Minister for Employment, Workplace Relations and Small Business issued a press release on 18 September 2001 stating that the Government would 'guarantee that Ansett workers will receive statutory and community standard entitlements' under SEESA.[44] This arrangement would be 'without prejudice to the right of the Government to stand in the shoes of the former employees to recover the monies the Commonwealth has outlaid'. In effect, the Government would 'stand behind the administrator' to pay these entitlements as they fell due.

2.18 The press release stated that SEESA would provide for:

- all unpaid wages;

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[41] The revised scheme, the General Employee Entitlements and Redundancy Scheme (GEERS), was announced by the Minister for Employment, Workplace Relations and Small Business, the Hon. Tony Abbott MP, on 20 September 2001. See: http://www.dewr.gov.au/ministersAndMediaCentre/mediacentre/printable.asp?show=2050. EESS and GEERS were the subject of an ANAO performance audit tabled in December 2002 (*Employee Entitlements Support Schemes*, Audit Report No. 20, 2002–03).

[42] See responses to the draft of this report from the departments of the Prime Minister and Cabinet, the Treasury and Finance and Administration, October 2003.

[43] See email from Fiscal Policy Branch, Department of the Prime Minister and Cabinet, to Group Manager, Workplace Relations Implementation, DEWR, 6 November 2001.

[44] Minister for Employment, Workplace Relations and Small Business, the Hon. Tony Abbott MP, Media Release 8301, *Ansett Employee Entitlements*, 18 September 2001. See: http://www.dewr.gov.au/ministersAndMediaCentre/mediacentre/default.asp.

- all unpaid annual leave;
- all entitlements for pay in lieu of notice (PILN);
- all long service leave; and
- up to eight weeks unpaid redundancy leave.[45]

2.19 The Government publicised its package of assistance to help Ansett group employees in newspaper advertisements.[46] These provided public information on the arrangements for SEESA, specified what entitlements would be covered and gave a toll-free telephone number for employees to ring for assistance with their entitlements. These advertisements also stated that the Government regarded the owner of Ansett as being responsible to meet the cost of employee entitlements and that it would seek to stand in the shoes of former employees to recover monies it outlaid for the Scheme.

2.20 The SEESA policy framework was developed with the help of a task force of senior officials ('the Task Force') who reported to ministers. The Task Force comprised senior representatives from the Department of the Prime Minister and Cabinet, the Department of Finance and Administration, the Department of the Treasury, the Department of Transport and Regional Services, the Department of Employment, Workplace Relations and Small Business, and the Australian Bureau of Statistics.[47]

2.21 The Task Force developed a model of operation under which a private sector entity (PSE) would be contracted by the Commonwealth to provide funds to the Administrators to enable SEESA payments to be made to terminated employees. The funds would be obtained either from the PSE's own resources or from a loan.

2.22 The other features of the model, as proposed by the Task Force, were as follows:

- By invoking s. 560 of the Corporations Act when making the payments to the Ansett Administrators, the PSE, having funded the employee entitlement payments, would thereby acquire the same priority in

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[45] In 1984, the then Conciliation and Arbitration Commission (the predecessor of the current Australian Industrial Relations Commission(AIRC)) established a standard on employment protection in Australia through a Termination Change and Redundancy (usually abbreviated to 'TCR') test case. This set a standard benchmark for redundancy in both federal and State awards. The matter is again before the AIRC at the time of preparation of this audit report. See http://www.e-airc.gov.au/redundancycase/

[46] See, for example, *The Daily Telegraph* (Sydney), 20 September 2001, p. 18.

[47] The AB'S advised the ANAO that, on the Task Force, it had provided technical advice on the treatment of the entitlements in government finance statistics and was not part of the development of the policy framework.

receiving payments following asset sales as the employees would otherwise have had.[48]

- The Commonwealth would guarantee the loan and make periodic payments from the funds raised under a new air passenger ticket levy to pay the liabilities incurred by the PSE, together with any associated administrative costs and financing (interest) costs associated with the loan.
- If the Administrators recovered funds from Ansett assets and repaid the PSE (because of the operation of s. 560 or an equivalent provision in a deed of company arrangement), the funds would be paid back to the Commonwealth or used by the PSE to help pay back any outstanding loan. In these circumstances, the Levy could be terminated earlier than if no recovery took place or if recovery were delayed.

2.23 The new Levy was then put in place. The Minister for Employment, Workplace Relations and Small Business introduced the *Air Passenger Ticket Levy (Imposition) Bill* and the *Air Passenger Ticket Levy (Collection) Bill* into the House of Representatives on 20 September 2001. He stated that the Government's view was that, although former Ansett employees had a right to their basic entitlements, the Federal Budget should not bear the cost. Therefore, it concluded that it was appropriate for air travellers to help to meet the cost of the Scheme through a levy on air tickets.[49]

2.24 The bills were passed on 27 September 2001. The Air *Passenger Ticket Levy (Imposition) Act 2001* imposes a levy of $10 on air passenger tickets. The *Air Passenger Ticket Levy (Collection) Act 2001* (the Collection Act) provides that the Levy is payable on tickets purchased from Monday, 1 October 2001. Regulations were made on 27 September 2001 under the Collection Act. The Air Passenger Ticket Levy (Collection) Regulations were gazetted on 28 September 2001.[50]

2.25 Section 22 of the Collection Act allows the Workplace Relations Minister to determine, in writing, the terms of a scheme for the payment of certain entitlements to former employees of companies in the Ansett group whose

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[48] This arrangement follows the mechanism employed by the Commonwealth's other employee entitlements schemes. When payments are made to meet employee entitlements under EESS and GEERS, s. 560 of the Corporations Act is used to establish the Commonwealth's priority for recovery from any assets of the insolvent business. A similar priority arrangement would be insisted upon in the event that a deed of company arrangement were to be entered into. This does not guarantee repayment but gives it the same priority as employee entitlements ordinarily have in the distribution of assets. These priorities are set out in s. 556 of the Corporations Act.

[49] The Minister for Employment, Workplace Relations and Small Business, the Hon. Tony Abbott MP, second reading speech, Air Passenger Ticket Levy (Imposition) Bill 2001, 20 September 2001.

[50] Amendments to the regulations were made and the *Air Passenger Ticket Levy (Collection) Regulations 2002* were gazetted on 12 September 2002.

employment had been terminated as a result of the insolvency of those companies. This provides the basis in legislation of SEESA.

2.26 The Minister for Employment, Workplace Relations and Small Business made such a determination on 9 October 2001. The determination provided that amounts payable under the Scheme were to be made by way of a loan and that repayment by the Ansett Administrators would be on terms prescribed by the Secretary of the department.

2.27 On 7 October 2001, the Deputy Prime Minister and Minister for Transport and Regional Services set out the detail of the Government's commitment in a letter to the Ansett Administrators. The letter stated that the Government's intention was 'to advance money through a private sector entity to the administrator for payment out to employees'.[51] It specifically elaborated on the Prime Minister's earlier announcement[52] of the Government's position on SEESA and is summarised below.

2.28 The commitment given by the Government was that it intended to protect employees of Ansett who were denied their entitlements. It would meet those entitlements for unpaid wages, annual leave, long service leave, pay in lieu of notice (PILN) and redundancy up to eight weeks to the extent that these could not be met from the assets of Ansett. The commitment did not remove the obligation on Ansett to pay employee entitlements upon termination. The Government commitment was, therefore, to advance moneys for employees' entitlements only to the extent that they could not be met out of the assets of Ansett, which now included the $150 million cash payment. Moreover, SEESA payments would be made only where entitlements were outstanding after Ansett's assets had been used to fulfil Ansett's obligations to pay these entitlements.

2.29 In the letter of 7 October 2001, the Deputy Prime Minister also described how the Scheme would operate. A PSE would advance money to the Ansett Administrators for payment to the former employees. This money would be advanced to the Ansett Administrators 'by way of a loan made specifically for the purpose of paying employee entitlements to the extent that there are not sufficient assets of Ansett to pay them'. The letter made it clear that the advance from the Government was to be used only as a last resort and in no case did the Government expect its advance to be used where there were assets that could be realised and used for the payment of employees.

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[51] Section 22(3)(a)(i) of the Collection Act enables the Minister for Employment and Workplace Relations to authorise 'payments to an entity for the purpose of helping the entity to meet payment obligations in respect of money borrowed for the purpose of making payments in connection with the Scheme'. This allows for but does not specify or make clear the intention that the 'entity' was to be a 'private sector entity', nor was that clear from the Parliamentary debate at the time.

[52] A copy of the letter is publicly available on the Ansett Administrators' website: http://www.ansett.com.au/administrator/v3083.htm

2.30 This letter also set out possible scenarios in which the Government's commitment might be called upon and what the Government expected in each case.

If Ansett were to go into liquidation: This would mean that the business would be closed, its employees terminated and its assets sold.

- In this case the Government expected that assets would be realised as quickly as possible and used to pay creditors (including employees) according to the priority set out in s. 556(1) of the Corporations Act. Only when readily realisable assets were exhausted did the Government expect SEESA funds to be called upon.
- The Government expected the same right of priority as employees under s. 556(1) of the Corporations Act for funds advanced. This means they would expect repayment in full of the amount they had advanced under SEESA, if sufficient funds were available when the assets were realised, before any employee received any further retrenchment payment over and above what had been advanced to them under the Scheme.
- If there were insufficient funds to pay the full amount for employee entitlements, the Commonwealth and those employees still owed redundancy money would be paid according to the same priority.

If a deed of company arrangement were to be entered into: This means that the administrators would enter into a legal arrangement with all creditors in relation to the quantum and timing of any payments from the assets of the company.

- In this case, the Commonwealth would expect the deed of company arrangement to reflect the same priority for any advances from SEESA as provided for under s. 556(1) in a liquidation.

If the company were to continue to trade with a reduced staff:

- In this case, the Government expected that unnecessary assets would be realised and used to pay terminated employees' entitlements before calling on SEESA funds. It would expect any advance under SEESA to be repaid as and when it would require.

2.31 When this letter was sent, the Ansett Administrators had only just settled with Air New Zealand. The letter also advised that the Government required that the $150 million that Ansett expected to obtain from Air New Zealand be used to pay employee entitlements unless there were legal obligations that took precedence. If there were such legal obligations the Deputy Prime Minister stated that he expected that the Ansett Administrators would inform him, before these obligations were paid, why they considered that they should take precedence over the Government' requirements in relation to the use of this money.

Use of the $150 million obtained from Air New Zealand[53]

2.32 From its first announcement, the Government's commitment was to pay employee entitlements under SEESA only to the extent that Ansett could not provide the necessary funds. However, the Ansett Administrators wished to use the $150 million obtained from Air New Zealand to support the recommenced Ansett operations.

2.33 From 7 October to 12 October 2001, the Administrators report having had numerous discussions with the Government and one of its advisors.[54] During this period, ministers decided they were not opposed to some of the Air New Zealand funds being used for recommencing Ansett operations.[55]

2.34 On 12 October 2001, the Ansett Administrators put a draft proposal to the Government.[56] The proposal was based on the Administrators' 'best estimates' of likely entitlements of terminated workers and an expected redundancy program affecting at least 8600 employees within a further two to six weeks. The proposal indicated that the Ansett Administrators were very reluctant to pay any employee entitlements amounts in mid-Administration. However, the Administrators' proposal was that 'they pay the 4–5 weeks' crystallised entitlements of employees limited to PILN totalling $52 million', of which the immediate cost was estimated at $35 million.

2.35 From discussions with the Ansett Administrators, the Task Force also noted that the proposal envisaged that employee entitlements would be paid in two 'waves'. The first would be the major part of the terminations (the 8600 staff), involving payments of the $35 million (representing PILN) from the Ansett Administrators and $195 million from SEESA. In the event that the attempt to sell Ansett as a going concern failed, a second wave of redundancies would result in payments for employee entitlements of a further $17 million from the Ansett Administrators and $90 million from SEESA. The difference of substance from the proposal by the Deputy Prime Minister was that Ansett would be making a lesser immediate contribution to employee entitlement payments than envisaged in the reference in the Deputy Prime Minister's letter to exhausting readily realisable assets before SEESA was called upon.

2.36 Both the Government and the Ansett Administrators had stated their concern that employees receive their entitlements as soon as possible. The

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53 An account of some of these events is provided in Zwier, L. and Merkel, D. 2002, op. cit.

54 The advisor referred to was a specialist who had been engaged by DOTARS specifically to provide advice in relation to the Ansett insolvency.

55 See the note from the Secretary of DOTARS, 11 October 2001. Ministers had decided their position in an early morning telephone hook-up that day.

56 See http://www.ansett.com.au/administrator/ansettattach1/mak02.pdf See also Task Force paper of 14 October 2001.

stand-down of Ansett employees had occurred nearly a month earlier, on 14 September 2001. The Task Force thought that options that enabled employees to access some entitlements (the 4–5 weeks' PILN from the Ansett Administrators) as soon as possible were preferable to those involving delays until all employee entitlement payments had been calculated and verified. The Task Force believed that many Ansett employees—who had been stood down—would have been experiencing 'considerable financial problems'.[57]

2.37 On 13 and 14 October 2001, the Ansett Administrators and the Commonwealth had further discussions. They agreed to the following arrangements.[58]

- The Ansett Administrators would write to Ansett employees seeking expressions of interest in being made redundant. The Administrators expected to despatch the letter on 17 October 2001 and the employees would have until 24 October to respond.
- Those employees who were made redundant would be paid 4–5 weeks' PILN from 29 October 2001 by the Ansett Administrators from Ansett resources, provided the Ansett Administrators could make the calculations in time. With an expected 8600 redundancies the cost was estimated at about $35 million.
- The Ansett Administrators would have completed all redundancy calculations within a further three weeks.[59] Verification on behalf of the Commonwealth was also expected to be complete within three weeks of the PILN payment. This was expected to enable the Commonwealth and the Ansett Administrators to pay the balance of employee entitlements in accordance with SEESA by 19 November 2001. The estimated cost, again, for the expected 8600 redundancies, was about $195 million.

2.38 On 15 October 2001, the Deputy Prime Minister and the Ansett Administrators issued separate media releases announcing the agreement about the use of the funds derived in the Air New Zealand settlement and

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[57] Task Force paper of 14 October 2001.

[58] See email from the Deputy Secretary, DOTARS reproduced at: http://www.ansett.com.au/administrator/ansettattach1/mak03.pdf. These arrangements assume that an initial wave of redundancies would comprise some 8600 employees. See the Task Force paper of 14 October 2001.

[59] The Ansett Administrators advised the ANAO that, at this point, they had already completed these calculations, as doing so was necessary to their calculating the PILN entitlement. The Ansett Administrators have also provided to the ANAO on 6 October 2003 a detailed schedule of the redundancy process, which is set out in Appendix 5 to this report.

the Government's commitment to fund the balance of employee entitlements in accordance with SEESA.[60]

2.39 On 17 October 2001, the Ansett Administrators began to send letters to Ansett employees inviting applications for redundancy.[61] On 30 October, they also sent letters to some 500 employees (mainly working in call centres) who were to be made compulsorily redundant. About 4000 employees either applied or were made redundant. The Ansett Administrators then began to pay PILN to those employees in accordance with their agreement.

Priority of repayment of SEESA advances

2.40 The issue that still required resolution between the Ansett Administrators and the Government was the priority of repayment of advances under SEESA. The Commonwealth's position remained that SEESA advances would rank for repayment with all other employee entitlements in accordance with the Corporations Act.[62] This issue developed in the context of the Ansett Administrators' consideration of offers to sell the mainline Ansett airline as a viable business.[63]

2.41 On 31 October 2001, the Ansett Administrators sent a proposal to the Government—'The Ansett Solution'—with the object of maximising the possibility of keeping Ansett in business or, if not, maximising the return to creditors.[64] The Ansett Administrators had received a conditional offer for the Ansett mainline business but, (they argued), they could not pursue it 'sensibly' without the Government's response to this proposal. The proposal outlined two options where the Government could subordinate in whole or in part the repayment of SEESA payments to rank in priority with ordinary unsecured

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60 See the Deputy Prime Minister and Minister for Transport and Regional Services, the Hon. John Anderson MP, Media Release A191/2001, 'Coalition Acts on Ansett While Labor Flips and Flops', 15 October 2001. This material was issued during an election period and is available from the website of the Liberal Party of Australia at http://www.liberal.org.au/media/campaign/anderson/andersonansett15oct.htm. Also, see 'Statement from Ansett administrators, Mark Korda and Mark Mentha of Andersen', 15 October 2001, at: http://www.liberal.org.au/media/campaign/anderson/statmtansettadmin15oct.htm and at: http://www.ansett.com.au/administrator/ansettattach1/mak04.pdf

61 See internal DEWR email, 17 October 2001. A copy of the text of the letter issued by Ansett is at: http://www.ansett.com.au/administrator/ansettattach1/mak14.pdf

62 This priority had been noted as 'agreed' in the letter of 17 October 2001 from the Ansett Administrators' legal advisers seeking a formal agreement.

63 Ansett Group (Administrators appointed): First Report by the Administrators, p. 43.

64 Ansett Group (Administrators appointed): First Report by the Administrators, p. 42.

creditors.[65] The Ansett Administrators continued to make submissions to the Government between 31 October 2001 and 9 November 2001 in support of their original proposal. However, the Government maintained its original position that SEESA repayments would rank equal to all other employee entitlements.

2.42 The Ansett Administrators accepted an offer for the mainline Ansett airline from Tesna Holdings Limited on 8 November 2001 and the committee of creditors approved the sale on 15 November 2001.[66]

2.43 At a meeting on 14 November 2001, the Commonwealth advised the Ansett Administrators that SEESA was established for the benefit of employees, and not ordinary unsecured creditors. The Commonwealth position was that SEESA should be viewed as a 'safety net' for employees. The Government would not accept a subordinated position.[67]

2.44 The Government's position was firmly restated in a further letter to the Ansett Administrators from the Deputy Prime Minister on 22 November 2001.[68] He stated that the Government's objective in putting SEESA in place had been 'to ensure that retrenched Ansett workers received their entitlements on a timely basis rather than wait for possibly several years until they could be paid out by the Administrators'. He emphasised later in the same letter that it was the Commonwealth's intention that 'SEESA be a safety net for employees. That is its singular purpose'. Moreover, the Government's view was that it was 'totally unacceptable' that employee entitlements should have been linked to commercial issues surrounding the sale of Ansett's mainline business. The Government also maintained that 'with respect to SEESA payments it would "stand in the shoes" of employees as a priority creditor, and that SEESA payments should at all times retain their priority ranking according to the normal application of the Corporations Act'.

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[65] The Ansett Administrators stated in their initial report to creditors that, if the then proposed sale of the mainline Ansett airline to Tesna did take place, unsecured creditors could receive an estimated return between zero and five cents in the dollar. If it did not, they were unlikely to receive any return. See Ansett Group (Administrators appointed): First Report by the Administrators, p. 71. The potential claims by unsecured creditors were later estimated by the Administrators to be 'more than $2000 million'. See the Third Report by Deed Administrators, para. 3.9, at: http://www.ansett.com.au/administrator/credmeet3/credrept3.pdf

[66] Four parties had actively participated in the sale process; Tesna, ANstaff, Singapore Airlines and Lang corporation. The completion of the Tesna sale was contingent on a number of conditions. On 26 February 2002 it was announced that the finalisation of all of the arrangements necessary for the sale could not be achieved before the completion date and the sale process ceased. Ansett Mk II ceased operation in 4 March 2002.

[67] Ansett Group (Administrators appointed): First Report by the Administrators, p. 40.

[68] A copy of the letter is publicly available on the Ansett Administrators' website: http://www.ansett.com.au/administrator/v3083.htm See also the Deputy Prime Minister and Minister for Transport and Regional Services, the Hon. John Anderson MP, Media Release A250/2001 'Government reaffirms position on Ansett', 22 November 2001.

2.45 The Ansett Administrators had stated that the Tesna offer had been subject to the Commonwealth subordinating the repayment of SEESA advances. However, the Government view was that the Ansett Administrators had inserted this condition as an incentive to unsecured creditors to support a deed of company arrangement.[69] The Deputy Prime Minister's letter noted, in support of the Government position, that at a meeting on 14 November 2001 the representatives of Tesna had made it clear that the priority question was not a 'condition precedent' to that bid.

2.46 The letter of 22 November 2001 proposed that SEESA funds would be advanced to the Ansett Administrators as a loan that would be recognised as a cost to the administration under s. 556(1)(a) of the Corporations Act, thereby obtaining the highest priority in repayment from realised assets.[70] However, if the loan were recognised as a cost of the administration the Commonwealth would be willing to subrogate this priority to a level equal to that of employee entitlements in line with the priorities set out in s. 556 of the Act.

2.47 Broadly, the Ansett Administrators accepted that position. However, they expressed concern that, if they were to proceed as proposed by the Commonwealth, they could be held personally liable to repay SEESA advances made under the determination under the Collection Act.

2.48 This was resolved by a deed (the SEESA Deed) between the Commonwealth and the Ansett Administrators, executed on 14 December 2001. This sets out the agreed basis on which SEESA payments would be made, including the adoption of the priority regime contemplated by ss. 556 and 560 of the Corporations Act. Both parties applied to the Federal Court for direction. The Deed, which was confirmed by the Court, protected the Ansett Administrators from any personal liability arising from the advance of SEESA funds and secured the Government's priority position equal to the former employees. Ansett creditors were then precluded from resolving that the Ansett group execute a deed of company arrangement with a provision that the Commonwealth did not have the priority for repayment of SEESA funds equal to that provided under s. 556 in any winding up.

2.49 In addition, the Minister for Employment and Workplace Relations issued a new determination under s. 22 of the Collection Act on 9 December 2001. The amendment was necessary to revise the list of companies eligible under SEESA and to reflect the arrangements set out in the Deputy Prime Minister's letter of

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[69] See the letter of 22 November 2001 from the Deputy Prime Minister and Minister for Transport and Regional Services, the Hon. John Anderson MP, to the Ansett Administrators, p. 2.

[70] DEWR minute to the Minister for Employment, Workplace Relations and Small Business, December 2001, regarding the new SEESA determination, p. 2.

22 November 2001. In particular, the determination needed to be made consistent with the Deed, then being finalised.

2.50 On 18 December 2001, the PSE selected by DEWR, SEES Pty Ltd (SEES), and the Ansett Administrators executed an Administration and Loan Deed of Agreement. This set out an agreed basis on which SEES, as service provider to the Commonwealth, would lend money to the Ansett Administrators under SEESA.

2.51 SEESA payments could now proceed.[71] By this time, DEWR had put arrangements in place to make the initial advances under SEESA (this is discussed further in later chapters).

2.52 The Government's original position had been to advance funds only as a last resort, when all Ansett assets had been realised. If there turned out to be a shortfall, then SEESA would meet that shortfall (but subject to the 8 week limit on redundancy payments). The Ansett Administrators had agreed that, in the immediate term, they would meet only the PILN payments from Ansett assets. The Government agreed to make payments under SEESA in advance of the end of the administration (which, it was thought, could run for several years) and before it could be known whether there would ultimately be a shortfall. However, through the Deed, the Government had maintained the priority position it had wished in any repayment from asset realisation.

2.53 Thus, at the commencement of SEESA, terminated Ansett employees could expect to receive their entitlements in three parts:

- PILN (of approximately 4–5 weeks), this was being paid by the Ansett Administrators;
- a SEESA payment. This would include all entitlements except the first four to five weeks' PILN[72]—made by the Ansett Administrators—and with redundancy capped at 8 weeks; and
- redundancy payments in excess of the amount covered by SEESA. This was to be paid by the Ansett Administrators on realisation of assets, which was expected to take some time, possibly several years.[73]

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71 See http://www.ansett.com.au/administrator/v3083.htm

72 Because the Ansett Administrators had agreed to pay the first four to five weeks' PILN entitlements, the general population of the Ansett employees were not expecting to have their PILN paid under the SEESA scheme. However, managers who were entitled to more than four to five weeks PILN were to receive an additional payment from SEESA to make up the balance of their PILN entitlement. See the Ansett Administrators' letter to Ansett employees, *Opportunity to apply for redundancy*, October 2001.

73 Ansett Administrators' letter to Ansett employees, *Opportunity to apply for redundancy*, October 2001.

Ongoing policy issues

Pay in lieu of notice (PILN)

2.54 The first part of the second creditors' meeting was held on 29 January 2002. Its main purpose was to approve the sale of the mainline airline to Tesna and to approve more time (up to 28 February 2002) for this sale to be completed. The Ansett Administrators stated later that they had continued to trade at this time, even though operations were incurring losses, as they perceived that the prospective sale required the business to be a going concern.[74] The Ansett Administrators' opinion was that this would provide the best possible return to creditors and maximised the chance of several thousand employees maintaining employment (thereby avoiding redundancy costs). The creditors agreed to the Ansett Administrators' proposals.

2.55 In the event, Tesna withdrew from the sale on 26 February 2002 and Ansett flights ceased at midnight on 4 March 2002.

2.56 On 5 March 2002, the Ansett Administrators wrote to the Commonwealth to advise that due to the non-completion of the Tesna sale they could no longer afford to fund PILN payments in future redundancies.[75] The Government, while continuing to emphasise their preference that the Ansett Administrators meet their previous commitment regarding the payment of PILN, acknowledged the change in circumstances and agreed that the necessary funds would thereafter come from SEESA (noting, however, that all SEESA funds remain an advance to the business and must be repaid if sufficient assets are available).[76]

2.57 In its response to the request, DEWR emphasised that the Government's undertaking to meet future PILN payments did 'not extend to the PILN payments for those former Ansett workers for whom SEESA payment have already been advanced to the Ansett Administrators in previous tranches (i.e. tranches 1 – 7).'[77]

2.58 The Ansett Administrators subsequently proposed that SEESA funds be used to reimburse them for all employee entitlements payments they had made from the $150 million they had received from Air New Zealand. They proposed to achieve this by withholding $29.4 million from any repayment of advances made under SEESA, when such repayment can be made from the assets of the business. The Minister for Employment and Workplace

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74 Second Report by Ansett Administrators, para. 3.2.

75 Letter from the Ansett Administrators to DEWR, 5 March 2002.

76 See the Minister for Employment and Workplace Relations' agreement, 6 March 2002.

77 Letter from DEWR to Arnold Bloch Leibler, 15 March 2002.

Relations rejected this proposal in September 2002, following consultations with other portfolios.[78]

2.59 This matter between the Ansett Administrators and the Commonwealth had not been resolved at the completion of this audit.

Deed of Company Arrangement

2.60 The second part of the second creditors' meeting was held on 27 March 2002. The Ansett Administrators proposed that a deed of company arrangement be executed for each of the Ansett companies under their control, on the grounds that this had various advantages over an immediate winding up, and the prospects of a better return to creditors. The creditors agreed and, on 2 May 2002, deeds were executed for each of the companies under administration.[79]

Ansett Ground Staff Superannuation Plan

2.61 The Ansett administration has been subject to a number of legal disputes, some of which could affect aspects of SEESA. The most prominent of these relates to the Ansett Ground Staff Superannuation Plan.

2.62 Ansett, as an employer, was party to certain superannuation trust deeds with respect to its employees, including the Ansett Ground Staff Superannuation Plan. Following the redundancy of many Ansett staff, they naturally looked to their superannuation entitlements. The terms of the Ansett Ground Staff Superannuation Plan included the payment of 110 per cent of superannuation entitlements to redundant members.

2.63 The Trustees of the Ansett Ground Staff Superannuation Plan took action in the Supreme Court against the Ansett Administrators. The questions that arose and were put before the Court were (i) whether Ansett was obliged to make contributions to the Plan; (ii) whether there was a shortfall in payments that should be met by Ansett; and (iii) what the priority would be of making up the shortfall from Ansett's assets. The Ansett Administrators stated in their third report that the shortfall was estimated to be up to $200 million.[80] If the priority sought were gained, this would reduce the funds available to be distributed to other creditors, including employees.

2.64 Judgement was handed down on 20 December 2002. Although the court found that Ansett was obliged to contribute to the Plan and to meet the shortfall,

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[78] DEWR Management Board report on SEESA, September 2002.

[79] See http://www.ansett.com.au/an_f.htm.

[80] See Ansett Group of Companies: Third Report, 16 September 2002, para. 1.2.1.

that obligation did not attract the priority being sought. However, on 24 March 2003, the Trustees appealed the decision. The appeal court considered the appeal on 11 August 2003. It terminated the appeal, leaving resolution to be determined as part of another matter, before the Federal Court.

2.65 The Ansett Ground Staff Superannuation Plan also challenged the validity of the Ansett DOCA. Proceedings to hear this appeal were, at the time of preparation of this report, set down for hearing by the Federal Court in November 2003. These were the proceedings that are also expected to resolve the superannuation issue.

2.66 The Ansett Administrators were unable to distribute to Ansett's creditors (including employees) any part of the funds raised from asset sales until these matters were settled.[81]

2.67 Towards the end of this audit, the Ansett Administrators announced that, following three days of mediation involving the Commonwealth, the Trustees of the Ground Staff Superannuation Plan, the ACTU and the Administrators themselves, they had received Federal Court of Australia approval of a proposal that allowed them to make further payments to Ansett staff. The Ansett Administrators stated:

> The agreement provides for a further $150 million to be paid to employees. Of the $150 million, $39 million will be paid to the Ground Staff Superannuation Plan members so as to cover their shortfall in vested benefits. The amounts paid will be deducted from their outstanding employee entitlements.
>
> To facilitate this settlement, the Commonwealth has agreed to accept a lesser return as the single biggest creditor to the Ansett Administration, receiving $150 million immediately, whilst deferring $67 million of its priority repayment, so as to allow the Administrators to pay this dividend to former Ansett employees.
>
> The Commonwealth will receive its deferred $67 million at a later date from the future sale of assets—but before any further dividends are paid to employees.[82]

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[81] See http://www.ansett.com.au/media/media_f.htm. See also the Ansett Administrators' *Employee Updates* for former Ansett employees, No. 14 (4 August 2003), No. 15 (16 August 2003); No. 16 (21 August 2003); and No. 17 (27 August 2003). In No. 14 the Administrators state that 'Numerous legal claims are being made by Ansett ex-employees.' They go on to point out that the effects of these claims, if successful, are, in some cases, to reduce the amount of cash available to all employees and others, to increase the total employee entitlements of $735.8 million.

[82] See the Ansett Administrators' *Employee Update No. 21* (25 November 2003) at http://www.ansett.com.au/cgi-bin/staff.pl.

3. Risk Management During the Implementation of SEESA

This chapter reviews the management of risk during the implementation of SEESA. Taking a risk management perspective, it examines some operational risks that arose during the implementation of the Scheme, and their consequences.

Introduction

3.1 This chapter takes, as a starting point, the policy decisions made by government, which prescribed the basic framework for SEESA. It goes on to review the more detailed elements of the design and their implementation and the management of risks that arose.

3.2 The discussion has been broken down into four subsections, the first of which addresses the framework and, each of the others, a particular source of risk that arose during implementation:

- arrangements for administering the Scheme;
- unintended tax consequences;
- management of the appropriation; and
- social security payments.

Arrangements for administering the Scheme

3.3 For successful operation, a scheme such as SEESA needs to include a clear statement of government policy, setting out its objectives and scope. These need to be supported by appropriate authority, including the proposed identification and management of any substantial risks, and clearly stated arrangements as to how the Scheme is expected to work, to support a robust administration and be properly accountable.

3.4 SEESA required both rapid development of the policy framework and urgent implementation. This required a capacity for the provision of further policy advice, including on the risks involved, while detail of the framework was still being settled between the Government and the key participants. This continued over the period from September to December 2001.

Policy objectives

3.5 The Prime Minister, at his press conference on 14 September 2001, stated the Government's primary policy objectives in helping Ansett employees.

The Government wished to make sure that Ansett employees' outstanding entitlements, with cap on redundancy at the 'community standard' of eight weeks, would be provided for by a special safety net scheme; that Ansett would be required to meet its responsibilities to its employees as far as possible and that a levy on airline tickets would be used to offset the costs of the Scheme. These objectives were supplemented a few days later by ministers, who decided that:

- early payment of entitlements should be ensured;
- the Scheme would use a private sector entity in its administration, and
- the financial arrangements should be designed to minimise the impact on the Commonwealth budget, especially the underlying cash balance.

3.6 The private sector entity would advance funds to the Ansett Administrator either from its own resources or from a loan.

3.7 These objectives were maintained, including during the period of intense discussion with the Ansett Administrators over how the Scheme would work. During these discussions the Government agreed to advance SEESA funds before the final outcome of the administration would be known. This reflected the objective of making early payments, but simultaneously required robust recovery arrangements to be made.

Ministerial determination

3.8 Authority for a scheme was provided in s. 22 of the Air *Passenger Ticket Levy (Collection) Act 2001* (hereafter, Collection Act). SEESA itself depended on a determination being made by the Minister for Employment and Workplace Relations under that section of the Collection Act. The determination specifies the companies and entitlements to be covered and the terms on which payments are to be made. This gives the Minister for Employment and Workplace Relations the authority to decide the business rules under which SEESA operates.

3.9 Section 22 also allows the Minister for Employment and Workplace Relations to authorise payments. These include payments in connection with the Scheme (in practice, this includes payments to SEES to meet the monthly repayments on the loan facility it secured) and payments to meet the Commonwealth's costs in collecting the levy and operating the Scheme (administrative costs incurred by DoTaRS and DEWR respectively). Finally, it limits these payments to 'no more than $500 million' and appropriates the Consolidated Revenue Fund for these purposes.

3.10 The Minister for Employment, Workplace Relations and Small Business made an initial determination on 9 October 2001 and, as discussed in Chapter 2,

replaced that with a revised determination on 9 December 2001. The content of the determination is described in the panel 'What does the Ministerial determination cover?', below.

3.11 The determination contemplates the possibility that a private sector entity (PSE) makes entitlement payments under the Scheme and, the alternative, that the Commonwealth make those payments.

What does the Ministerial determination cover?

The determination sets out the terms of the Scheme. It prescribes the companies and employees that are covered by it and specifies that it covers the following entitlements:

- all unpaid wages including unpaid amounts in respect of paid leave already taken and allowances such as shift allowance and overtime;
- all unpaid annual leave (including annual leave loading);
- all unpaid long service leave;
- all unpaid pay in lieu of notice; and
- all unpaid redundancy pay (an amount paid under SEESA on account of unpaid redundancy pay will not exceed an amount equal to eight weeks' pay, less redundancy payments already received).

The determination also states how payments are to be made under the Scheme. It states that the payments will be made on either behalf of the Commonwealth by the department or by a third party, under an arrangement approved by the department. No entitlement payments are to be made unless the required information is provided by the insolvency practitioner to satisfy the department and/or the third party that an entitlement is payable under the Scheme.

The determination explicitly states that the payment of the entitlements will be made by way of a loan advanced to the eligible companies through the relevant insolvency practitioner for the exclusive purpose of meeting payments to eligible employees. It also outlines that the entitlement payments will be considered an 'expense' within the meaning of s. 556(1)(a) of the Corporations Act and will be repaid by the Insolvency Practitioner in accordance with the priority afforded by the Court.

The determination defines an employee covered by SEESA as a person who is employed under Australian law, who has had their employment with an eligible company terminated, as a result of the insolvency of that company. An employee who was a shareholding executive director of the eligible company, or a relative (as defined in s. 9 of the Corporations Act 2001) of a shareholding executive of the eligible company is not considered an eligible employee for the purposes of SEESA.

Identification and management of risks

3.12 The ANAO found that the Task Force and its work satisfied the need for policy capacity during the early, more fluid part of the development of the Scheme. The Task Force provided advice on certain risks at various points in the development of the policy framework for SEESA. For example, the Task Force found that using a private sector entity as financial intermediary to pay the administrator from either its own resources or from a loan would achieve the objective of minimising the risk to the underlying cash balance.

3.13 The Task Force advised that, as compared with a model of operation based on the Commonwealth providing the finance directly, this approach would bring:

- increased costs associated with fees, interest and administrative costs (then estimated to 'possibly exceed' $25–$30 million); and
- a likely delay of six weeks in payments flowing to Ansett employees, while a suitable commercial entity was found, that entity arranged funding and contractual arrangements were being settled.[83]

3.14 The Task Force also identified risks associated with the fact that it would be that PSE that would legally stand in the shoes of the employees in seeking recovery of funds advanced to the administrators. However, the Government accepted these risks, and this became its policy position for implementation of SEESA.[84]

3.15 DEWR finalised the specific arrangements for the Scheme based on the PSE option agreed by ministers and allowed for by the Collection Act and the Ministerial Determination. With the help of the Department of Finance and Administration, it selected Bentleys MRI of Sydney as its preferred supplier. (The selection process is discussed in Chapter 4.)

3.16 The Task Force also drew ministers' attention to the risks associated with the contingent nature of termination of employees from Ansett. The actual timing and scope of these redundancies would affect the verification effort required from SEES and the duration of the contract. The Task Force also identified the risk for the duration of the levy associated with the level of recovery from Ansett. That is, lower recovery would increase the duration of the levy so as to make sure that any shortfall resulting from the sale of Ansett assets could be met.

3.17 Under s. 22 of the Collection Act, DEWR was responsible for the implementation of SEESA. The Task Force identified four major contracts that needed to be in place before SEESA funds could flow, as follows:

- DEWR had to contract Bentleys MRI (in practice, the Commonwealth contracted Bentleys' special-purpose subsidiary, SEES).
- The Commonwealth and the Administrators had to agree on terms under which funds would be advanced to meet employee entitlements, including the terms under which the companies would repay Bentleys (in practice,

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[83] In practice, the continuing negotiations with the Ansett Administrators prevented the time taken to put these arrangements in place from becoming the critical path for disbursement of payments (see Chapter 2).

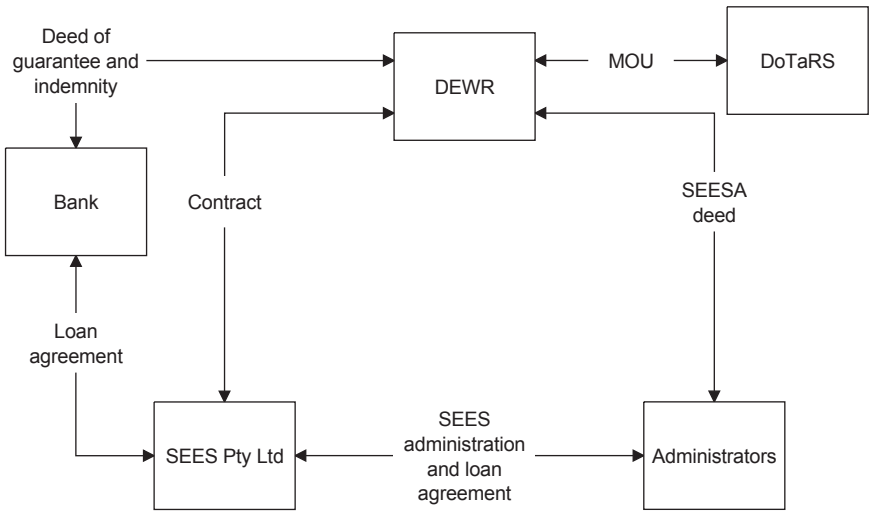
[84] At this point (late September 2001), risks such as those associated with the incidence of tax (discussed later in this chapter) had not been identified.

SEES: this required a deed between DEWR and the Ansett Administrators and an agreement between SEES and the Ansett Administrators).

- SEES needed to secure a loan from a financial institution.
- The Commonwealth needed to provide a guarantee to the financial institution making the loan to SEES of the funds to be made available to the Ansett Administrators to meet outstanding employee entitlements.

3.18 In practice, a further agreement—the memorandum of understanding between DEWR and DOTARS—needed to be put in place to allow DEWR to reimburse DOTARS for its costs in administering the collection of the levy. Figure 3.1 illustrates the network of agreements among the principal parties.

Figure 3.1
Agreements among the principal parties



Source: ANAO analysis of information obtained from DEWR and DOTARS.

3.19 Although the Task Force had identified certain risks and advised ministers (as noted above), for the period after the policy guidance and authority for the Scheme had been set, the ANAO found no documentary evidence of:

- a systematic risk analysis being undertaken by DEWR for the agreed option or formal, ongoing risk management of that option; or
- timely advice being provided to senior management on the impact the realisation of such risks would have on the delivery of the Scheme.

3.20 While the ANAO found that key instruments, such as the various agreements had been developed, it found no evidence of a consolidated, documented account of the key processes and responsibilities of the entire

mechanism of the Scheme. Documentation giving a comprehensive account could have helped DEWR to better think through the processes and identify potential risks. Given the self-evident complexity of the arrangements, the lack of such an account in itself introduced additional risk to management of the Scheme.[85] As well, such a record is an important element of accountability that can be of valuable assistance in any subsequent Parliamentary or other questions or committee inquiries.

3.21 SEES did prepare a diagram of the operation of the Scheme, in consultation with DEWR. SEES supplied copies of this diagram to prospective financiers to aid their understanding of how SEESA was intended to operate.[86]

3.22 With a time critical and complex project such as SEESA, such a structured and documented account would increase the likelihood that key risks are identified early and are mitigated cost-effectively. The absence of such a systematic description of key risks limits the ability of senior management to be comprehensively assured through governance arrangements that all material risks have been identified and are being addressed. At least the likely impact of a particular risk should preferably be known before, rather than after, the event so that appropriate and timely action can be taken. It should be little comfort to management that the consequences of not taking such action do not turn out to be material.

3.23 The remainder of this chapter discusses certain specific risks that have arisen during the implementation of the Scheme.

Unintended tax consequences

3.24 A tax risk identified before the execution of the contract between the DEWR and SEES has been realised. Although the net cost may be minor, the tax payable could add substantially to nominal expenditure on the Scheme. A second substantial tax issue, flowing from the same risk, was later identified by the Australian Taxation Office and has now been addressed by DEWR.

Identification of the initial tax risk

3.25 During the development of the contract between the Commonwealth and SEES from late October 2001, SEES raised concerns with DEWR about

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[85] The arrangements were, in one important respect, later revised. At first, DEWR advised DOTARS that the incidence of tax would impact the levy duration. Subsequently, the Treasurer agreed that levy receipts would not be used to fund tax payable on DEWR's payments to SEES to repay the CBA loan and, hence, would not impact levy duration.

[86] This diagram is reproduced at the end of Appendix 2.

the incidence of tax on the various transactions contemplated under SEESA.[87] After it had short-listed financial institutions to provide funding for the Scheme, SEES emphasised that those institutions also saw 'certainty regarding taxation receipts by SEES' as a major issue.

3.26 DEWR sought the advice of the Australian Government Solicitor (AGS) on tax consequences of the then proposed agreement. A number of transactions and possible tax consequences were considered including the potential incidence of GST and income tax. Among these was the possibility that payments made to SEES by DEWR—the monthly instalments to repay the Commonwealth Bank of Australia (CBA) loan—would attract income tax.

3.27 The AGS opinion was that it was at least possible that the ATO would take the view that some tax liabilities would arise. However, it also thought it unlikely that the payments to SEES (representing levy collected) would be assessable for tax as income in the hands of the contractor. At the same time, the AGS also advised DEWR to consult the ATO's Deputy Chief Tax Counsel to settle the tax implications of the draft agreement 'now' rather than risk the ATO taking a view inconsistent with that formed by the AGS at that time. This advice was provided just over a month before the contract was signed.[88]

3.28 The AGS also noted, in particular, that:

> the true nature of the arrangement being contemplated involves the Commonwealth essentially repaying a loan which the contractor obtains and administers for the ultimate benefit (or purposes) of the Commonwealth.[89]

3.29 DEWR provided a copy of the AGS advice to SEES, with the latter expressing concern that the proposed contract did not document the true nature of the arrangement, as characterised by the AGS. It advised:

> The result is that, to the extent transactions are characterised solely by reference to the Contract, unintended taxation consequences can result. This could include ticket levy receipts being subjected to income tax and/or GST, resulting in

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[87] SEES has provided the ANAO with a detailed chronology of its actions on the tax issue (8 October 2003). This records that SEES first emailed DEWR, raising the issue of Levy receipts potentially being taxable, on 31 October 2001. In November 2001, SEES drafted a clause it proposed for inclusion in the contract to address its concerns.

[88] Advice from Senior General Counsel, AGS, to DEWR, 13 November 2001.

[89] This was supported by additional AGS advice (from Chief General Counsel) in April 2002 that 'The nature of the arrangements is a very unusual one but it is nonetheless clear that SEES is simply a vehicle to facilitate the transmission of funds from the Commonwealth to former employees of Ansett. The character of the arrangement involves the repayment by the Commonwealth of a loan obtained by SEES and administered for the purposes of the Commonwealth' (See letter from AGS to DEWR, 'Ansett Agreement—SEES—Tax Issues', 18 April 2002, para. 31).

significant tax leakages from the Scheme, potentially such that the levy proceeds would be inadequate.[90]

3.30 If the payments by DEWR to SEES were subject to income tax, that tax burden would fall on SEES. As DEWR expected these payments to be $8 million a month, a substantial tax liability for SEES could arise. SEES told DEWR that, in this event, the company could become 'instantly insolvent'.[91]

Mitigating action

3.31 To mitigate the tax risk, SEES recommended to DEWR that the loan from the financier should be properly characterised as being made in a nominee capacity with the funds borrowed at no time becoming the beneficial property of SEES.[92] DEWR sought AGS advice on the option.[93]

3.32 The AGS view was that the aim of the option would be to make it clear that SEES never receives levy or loan funds in its own right and so does not itself have tax liabilities in relation to those funds.[94] The option would have required explicit statements about the nature of the loan arrangements and the relationship between SEES and the Commonwealth to be made, in particular, the capacity (nominee/agent) in which SEES borrows the loan funds. However, as the AGS saw it, this would be clearly contrary to the Commonwealth's intention in establishing the proposed arrangements. The ANAO understands this to be a reference to the intention to have SEES undertake the borrowing in its own right rather than on behalf of the Commonwealth. DEWR did not pursue the option.[95]

3.33 SEES (like the AGS) also recommended that a private ruling be sought specifically on the tax implications of the payment of ticket levy monies to SEES. At a discussion on tax issues during a video conference with DEWR

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[90] 'Comments on Tax Issues', provided by the Tax Consulting Division of Bentleys MRI (Sydney) Pty Ltd, circa 21 November 2001. Bentleys MRI raised orally the risk of going over the $500 million limit on the special appropriation during a video conference between DEWR and SEES on 21 November 2001.

[91] Record of video conference, 21 November 2001.

[92] 'Comments on Tax Issues', provided by the Tax Consulting Division of Bentleys MRI (Sydney) Pty Ltd, circa 21 November 2001.

[93] Email request from DEWR to AGS, 27 November 2001.

[94] Advice from AGS to DEWR, 28 November 2001.

[95] In any case, if SEES (or any third party) were to seek to borrow funds on behalf of the Commonwealth it could not do so without the explicit authorisation of an Act, as required by s. 37 of the Financial Management and Accountability Act 1997 (FMA Act).

officers on 21 November 2001, SEES advised urgency because a private ruling would take 'a minimum of a month'.[96]

3.34 On 27 November 2001, DEWR wrote to the Australian Taxation Office, providing a copy of the draft contract and seeking advice on its taxation implications.[97] DEWR advised the ANAO that it convened a meeting in late November 2001 with the ATO and AGS to discuss these matters. DEWR was not able to provide a record of that meeting. Later, DEWR advised its minister that 'We understood from the ATO at that time [December 2001] that no adverse taxation implications arose from the proposed arrangements'.[98] The ANAO has not found any written record to support this understanding.

3.35 DEWR and SEES, with AGS help, then set about drafting a request to the Commissioner of Taxation for a private ruling on the possible tax consequences. The contract (signed on 17 December 2001) acknowledges that the parties were seeking the private ruling (clause 3.12) and states that the parties expected that the ruling would be issued by 31 December 2001.[99] However, the application had not been lodged by that date.

3.36 DEWR's objective in early December 2001 was to enable as many terminated Ansett employees as possible to receive their SEESA payments before Christmas 2001.[100] This was reinforced by a ministerial press release on 11 December 2001 in which the Minister for Employment and Workplace Relations expressed the Government's hope that that day's hearing in the Federal Court (see Chapter 2) would 'pave the way for Commonwealth scheme payments to flow to Ansett workers (who have already been made redundant) by 19 December'.[101] Therefore, the risk that DEWR sought to avoid, first and foremost, was that of delay in payments.

3.37 SEES was able to make its initial payments under SEESA on 18 and 19 December 2001. The events were marked by a further press release from the Minister.[102]

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96 Record of video conference of 21 November 2001. However, SEES raised this possibility as early as 13 November 2001 in an email advice to DEWR.

97 Letter from Group Manager, Workplace Relations Implementation, DEWR, to Tax Counsel, ATO, 27 November 2001.

98 DEWR provided this explanation in a minute to Minister Abbott in February 2003.

99 The ANAO has not found any evidence as to why the parties expected that the ruling should be available by this date.

100 This is confirmed by the letter (undated but clearly despatched in early December 2001) from the Secretary, DEWRSB, to the Ansett Administrators stating the Commonwealth's position on SEESA. (See: http://www.ansett.com.au/administrator/ansettattach1/dmm03.pdf.) That deadline is reflected operationally in internal DEWR emails of 8 December 2001 and 11 December 2001.

101 The Minister for Employment, Workplace Relations and Small Business, the Hon. Tony Abbott MP, media release, 'Ansett worker entitlements', 11 December 2001.

102 The Minister for Employment, Workplace Relations and Small Business, the Hon. Tony Abbott MP, media release, 'First Ansett worker entitlements paid', 18 December 2001.

3.38 On the tax risk, DEWR adopted a strategy to enable the contract to be executed and for the Scheme to begin working before receiving the private ruling. This strategy comprised the inclusion in the contract of clauses[103] that would do the following:

(a) allow SEES to pay the cost of any unintended tax consequences out of the Separate Account it had established to manage the funding of the payments to and recoveries from Ansett. This means that DEWR agreed that the Commonwealth would meet the cost to SEES of paying any tax that might flow from an unfavourable private ruling;[104] and

(b) require SEES to reimburse the Separate Account with an amount equivalent to any benefit that may accrue as a result of any unintended tax consequences.[105]

3.39 This strategy meant that any tax liability would be met from the repayments funded by the appropriation in the Collection Act. Because of the expectation at this time that payments by DEWR to SEES under the contract would broadly match levy collected, the additional cost would have had to be funded by the Levy.[106] In effect, DEWR accepted the burden of the tax risk for the Commonwealth subject to SEES 'paying back' to the Commonwealth any unintended tax benefit.[107] Later documents on file show that the department had envisaged that the $8 million monthly instalments could be increased to meet any tax liability incurred by SEES.[108]

3.40 The primacy of the desire to make the initial payments promptly is also evident from SEES's view in a letter to the CBA in June 2002:

> At the time of negotiating the agreement between SEES and the Commonwealth of Australia [that is, late 2001] ... the whole taxation position was not finalized. Bearing in mind the impending Christmas break and the desire to make payments

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[103] Clauses 3.12 to 3.15 of the contract between the Commonwealth and SEES deal with the 'unintended tax consequences'. DEWR was inclined to this strategy as early as 13 November 2001. See email of that date from SEES to DEWR.

[104] Clause 3.13. An explanation of the principal cash flows in SEESA and the role of the Separate Account maintained by SEES is set out in Appendix 2.

[105] Clauses 3.14(b) and 3.15.

[106] Although the view at this time was that funding to pay the tax liability would be met by levy payments, this subsequently changed.

[107] See DEWR internal email advice from its Principal Government Lawyer on risk allocation in the Commonwealth–SEES contract, 26 February 2003.

[108] Minute to the Secretary, DEWR, from Group Manager, Workplace Relations Implementation, 15 August 2002.

to Ansett employees in respect of their employee entitlements an indemnity was included in the SEES agreement with the Commonwealth.[109]

3.41 DEWR had recognised this tax risk as serious. This is evident from its application for the private ruling in which it stated that, if the ruling were not in its favour, it 'might not have enough funds to administer the Scheme in the way the Government intended'.[110] However, resolving the tax risk took lower priority than the risk of further delay in making the initial payments.[111] Reaching agreement with the Ansett Administrators had taken some time (as described in Chapter 2). DEWR advised the ANAO that, in its view, a delay in implementation 'would have had a significant social and economic impact on the Ansett employees already without employment or alternative sources of finance'. DEWR sought the private ruling from the Commissioner of Taxation on 3 January 2002, after the contract had been signed and initial SEESA payments made.[112]

Outcome and consequences

3.42 The Commissioner issued a *Notice of Private Ruling* on 1 March 2002, relating to the Goods and Services Tax aspects of the transactions. This resulted in no unintended tax consequences. More significantly, he issued a further ruling on 4 April 2002.[113] It advised:

> The payments of amounts under the Service Contract by the Commonwealth to the contractor, SEES, are assessable income in the hands of SEES. The income will be derived by SEES in the income year in which SEES is entitled to receive payment and will be included in SEES's assessable income under section 6-5 of the *Income Tax Assessment Act 1997*.[114]

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[109] Letter from SEES to CBA of June 2002 advising of the tax issue. Under a clause of the loan agreement between SEES and the CBA, SEES is required to notify the CBA promptly in writing of any dispute which may exceed $1 million. SEES advises that it determined that 'it should notify the CBA of the potential tax liability to eliminate the possibility of non-compliance with the obligations under the Loan Agreement in the event of non-disclosure' (Letter from SEES to the ANAO, 8 October 2003).

[110] This indicates that the applicants for the ruling expected that there was a significant risk that the total costs of the scheme would exceed the $500 million provided by the special appropriation in the Collection Act. This also clearly reflects the view put by SEES earlier to DEWR.

[111] The chronology of events relating to tax, provided to the ANAO by SEES, shows that DEWR had formed the view by 29 November 2001 that the urgency of making SEESA payments had led DEWR to conclude that the tax issue should be dealt with by providing an 'indemnity' to SEES in the contract.

[112] The application for a private ruling is dated 3 January 2002. The application states that 'A contract has been entered into by the Commonwealth and the contractor'.

[113] SEES advises that it first received a copy of the ruling from DEWR on 30 April 2002.

[114] In the view of the AGS, the ruling seemed to be based to a substantial extent on a belief that the amounts paid to SEES by the Commonwealth could not be disaggregated into component parts. There is no provision in the contract that allocates a portion of the monthly instalments paid by DEWR to, for example, any fees and allowances due to SEES and other amounts payable from the Separate Account, such as payments in respect of the loan (See letter from AGS to DEWR 'Ansett Agreement—SEES—Tax Issues', 18 April 2002, paragraphs 9–10).

3.43 At the same time, a Second Commissioner of Taxation also raised with the Secretary, DEWR, a second unintended tax consequence, not anticipated by DEWR before signing the contract with SEES. This additional consequence resulted from the ruling on the incidence of income tax.

3.44 The private ruling, mentioned above, had established that SEES would be liable to pay income tax on the amounts for the monthly loan repayments it received from the Commonwealth. Although the Commonwealth would bear the burden of any tax liability incurred by SEES, the company and its shareholder would enjoy the benefit of the franking credits that arose in connection with the assessment and payment of the income tax. The Second Commissioner pointed out that, as it did not seem that the Commonwealth had envisaged providing such a benefit to SEES, this represented an additional cost to the Commonwealth and a 'significant windfall gain for SEES (and Bentleys MRI).'[115]

3.45 In effect, SEES would be able to use the franking credits associated with the payment of the income tax to pay fully franked dividends to its shareholder, Bentleys MRI. The benefits could also be passed to the shareholders of Bentleys MRI. The Second Commissioner explained that this whole outcome was inconsistent with the intent of the imputation system, as a payment of tax would be imputed to the shareholders even though the Commonwealth had, in fact, met the tax burden.

3.46 The advice from the Second Commissioner also pointed out that:

> There will be a circular flow of funds passing between the Commonwealth and SEES. That is, the company will incur a tax liability on the payments derived in the income year, the Commonwealth will pay an additional amount to SEES so that the company can meet the tax liability. SEES will, in turn, pay the additional amount back to the Commonwealth as a payment of tax. SEES will then incur a further tax liability in respect of the additional amount paid by the Commonwealth. The structure of the arrangement is unnecessarily complicated.[116]

3.47 The Second Commissioner recommended that DEWR approach either SEES or the Government with a view to negating the potential windfall gain to SEES.

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[115] Minute from a Second Commissioner of Taxation, to the Secretary, DEWR, 3 April 2002. No estimate of magnitude of the potential additional cost was made. SEES has advised the ANAO that its understanding was that payments for its services would be taxable income and that payments to Bentleys MRI, which would equal those service costs (but not including finance-related disbursements) would be a deduction under the *Income Tax Assessment Act 1997*. To that extent, there would be no alleged benefit of franking credits.' (Letter of 8 October 2003).

[116] Minute from a Second Commissioner of Taxation, to the Secretary, DEWR, 3 April 2002.

3.48 DEWR, as mentioned above, had sought to mitigate such an unintended consequence by including clauses that required SEES to report to DEWR and reimburse the Separate Account with an amount equivalent to any benefit that may accrue as a result of any unintended tax consequences.[117] DEWR subsequently obtained the following AGS advice on this matter:

> Considering the whole intent of the Contract and the intent of the ability to frank dividends, we believe that clauses 3.14 and 3.15 are wide enough to prevent SEES using the franking account to give a windfall tax advantage to its parent company shareholder.[118]

3.49 The AGS advice had also concluded that the Commonwealth should attempt to obtain the agreement of Bentleys/SEES for the winding up of SEES upon the conclusion of the contract:

> Of course if the company were to remain in existence after the end of the Contract, then the credits that had arisen in the franking account and never used could then be used for the benefit of SEES's shareholder after the Commonwealth was no longer involved with SEES. To overcome this there would need to be an agreement with SEES that it would wind up the company after the contract was completed.

3.50 DEWR subsequently approached SEES and Bentleys on the matter and a deed of undertaking was drafted. As a part of the mitigating action, the shareholding arrangements in SEES were changed so that Bentleys could not, of its own volition, consolidate SEES back into its parent company. On 21 June 2002, DEWR signed a Deed of Undertaking with SEES and SEES's shareholders to prevent the unintended consequences (any windfall gain) identified by the Second Commissioner, and agreeing to the winding up and deregistration of SEES as soon as practicable upon termination of the contract.

3.51 The ATO provided DEWR with confirmation that, if the Deed were complied with fully by the parties, in the ATO's view, the unintended tax consequences would not arise. This means that the franking credits issue has therefore been resolved. However, the ATO also pointed out that if SEES or Bentleys were not to comply there was no remedy under tax law. The Commonwealth would then have to rely on its rights under the Deed.[119] The Commonwealth's interests were, therefore, protected at this level.

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[117] Clauses 3.14(b) and 3.15.

[118] AGS advice to DEWR of 26 April 2002.

[119] See email to DEWR, from Tax Counsel, ATO, 6 May 2002.

Further consequences

3.52 The ANAO has identified the following six further potential consequences of indemnifying SEES from meeting tax costs and the private ruling.[120]

(a) *An increase in the potential maximum expenditure required under the special appropriation in the Collection Act.* Both SEES and DEWR had expressed concern (cited above) that the required expenditure could, as a consequence, exceed the appropriation limit of $500 million.[121]

(b) *An increase in the amount of levy that must be collected to meet the costs of the Scheme.* This is because the purpose of the levy is to raise money to meet the costs of the Scheme, and payments by DEWR to SEES under the contract are intended broadly to equate levy collected.

(c) *From (b) above, a potential consequential windfall in tax collections for the Commonwealth.* This is because the additional costs of meeting income tax payments are simply returned to the Consolidated Revenue Fund (CRF). In effect, this would mean that the additional Levy raised would be paid into general revenue. Prima facie, this amount would not form part of any surplus from the Levy, which would mean that it would not necessarily be subject to any commitment concerning the direction of expenditure of any such surplus, should that surplus arise.

(d) *Costs of reviewing the ruling*. There has been substantial effort invested by DEWR and SEES in lodging an objection to the Commissioner of Taxation's private ruling (and effort expended by the ATO in responding to the objection).

(e) *Costs of circular transactions*. There are administrative costs to the circular stream of payments that was highlighted by the Second Commissioner.

(f) *Consequential costs in interest payments.* As a consequence of the tax risk, it is likely that DEWR has incurred greater interest costs on the private sector loan. By mid-2002, it was clear that the Levy was reliably raising more revenue than DEWR was expending in monthly repayments through SEES to service the loan. At that time, the ANAO suggested that DEWR could increase the rate and reduce interest costs. However, DEWR elected to maintain a lower rate of repayment lest it had to meet the costs

[120] A further consequential issue raised by the ANAO was whether this arrangement could lead to SEES not having to meet the cost of income tax payable on the fee income it received. In response to the ANAO's query DEWR provided a copy of a letter from SEES to DEWR, in which SEES stated that 'it does and will continue to return the fees it receives from DEWR as taxable income'.

[121] The potential material increase in the costs of the scheme was recognised by DEWR as a contingent liability, and was included in their financial statements for 2001–02.

of the tax liability. This matter is taken up below under *Managing the Appropriation*.

3.53 DEWR has addressed aspects of these consequences, as discussed below.

Additional expenditure

3.54 DEWR sought advice from the AGS as to whether it is legally possible to use funds from an appropriation other than that provided under the capped special appropriation in s. 22(5) of the Collection Act to fund payments to SEES. The AGS advised that such payments could be made from a general appropriation. In brief, this is because the Collection Act does not require that all of the payments made to SEES must be made from the s. 22 appropriation.[122]

3.55 However, there is also a means of mitigating the risk of expenditure reaching the $500 million allowed under the special appropriation. It needs to be borne in mind that repayment of the CBA loan can happen, in the ordinary course, in two ways:

(a) first, from DEWR's monthly $8 million payments to SEES (which attract tax); and

(b) second, from moneys recovered by SEES from the Administrators under s. 560 of the Corporations Act (which do not attract tax).

3.56 Income tax and hence, expenditure under the special appropriation can be limited to the extent that DEWR can rely on recovery rather than making monthly payments to repay the CBA loan. DEWR has advised the ANAO that this was a consideration in its management of the appropriation (discussed below).

Increased levy collection

3.57 DEWR's initial expectation was that the additional payments it would make to meet SEES's taxation liabilities would require additional funds to be provided by revenue from the Levy.[123]

3.58 Section 12 of the Collection Act allowed the Minister for Transport and Regional Services to declare a final Levy month, after which no Levy can be collected. Therefore the private ruling also affected the discharge of the minister's responsibilities under s. 12.

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[122] Email advice from AGS to DEWR, 2 August 2002.

[123] Email from DOTARS to DEWR, 5 July 2002; response from DEWR, 8 July 2002.

3.59 Under the memorandum of understanding between DEWR and DOTARS, DEWR undertook to:

> advise DOTARS, as soon as it is known, of the level of funds required to meet the expenditures authorised under the [Collection] Act, so that the Minister for Transport can make a decision on when it is appropriate to declare the final Levy month under section 12 of the Collection Act.

3.60 Because of the contingencies affecting the Ansett administration, DEWR has not yet been in a position to 'know' the level of funds required. Nevertheless, given that the income tax it had agreed to pay added substantially to the funds required, DEWR would be expected to have advised DOTARS of the unforeseen and substantial additional requirement flowing from the ruling.[124]

3.61 The ANAO found that DEWR did this after receiving a request from DOTARS in July 2002, to enable the latter to brief its minister on how long the levy would need to be in place.[125] This was some three months after the tax ruling had been received. DEWR advised that this would add $2.5 million to each monthly payment.[126] DOTARS briefed its minister on the following day stating that, if the ruling stood, it would add significantly to the cost of SEESA.[127]

3.62 DEWR subsequently changed its view about the source of funds to meet the unexpected tax liability. This change followed consultations with the Treasurer and was subsequent to a Parliamentary Question being asked about the consequential contingent liability.[128] The new perspective was that, because all of the tax paid would simply be returned to the CRF, the effect of the private ruling was seen as having no net impact on the cash balance and as 'revenue neutral'.[129] Therefore, there was no need to raise additional revenue to pay the tax as it would return immediately to the Commonwealth, regardless of its actual value. In this light, there was no need to include the impact of any taxation when considering the duration of the Levy.[130]

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[124] SEES has advised the ANAO that it was 'required to lodge its 2002 tax return on 31 January 2003. It obtained an extension to 31 May 2003. It was obliged to pay the tax, which amounted to $7.8 million on that date, which it did' (Letter of 8 October 2003).

[125] Email from DOTARS to DEWR, 5 July 2002; response from DEWR, 8 July 2002.

[126] This appears to be a miscalculation based on simply adding 30 per cent to the repayments. The true figure is about $3.4 million. (This is because $11.4 million must be paid to SEES so that it can remit 30 per cent of that payment as tax and still repay $8 million to the CBA.)

[127] Minute to the Minister for Transport and Regional Services from DOTARS, dated 9 July 2002. Acknowledged as seen by Minister on 12 July 2002.

[128] Senate, Parliamentary Question no. 999, asked by Senator Sherry of the Minister representing the Minister for Employment and Workplace Relations, upon notice, on 9 December 2002.

[129] See email from Treasury to DOTARS, 19 February 2003.

[130] See email from Group Manager, Workplace Relations Implementation, DEWR, to DOTARS, 8 December 2002.

3.63 This perspective represents a change in the arrangements for the Scheme insofar as the original framework had envisaged the revenue and expenditure streams to be equated. As DEWR advised DOTARS:

> It is very important that the presentation of this matter clearly distinguish between the collection of the ticket levy and the payment of funds from CRF; the two are related but not the same and the payment of taxation (if any eventuates) will not impact on the duration of the levy. Similarly, the budget neutral nature of any taxation issues needs to be highlighted.[131]

3.64 In effect, DEWR had obtained agreement that, because the unexpected tax payments would have no impact on the cash balance, there would not be a need to raise additional Levy to offset the cost of those payments. This would mean that the Commonwealth would not profit from a tax on the Levy.[132] However, DEWR would still need to keep within the $500 million limit for which it had authority in the special appropriation.

Other consequences

3.65 There was a particular concern in DOTARS that the second possible consequence listed above—that of the Commonwealth making a windfall gain from tax revenue funded by the Levy—would attract public criticism. However, advice from the Treasurer that Levy collections would not be used to meet tax payments resolved this issue.

3.66 Technically, the imposition of tax adds to the total cost of the Scheme. However, the net cost is increased only by the last three consequences mentioned above, those of the lodging of an objection to the private ruling, by DEWR and SEES; the administrative burden imposed by the arrangement for paying the tax liability; and additional costs in interest payments.

3.67 DEWR advised the ANAO that it has been monitoring the costs of objecting (with SEES) to the private ruling and seeking to have it reviewed. These costs are estimated to be $65 000. They comprise fees for a Queen's Counsel, SEES and the AGS.

3.68 The total cost of addressing the tax issue is greater and comprises most of the $30 000 of additional costs charged by SEES as part of an initial 'fixed cost fee' of $430 000.[133] According to SEES, this had exceeded the amount set out in its proposal of 22 October 2001, primarily because of its analysis of tax consequences not contemplated when it made its original bid and some other

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[131] Ibid.

[132] Email from Treasury to DOTARS, 19 February 2003.

[133] SEES has advised the ANAO that it has calculated the additional cost, in the initial fixed cost fee, due to the tax matter alone was $26 735. It also provided an outline of the personnel and activities involved (Letter of 8 October 2003).

delays.[134] These costs will be met from the Scheme's special appropriation and offset by Levy revenue.

3.69 Unless a suitable arrangement can be made to avoid it, the circular flow of payments highlighted by the Second Commissioner will also impose administrative costs on all of the parties involved for the remainder of the life of the Scheme. No estimate of these impacts has been made.

DEWR's management of tax risks

3.70 DEWR has faced a series of potentially substantial risks from unintended tax consequences of the implementation of SEESA. The first risk, that of delay in making initial SEESA payments while the tax position was clarified, was successfully managed by the drafting of the SEES contract. This meant that the Commonwealth would assume the tax risk. In turn, this gave rise to the unintended possibility of substantial franking credits being available to the company's shareholder. DEWR had included clauses in the contract that it thought would inhibit such a risk. However, when the Second Commissioner drew attention explicitly to that risk and, following consultation with the ATO, DEWR took further action to mitigate it in the form of a deed.

3.71 The second identified risk was that the private ruling would be unfavourable. The ANAO found no evidence of a risk management strategy that analysed and assessed this risk, and addressed possible treatment.

3.72 Reliance on AGS advice and its (undocumented) discussion with the ATO[135] may have led DEWR to estimate as low the probability of an unfavourable outcome (although the AGS did urge DEWR to settle the matter and not to accept a risk). SEES had also exhibited concern about the outcome and showed unequivocally that the consequences, if realised, would be substantial.

3.73 Ultimately, DEWR's decision to accept the risk led to a potentially large contingent liability now being realised and, consequently, an increase in the overall cost of the Scheme.[136] Because most of the additional expenditure will be returned as tax revenue, the likely real increase is small in comparison with the amounts involved in the Scheme. However, the decision led to substantial time and resources being devoted to legal and other advice to appeal the

[134] See letter from SEES to DEWR, 29 November 2001. See also the discussion on contract prices in Chapter 4.

[135] See the email from Group Manager, Workplace Relations Implementation, DEWR to Minister Abbott's office, 13 May 2002: 'After a conversation with the ATO, from which we felt we would get what we expected (based on advice from AGS), we, with SEES P/L formally applied for a Private Binding Ruling (PBR).'

[136] The ANAO notes that DEWR incorporated this contingent liability in its financial statements at the first opportunity.

private ruling over the subsequent twelve months, with opportunity cost implications. Also, as set out above, there were potential consequences for DOTARS.

3.74 DEWR identified and addressed the further risk of having to fund a substantial tax liability from the Levy only once the unfavourable ruling had been issued. DEWR could have addressed the provision of funding in this eventuality at the time the tax risk was first identified. This is particularly so given that the AGS had provided advice in November 2001 about the possibility of using an appropriation other than that in s. 22 of the Collection Act to meet tax liabilities should the required amount be large (which would carry the risk that the $500 million limit in that section might be reached).[137]

3.75 SEES had expressed concern to DEWR, in November 2001, that the AGS advice on tax was couched in probabilistic terms and that the degree of uncertainty over the issue at that time may have been unacceptable to DEWR's minister.[138] The ANAO concludes that, given that a further delay in payments to the Ansett workers was very undesirable, a better approach would have been for DEWR to have advised ministers of the tax risk *before* the execution of the contract. That would have enabled ministers to balance the priority they attributed to making initial SEESA payments before Christmas 2001 with the then known tax risk, or even whether they wished to reconsider broader options for implementation.[139] In the event, this tax problem was drawn to ministers' attention only some weeks after it had crystallised in an unfavourable ruling.[140]

3.76 Given the complexity that these tax consequences add to the calculation of costs of SEESA, clear documentation of these calculations is pivotal in ensuring transparency and integrity in administering the Scheme, particularly given the significant public interest in the Scheme.

3.77 DEWR has provided the ANAO with evidence to show that it, jointly with DOTARS, has been monitoring the costs of the Scheme. This has been required to enable the departments to advise ministers on when the Levy could

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[137] Advice by email from Senior General Counsel, AGS, 13 November 2001.

[138] See *SEES Pty Ltd—Notes on the taxation position*, 21 November 2001.

[139] There is evidence that in mid-November, when negotiations with Administrators were under way, DEWR gave consideration to options such as making SEESA payments direct from Consolidated Revenue, which was outside existing policy parameters, but may have been an option available to enable prompt payment without having to pay via the Administrators (Minute to Secretary, DEWRSB, from Group Manager, Workplace Relations Implementation, DEWR, 14 November 2001).

[140] The tax issue was first drawn to the attention of Minister Abbott's office in an email of 13 May 2002 'in case it became public' (email from Group Manager, Workplace Relations Implementation, DEWR to Minister Abbott's office, 13 May 2002). It is not clear when the matter was drawn to the Minister's attention. The matter was drawn to Minister Anderson's attention in a brief dated 9 July 2002.

be terminated. Because of the taxation issues discussed here, it would seem appropriate for DEWR to calculate and report publicly the actual additional costs incurred by the Commonwealth, directly or indirectly, including any additional administrative costs of the Scheme incurred through the realisation of these risks.

Management of the appropriation

3.78 The ANAO sought to establish whether DEWR managed the appropriation provided under the Collection Act so as to minimise costs to the Commonwealth. An important aspect of this is the rate of repayment of the loan, which has been $8 million a month, commencing in March 2002. The rate at which the levy has raised revenue has been an average of $13 million a month (see Chapter 6). This raises the question as to whether the department will have incurred higher interest charges as a result of the DEWR's choice of repayment rate and whether repayments could prudently have been made at a higher rate.

3.79 The Collection Act provides the Minister for Employment and Workplace Relations with a special appropriation for the purpose of payments in connection with the Scheme. Section 22(5) limits the amount that can be authorised under s. 22(4) to a maximum of $500 million. In effect, this provides the resources to cover any liabilities incurred by SEES plus associated administration and financing costs associated with the loan.

3.80 Only a small proportion of this appropriation is likely to be required for establishment and operating costs. Therefore, loan repayment is important in the prudent use of these funds.

3.81 There is nothing in the Collection Act prescribing or restricting the rate at which payments can be made from this appropriation, within the overall cap of $500 million. However, based on the Task Force's original advice, there is a policy commitment to make the revenue and expense streams broadly equal—that is, neutralise the impact on the cash balance. Therefore, payments to the private entity to repay the loan would be expected broadly to match levy collections. The Task Force also acknowledged at the outset that the two streams might not exactly coincide in each year.[141]

3.82 The loan obtained through SEES is a commercial loan and it incurs interest charges at a commercial rate. That rate is subject to daily fluctuations[142] and applies to the size of the outstanding principal. Therefore, the more

[141] See DEWR internal email concerning advice given by DEWR to the ATO, 7 March 2002: 'The govt decision was to opt for the current arrangements as a means of balancing the actual outlay of monies by govt (monthly from CRF) with the anticipated monthly income from air ticket levy.' The ANAO is not aware of any other policy constraints in effect at that time on the management of the appropriation.

[142] The fluctuations derive from the daily Bank Bill Rate (BBR).

quickly that the loan can be repaid, the less interest is incurred by the Commonwealth. However, given the intention to balance expenditure from the CRF with revenue from the levy, the rate of payment would be expected to approximate the rate of revenue. It would be inconsistent with this principle to repay at such a high rate so as to create, as a consequence, a substantial net deficit. On the other hand, the interest payable on the commercial loan would be higher than that accruing to funds residing in the CRF. Therefore, there would be additional (interest) costs associated with repayments that are lower than the specific revenue available for the purpose.

Setting the rate of repayment

3.83 The ANAO sought advice on how the rate of repayment was set and what consideration was given to revising that rate as events unfolded. DEWR advised that the rate of repayment was based on advice from DOTARS as to the likely rate at which revenue would be raised by the levy.[143] DOTARS advised DEWR, in mid-November 2001, that the revenue for November was expected to reach $8 million and it expected the revenue stream to rise progressively in subsequent months.[144]

3.84 The expected repayment rate was specified in the information provided to prospective financiers by SEES: 'the manner and timing of [loan repayments] will be tied to the rate at which the Commonwealth Government receives monies from levies collected through operation of the Air Passenger Ticket Levy Act. For planning purposes, the Department has suggested a figure of $8 million a month be used.'[145] SEES also listed among key requirements from prospective financiers 'scope for accelerated repayments'.

3.85 DEWR also noted other DOTARS advice, based on experience with the administration of the Waterfront Redundancy Scheme,[146] which has some

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[143] See DEWR internal email, 25 October 2001, reporting a telephone conversation with a DOTARS officer, reporting an estimate of '$100 million per year (= $8.3m a month)'. See also the email from DEWR to Bentleys, 28 February 2002. On 1 November 2001, DEWR noted that DOTARS original advice on the likely rate, approximately $8 million, had been based on an estimate of a 10 per cent reduction in the traffic volume that had existed prior to the 11 September 2001 incidents in the USA and the Ansett collapse. At that time, the best estimate of likely levy revenue in the first month of the operation was about $6 million (but this was thought very inexact). Ultimately, some $9,174,386.27 was collected in respect of tickets purchased in October 2001. However, this was not clear until after November 2001.

[144] See DEWR internal email, 19 November 2001. Chapter 6 discusses in more detail DOTARS' estimation of the amount of levy expected to be raised.

[145] Letter of 31 October 2001 from SEES to prospective financiers. Email from DEWR to Bentleys MRI, 28 February 2002. Note that at a meeting with SEES in November DEWR expressed its confidence in obtaining $8 million a month from the levy (Record of remarks by Group Manager, Workplace Relations Implementation, DEWR, at a video conference with SEES regarding SEESA, 21 November 2001).

[146] See ANAO 2000–01, *Administration of the Waterfront Redundancy Scheme*, Performance Audit, Audit Report No. 17, available at http://www.anao.gov.au/.

similarities to the SEESA arrangements. In that instance levy receipts had been allowed to stabilise for six months to allow a more accurate estimate to be made of levy receipts and to base monthly payments on that more accurate figure.

3.86 DEWR decided in December 2001 that the standard monthly SEESA loan repayment amount would be $8 million, commencing in March 2002. The Minister for Employment, Workplace Relations and Small Business was advised of this proposed arrangement before the contract was signed.[147] DEWR also advised the Minister that the timing of the first repayment would mean that the levy was likely to have stabilised, allowing the establishment of a standardised loan repayment amount commensurate with the actual ticket remittance level.[148] In this regard, DEWR was proposing to follow the pattern of the Waterfront Redundancy Scheme.

3.87 The contract between the Commonwealth and SEES provides that the Commonwealth will pay to SEES amounts necessary for SEES to discharge SEES' obligations under the contract—in effect, to repay the CBA loan—when the funds are available in accordance with the Collection Act.[149] The same clause includes an 'acknowledgment' by the parties that 'the Commonwealth anticipates paying those monies by instalments of approximately $8 million a month.'[150]

3.88 The required scope for accelerated repayments was also accommodated in the contract with SEES. This was confirmed for DEWR on several occasions over ensuing months. For example, DEWR received advice in June 2002 from Bentleys MRI that the latter was 'not aware that there are any constraints on the Commonwealth making payments greater than $8 million'[151] and internal legal advice stated that the relevant provisions of the contract 'give the Department a discretion as to the amount of the instalments'.[152] DEWR had received further internal legal advice in February 2003 that:

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147 Minute to Minister, 13 December 2001.

148 See DEWR minute to Minister, 17 October 2001. The Minister had also been advised earlier of the proposed $8 million a month repayment rate in a minute concerning the Commonwealth guarantee of the loan.

149 See clause 9.1 of the contract between the Commonwealth and SEES.

150 However, this would be in addition to any payments made under clause 3.13 of the contract, which provides for reimbursement by DEWR of taxes paid by SEES on transactions under the contract except payment of fees, allowances and bank fees and similar payments.

151 See facsimile to DEWR from a director of Bentleys MRI Sydney, 26 June 2002. Note also that in March 2003, DEWR met with SEES, who asked if DEWR intended making any payments in addition to the standard $8 million monthly payment. DEWR undertook to advise if/when DEWR planned to do so. See email of 17 March 2003.

152 Advice by email of Principal Government Lawyer, DEWR, to Group Manager, Workplace Relations Implementation, DEWR, and other officials, 20 June 2002.

given that payments by the department to SEES needed to mirror receipts from the Air Passenger Ticket Levy, clause 9.1 [of the Contract with SEES] provided the flexibility of an approximation of the monthly amounts (rather than fixed amounts) to be paid, given that the receipts from the Levy could only be approximated.[153]

3.89 Scrutiny of the documentation shows that there are two ways in which early payment of the loan could take place. First, the Commonwealth could pay out the loan in full at any time under the Deed of Guarantee.[154] Second, SEES could make prepayments. It could prepay the loan in full[155] or by paying more than the agreed instalment of $8 million a month. In the latter case, the additional amount would need to be at least $5 million and in whole multiples of $1 million.[156]

Reconsideration of the rate of repayment

3.90 Consistent with the forecast DOTARS had provided to DEWR, the revenue stream did rise. Over $9.1 million was collected for October 2001 ticket purchases and receipts were in excess of $12 million for each of the next seven consecutive months. On the basis of DEWR's earlier advice to its minister, it was to have used the period of six months before the commencement of repayments to allow a more accurate estimate to be made of levy receipts and to base monthly payments on that more accurate figure. However, DEWR wrote to SEES in March 2002 advising that the monthly instalment rate would be $8 million.[157]

3.91 The ANAO found no evidence that DEWR, in setting this rate, had either:

- taken account of the stabilised—and higher-than-expected—revenue stream, as it had stated to the Minister; nor
- assessed the benefits available to the Commonwealth of reduced interest repayments by repaying at a rate commensurate with levy receipts.

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[153] See advice from Principal Government Lawyer, DEWR, 27 February 2003.

[154] Deed of Guarantee and Indemnity between the Commonwealth and CBA, clause 11.1.

[155] Loan Agreement, clause 14.1(a).

[156] Loan Agreement, clauses 14.1(a) and (c). If SEES were to make a prepayment the amount payable would be the sum of the advances being prepaid, interest on those advances and 'break costs'. Break costs are set out in clauses 22(d) and (e) of the Loan Agreement. Where the advance being prepaid does not carry a fixed rate of interest SEES would pay to the CBA at the time of prepayment the amount of any loss, cost or expense the CBA suffers as a result of the prepayment (Clause 22(d)). Primarily, this is likely to be any loss of revenue resulting from the CBA being unable to redeploy the funds prepaid at the same or a higher rate of interest as was being charged under the Loan Agreement, plus some administrative costs.

[157] Letter of 11 March 2002 to SEES from DEWR regarding timing and quantum of payments. See also DEWR internal emails, 26 February 2002 and 1 March 2002.

3.92 By July 2002, the average rate of levy revenue per month over the entire period from its commencement had reached $12.4 million, more than 50 per cent higher than expected. As part of its endeavour to keep its minister advised of how long the levy needed to remain, DOTARS then raised with DEWR the issue of the rate of loan repayment and whether additional payments should be made.[158] By this time, DEWR had become aware of the impact of the private tax rulings (discussed above). DEWR's view was that it was possible that payments from Levy revenue would need to be increased to $10 million a month if they were to meet the additional costs of the unexpected tax payments.[159]

3.93 The rate of repayment was raised again by the ANAO in the course of an ANAO controls review of SEESA in mid-2002. DEWR accepted that repayment at a higher rate would have benefits, but thought it prudent to await the resolution of an objection (appeal) that had been made to the tax ruling.

3.94 As discussed earlier, DEWR established in December 2002 that it did not need to meet tax payments from Levy revenue. After that point this was not an impediment to a variation in the rate of repayment.

3.95 During the preparation of the 2002–03 Mid-year Economic and Fiscal Outlook (MYEFO), the Department of Finance and Administration proposed to DEWR that the financial estimates for 2002–03 reflect a supplementary payment before the end of the 2002–03 financial year so as to match the repayments of the loan to the levy receipts for 2002–03.[160] However, another risk that DEWR has had to bear in mind is that of reaching the $500 million limit in the special appropriation. This risk was increased because of the need also to meet the tax costs associated with these repayments. DEWR has advised the ANAO that this was 'a relevant consideration'. In effect, this means that DEWR has not increased the rate of repayment in order to mitigate the risk of reaching the limit in the appropriation, despite having received legal advice that not all payments to SEES needed to be made from that special appropriation.[161]

3.96 SEES has advised the ANAO that, if the monthly repayments had been set at $13 million the interest to 15 September 2003 would have been $16.95 million, rather than the actual interest paid of $20.54 million. In other words, to that point, DEWR had paid 21 per cent more in interest ($3.59 million) than if it had repaid at a rate that matched repayments to levy

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[158] Email from DOTARS to DEWR, 5 July 2002.

[159] Email from DEWR to DOTARS, 8 July 2002.

[160] SEES has advised the ANAO that it received a request on 4 June 2003 from DEWR seeking advice on projecting a supplementary payment of $120 million.

[161] See earlier discussion under 'Additional expenditure'.

receipts.[162] This amount also exceeds the payments to meet the costs incurred by the department in the establishment and operation of the Scheme over the period 1 October 2001 to 31 March 2003, reported as $1.98 million.[163]

3.97 SEES also stated to the ANAO that it *would have* advised DEWR against making payments above $8 million a month until a range of contingencies (such as the taxation issue, factors affecting the Ansett administration and the possibility of reaching the $500 million cap on the special appropriation) were resolved in order to preserve free cash flow and maintain flexibility. This was because 'additional funds raised from the Levy could conceivably have been required to meet any one or more of these potential liabilities'.[164]

3.98 The ANAO understands that DEWR does not now expect that SEESA expenditure will exceed the $500 million limit and that it has not sought funds from any other appropriation.[165]

3.99 The ANAO concludes that DEWR could have undertaken the necessary financial analysis early in 2002 that would have assisted it to manage better the funds available to it under the appropriation in the Collection Act. DEWR did not do as it had indicated it would and take account of the first six months' experience of the Levy to set repayments at a level commensurate with ticket revenue. Instead, it used DOTARS' original, conservative forecast of $8 million a month to set the repayment rate. This decision did not take account of the potential financial costs to the Commonwealth. Later, it retained that existing repayment rate, first, in case it needed additional funds to meet unanticipated tax costs, and later, to minimise the risk of reaching the $500 million appropriation limit.

Social security payments

3.100 Another consideration in the implementation of SEESA is that payments to individuals may interact with other Commonwealth programs. The most obvious case is that receipt of a SEESA payment may affect a person's entitlement to unemployment payments, family payments or other social security assistance. The risk to the Commonwealth is that a SEESA payment

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[162] Letter from SEES to the ANAO, 8 October 2003, Annexure 2. SEES provided the ANAO with a detailed calculation of the interest that would have been payable if $13 million a month had been the repayment rate.

[163] These payments are authorised under s. 22(3)(b)(ii) of the Collection Act. The figures are provided in the two reports made to Parliament under s. 24 of the same Act. This represents DEWR's operating costs and does not include fees paid to SEES.

[164] Letter from SEES to the ANAO, 8 October 2003. There is no evidence that DEWR sought advice on the repayment rate.

[165] DEWR provided the ANAO with an estimate of SEESA expenses and liabilities as of the end of 2002–03 that showed a grand total, including all contingent liabilities, of $480.2 million.

might not be taken into account in determining the rate of payment of the social security entitlement, leading to the possibility of an overpayment of the latter. In effect, this would mean that a person had thereby obtained more assistance than they are entitled to from Commonwealth sources.[166]

3.101 The risk of overpayment of other Commonwealth benefits could be controlled if information on personal payments under SEESA were available to the relevant Commonwealth agency, Centrelink. That is, if a former Ansett employee had claimed or were receiving a social security payment from Centrelink, then Centrelink might reduce or suspend such a payment where the employee then received a SEESA payment. However, to be able to do this, Centrelink would need to become aware of the employee's receipt of the SEESA payment, its amount and timing. The better course is to pay the correct entitlement at the outset rather than identify overpayments later and seek to recover.[167] Some Centrelink clients would provide this information but others might not do so, either inadvertently or deliberately.

3.102 Centrelink advised the ANAO that, in its view, the majority of customers are meticulous about notifying changes of circumstances and providing the requisite verification of changes. However, there is substantial evidence that the most frequent cause of incorrect payment is customer failure to report changes in circumstances.[168]

3.103 This type of risk has been previously anticipated and mitigated by DEWR for the earlier Employee Entitlements Support Scheme (EESS). When it has made payments for individuals under EESS, DEWR has then provided that payment information directly to the Centrelink Employer Contact Unit in Tasmania. DEWR has continued this practice for the replacement scheme, the General Employee Entitlements and Redundancy Scheme (GEERS). Also, DEWR provides advice direct to recipients of GEERS payments about the

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[166] Policy guidance on the treatment of GEERS payments in assessing social security entitlements is set out the Department of Family and Community Services' Guide to Social Security Law See: http://www.facs.gov.au/guide/toc/guiderew.htm.

[167] Even where a case of double-dipping is identified after the event, recovery of overpayments may be costly and may not always yield 100 per cent recovery.

[168] This is frequently income from employment (see Department of Family and Community Services, *Annual Report* 2001–02, p. 375). See also the Minister for Family and Community Services, Senator the Hon. Amanda Vanstone, press release, 'Co-operation and Compulsion both needed for Compliance', 15 May 2001. (See: http://www.facs.gov.au/internet/minfacs.nsf/). It should be noted also that the prime focus of the FaCS–Centrelink business partnership assurance framework is on specific risks to payment correctness, as agreed by FaCS' Risk Assessment and Audit Committee. The first such risk it lists is that customers may not provide the correct information, either at claim or when circumstances change. See *FaCS–Centrelink Business Partnership Agreement 2001–04*, Business Partnership Assurance Protocol. (See http://www.facs.gov.au/bpa2001/sections/assuranp.htm#business)

possible interaction with payments received from Centrelink, including the fact that Centrelink would be advised directly of GEERS payments made.[169] It is reasonable to expect that DEWR would have adopted similar arrangements to mitigate the same risk for SEESA, if the department had initially recognised the risk. The ANAO found that it did not do so for several months after the Scheme had commenced.

3.104 The ANAO notes that the Task Force advising the Government during the period after the Ansett collapse observed as early as 12 September 2001 that unemployment assistance would be available to Ansett employees from Centrelink, subject to the usual eligibility rules.[170]

Size of the risk

3.105 The evidence indicates that many SEESA payments to individuals were substantial, a large proportion of the employees were looking for work and many of them would have obtained help of some sort from Centrelink, possibly funded by DEWR under another program:

- Although the actual amounts paid vary greatly across the retrenched workforce, the mean amount paid under SEESA to terminated employees is about $26 000 and the median, around $20 000;
- The evidence from Webber and Weller's post retrenchment survey of Ansett workers is that a little over three-quarters of the sample they questioned obtained some new paid work in the year after September 2001. Three-quarters of these had found work within two months of retrenchment and 95 per cent had done so within six months. On the other hand, much of the employment gained had been casual or temporary. Only just over one-third of the entire sample thought they were now (a year afterward) in secure employment. Only seven per cent had withdrawn from the workforce;
- Shortly after the Ansett collapse, Centrelink conducted information seminars around the country for workers affected by the Ansett Airlines collapse. Their stated purpose was to make sure that Ansett staff could be well informed about assistance they may be eligible for and an opportunity for them to register an intent to claim so they could be paid income support from the earliest possible date;[171] and

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[169] See, for example, the GEERS information leaflet (http://www.workplace.gov.au/Workplace/).

[170] Minute to Prime Minister, acting Prime Minister, Treasurer and Secretary, Department of the Prime Minister and Cabinet, from the Secretary, DOTARS.

[171] The Minister for Children and Youth Affairs, the Hon. Larry Anthony MP, media release, 17 September 2002. See: http://www.facs.gov.au/internet/MinCS.nsf/v1/wendymedia.htm.

- The Webber and Weller survey also reports that around half of their sample used Centrelink services when seeking help with job placement. This would mean that the full range of assistance available would have been made known to this group.

Mitigating action

3.106 Centrelink advised the ANAO that it had stressed to former Ansett employees at seminars conducted at the time, and at follow up contact points, the need for those seeking payments to report SEESA payments to Centrelink. Centrelink relies primarily on the customer to notify wherever there is a change in circumstances affecting their payment.

3.107 The ANAO has found no evidence that DEWR considered this risk before signing the contract with SEES in December 2001 or for about three months thereafter. DEWR has also advised that reductions in social security payments were not taken into account in the original costing for the Scheme.[172] Moreover, no clause was included in the contract for SEES to provide the Commonwealth with personal payment data under the Scheme. The contract does address retention of the information following the completion of the contract: but it fails to prescribe which parties would have access to employees' personal information throughout the duration of the contract.

3.108 DEWR began to address the risk in March 2002.[173] On 12 March 2002, it wrote to SEES seeking the payment details for the express purpose of providing them to Centrelink to protect the revenue.[174] However, SEES was concerned that providing personal data might place it in breach of privacy legislation.

3.109 After discussions with SEES, DEWR summarised the position as follows:

> Clause 19(c) [of the contract between DEWR and SEES] limits Bentleys' ability to use or disclose personal information unless the use or disclosure is necessary (directly or indirectly) to meet an obligation under the contract. I am unable to identify any contractual duty that rests on Bentleys to disclose the personal information of employees. Indeed, the fact that the services have been provided

[172] Advice supplied in writing by DEWR, 9 August 2002. If they are significant, an estimate of savings in reduced social security expenditure should be taken into account in any calculation of the total cost of the Scheme.

[173] There is evidence that DEWR had raised with SEES the question of the provision of advice to Centrelink of people paid entitlements under SEESA as early as 9 January 2002. However, DEWR first took formal action—the letter requesting the data was despatched—in March 2002.

[174] Letter from DEWR to SEES.

under the contract for some months without any such disclosure is in and of itself evidence that such disclosure is not required [Emphasis added].[175]

3.110 The very fact that DEWR had raised this requirement belatedly made it more difficult to meet the requirement.

3.111 There was no apparent difficulty in SEES securing the required data from the Ansett Administrators. The deed signed on 18 December 2001 between SEES and the Ansett Administrators includes an agreement that the Ansett Administrators 'must provide SEES with access and information reasonably required by SEES, as service provider to the Commonwealth ...'. The difficulty lay in SEES providing the data to DEWR.

3.112 DEWR, in its efforts to obtain the data, expended additional resources including obtaining legal advice to establish whether DEWR was legally precluded from accessing the information. SEES also obtained legal advice on its privacy responsibilities (charged to DEWR). The parties also discussed the possibility of a contract variation. DEWR then became concerned at the additional expenses being incurred by SEES relating to privacy.[176]

3.113 However, further legal expense was avoided when Centrelink approached the Ansett Administrators direct to obtain the necessary data.[177] DEWR advised the ANAO that 'appropriate arrangements are now in place'[178] and that 'Centrelink have been provided with advice on all SEESA recipients directly from the Ansett Administrators to ensure Commonwealth assistance is appropriately targeted'.[179]

3.114 During the audit, the ANAO obtained legal advice that privacy legislation has no impact upon SEES's ability to provide this information to DEWR. DEWR concurred with this assessment and was subsequently able to obtain the information from SEES.[180]

Use of the data

3.115 Centrelink advised the ANAO that it had requested the information from the Ansett Administrators on 22 April 2002 but did not receive a

[175] DEWR internal email, 13 March 2002.

[176] See DEWR internal email, 21 March 2002.

[177] Centrelink advised the ANAO that, because of the privacy-related difficulties encountered in obtaining data on to whom and when SEESA payments had been made Centrelink approached the Ansett Administrators directly. Centrelink sought the information in accordance with ss. 195 and 199 of the Social Security Administration Act. DEWR provided the ANAO with evidence that Centrelink had advised DEWR on 19 March 2002 that it had already been in contact with the Ansett Administrators about the provision of employee entitlement data.

[178] DEWR comments on ANAO issues papers.

[179] See advice from DEWR, 9 August 2002.

[180] See advice from DEWR, 9 August 2002.

response until 16 July 2002. The Ansett Administrators provided details for about 10 500 former Ansett employees. However, they had not been able to provide all the data Centrelink had asked for. Centrelink had done some trial data matching, using this information, to assess the quality of matches it could make. Because of the gaps in the Ansett data, Centrelink concluded that it would take considerable refinement of normal data matching protocols and manual follow up to provide the quality of case identification that would warrant follow up review action. Centrelink stated that this work had never been completed due to higher ongoing priorities.[181]

3.116 Delays in being alerted to possible overpayments can reduce the chance of success of any recovery. In this case, Centrelink stated that the delay in its gaining the information was not as significant as the gaps in information provided by the Ansett Administrators. These gaps have affected its ability to data match.

3.117 Centrelink stated that it had achieved reductions in payments as a result of SEESA through normal assessment processes, based on customer notification of changes in circumstances. This is an ongoing obligation for income support customers. However, Centrelink does not distinguish in its records between (i) customers who have received a GEERS or SEESA payment and (ii) the general population who have declared employment separation payments that have resulted in a reduction in an income support payment. Therefore, Centrelink cannot say what savings can be attributed to the interaction of payments.

3.118 The Department of Family and Community Services (FaCS) is accountable for the special appropriations that fund the major Commonwealth income support and family assistance programs. FaCS has advised the ANAO that it is satisfied that the compliance tools available to Centrelink cover the major risks to outlays presented by SEESA.

DEWR's management of the social security payment risk

3.119 DEWR's failure to address, in a timely way, a risk that had been anticipated in its other publicly funded employee entitlement support schemes, has most likely resulted in additional costs to the Commonwealth. DEWR and Centrelink expended additional resources attempting to obtain personal employee data through SEES. However, it is not now possible to estimate, reliably, any overpayments of Commonwealth benefits that may have occurred that could otherwise have been prevented, nor any additional administrative costs, including opportunities forgone.

[181] Centrelink also advised the ANAO that ongoing data matching program against taxation records might duplicate matches that would ultimately be derived from further work with the Ansett data, questioning the cost effectiveness and priority of undertaking further work in this area.

3.120 In the event that any overpayments are detected through Centrelink's post hoc compliance strategies (such as data matching with the ATO) the recovery costs will be greater than the preventative costs of providing sound information at the time SEESA payments were being made.

3.121 DEWR could reasonably have been expected to have anticipated the overpayment risk and taken early action to mitigate it. This could have been achieved by seeking the agreement of the Ansett Administrators to provide prompt and adequate personal data direct to Centrelink. Alternatively, it could have included a clause in its contract with SEES explicitly stating which parties had rights to personal data obtained during the administration of the Scheme.

4. Outsourcing

This chapter examines the outsourcing arrangements for the administration of SEESA. The discussion includes the selection of both the private sector entity and the financier of the Scheme as well as the management of the contract between DEWR and SEES.

Introduction

4.1 The administration of SEESA and the provision of finance to enable terminated Ansett workers to be paid promptly has been outsourced to a private sector entity, SEES. DEWR, therefore, primarily undertakes the role of contract manager. This chapter focuses on the ANAO's examination of three key aspects of contract management being:

- selection of the private sector entity;
- selection of the financier; and
- management of the principal contract.

4.2 The chapter addresses the risks associated with the selection of the private sector entity and financier. It also considers the risks to the delivery of services by SEES and how those risks may be mitigated through the development of a contract that clearly specifies the Commonwealth's requirements.

Selection of the private sector entity (SEES Pty Ltd)

Guidance

4.3 Guidance is available to those conducting procurement on behalf of the Commonwealth. The *Financial Management and Accountability Act 1997* (FMA Act) and the FMA Regulations (in particular, Regulations 6–13,) provide the legislative and regulatory framework. The other principal relevant source comprises the *Commonwealth Procurement Guidelines and Best Practice Guidance*.[182] These documents contain numerous references to other resources relevant to Commonwealth procurement. In addition, DEWR has its own Chief Executive's Instructions and internal *Practical Guide to Contract Management*. DEWR advised the ANAO that this was the guide it used to establish and manage its contract with SEES.[183]

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[182] The Commonwealth Procurement Guidelines are available from the Department of Finance and Administration website at:

http://www.finance.gov.au/ctc/publications/purchasing/cpg/commonwealth_procurement_guide.html.

[183] See advice from DEWR, 9 August 2002.

4.4 DEWR's *Practical Guide* sets out principles for sound contract management. It provides a useful summary guide on key steps both in contract development and contract management and identifies sources of expertise on certain aspects within DEWR. It also provides a bibliography of other guidance and relevant legislation.

4.5 As the Task Force had earlier acknowledged, the selection of the private sector entity and securing a source of finance needed to be completed promptly. Both tasks were on the critical path to satisfying the Government's objective of making prompt payments to the Ansett employees.

4.6 An additional consideration is that the selection took place during the caretaker period for the 2001 Federal Election.[184] It is reasonable to expect that DEWR would have regard for the conventions normally observed during such periods.

Selection process

4.7 SEES was chosen through a select tender undertaken by DEWR with help from the Department of Finance and Administration (Finance). Finance also provided advice on which organisations had the right skills for the task.[185]

4.8 DEWR issued the request-for-proposal (RFP) to ten companies by courier on 8 October 2001.[186] It invited tenderers to apply based on accounting skills and absence of prior relationship with the Ansett group of companies. DEWR required the latter qualification to inhibit any conflict of interest or appearance of such a potential.

4.9 DEWR prepared an evaluation plan and engaged an external probity adviser for the selection. That engagement was without tender on the grounds that the department had then only recently conducted a comparable tender and the benefits of testing the wider market again were not sufficient to 'justify the hardship such a delay might cause to the affected former Ansett Group employees'.[187] Senior management formally approved the

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[184] The caretaker period commenced at noon on Monday, 8 October 2001. See Australian Electoral Commission, *Behind the Scenes: the 2001 Election Report*, at http://www.aec.gov.au/_content/when/past/2001/bts/index.htm. The election was held on 10 November 2001.

Guidance on caretaker conventions is provided by the Department of the Prime Minister and Cabinet. See: http://www.pmc.gov.au/docs/caretaker.cfm.

[185] See advice from DEWR, 9 August 2002.

[186] See *Record of Evaluation of SEESA RFP 2002/24*. The minute of 24 October 2001 to the Secretary, DEWR, seeking his endorsement of the preferred tenderer states that the RFP was issued on 22 October. This is implausible and is assumed to be an error.

[187] DEWR minute to Group Manager, Workplace Relations Implementation, of 22 October 2001.

probity arrangements and tender evaluation plan on 22 October 2001.[188] The evaluation panel comprised DEWR and Finance officers.[189]

4.10 Tenders closed on 22 October 2001. On 24 October, the evaluation team made a written recommendation that Bentleys MRI be selected as preferred provider and that the Group Manager, Workplace Relations Implementation be authorised to enter into contract negotiations with the preferred provider. The Secretary of DEWR, to whom the recommendations had been made, approved them on the same day.[190] These recommendations were made 'in order to expedite the contracting' and with a view to commencing contract negotiations on the following day. At that point, the team expected to have a final, fully documented evaluation report by 29 October 2001. In the event, that was provided on 9 November 2001 and approved by the Secretary on 12 November 2001.[191]

4.11 Bentleys MRI (hereafter, 'Bentleys') proposed in its tender to establish a separate legal entity (SEES) as a 'special vehicle to deliver the required services'. DEWR found that this proposal was a weakness in Bentleys' tender.[192] The department has advised the ANAO that the risk of establishing a separate legal entity was that SEES would be established without assets. In order to mitigate that risk DEWR required Bentleys, the parent company, to provide a guarantee in support of the proposed arrangements.[193] Under the performance agreement Bentleys guaranteed to the Commonwealth the performance of the obligations undertaken by the service provider, SEES under the contract. It also indemnified the Commonwealth against losses,

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[188] Evaluation plan and probity arrangements approved by Group Manager, Workplace Relations Implementation, DEWR, 22 October 2001. Also, see minute signed by Group Manager, Workplace Relations Implementation, DEWR, 22 October 2001 informing Secretary, DEWR, of these.

[189] Ibid.

[190] The minute of 24 October 2001 provided a three-page summary view of the evaluation team's conclusions on the preferred provider, which were expressed unequivocally. It also asserted that the probity adviser confirmed that the evaluation process had been conducted in accordance with the approved probity and evaluation plans. An 'interim probity sign-off' accompanied the minute.

[191] See minute from Group Manager, Workplace Relations Implementation, DEWR, 9 November 2001. The full evaluation report of 9 November 2001 comprised a twelve-page analysis of the tenders in terms of the selection criteria, with a conclusion and recommendation consistent with the panel's earlier recommendation.

[192] Bentleys MRI Sydney advised the ANAO (letter of 8 October 2003) that it is a firm of chartered accountants operating through several entities. In preparing its proposal to create SEES to undertake under this contract, it had formed the view that none of the existing entities were appropriate. The reasons included the nature of assignments normally undertaken by those entities, the size of the project and level of borrowing, and the impossibility of adjusting existing professional indemnity insurance arrangements to suit the insurance requirements of the contract with DEWR. Bentleys suggested to the ANAO that these factors would apply to any other accounting firm.

[193] DEWR advice to ANAO, 19 March 2003.

damages, costs and expenses directly incurred by reason of SEES failing to execute and perform its contractual obligations.[194]

Early commencement of work

4.12 DEWR officers advised Bentleys on 26 October 2001 that they had been selected as the department's preferred tenderer. Bentleys' expectation after that meeting was that contract negotiation could take place with a view to signing contracts on 1 November 2001.[195]

4.13 DEWR notified Bentleys that, because this activity was taking place during the caretaker period, it was unlikely that the Government would be prepared to enter into the contract or provide the guarantee in respect of the proposed bank loan until that period had concluded.[196] Nevertheless, because of the need to minimise delays in making SEESA funds available to the former Ansett employees, Bentleys then began preparatory work.[197] This included work towards securing a loan.

4.14 Bentleys sought a letter of comfort from DEWR. The department promised to pay for work undertaken in advance of the contract on the basis of 'normal hourly rates for work reasonably undertaken' from 2.00 p.m. on 26 October 2001, should a contract not be executed in due course. If a contract were signed, then it would pay in accordance with that contract. DEWR also provided Bentleys with a letter giving it authority to seek financing proposals (through SEES) in advance of DEWR and SEES signing the contract.[198]

Contract prices

4.15 In its assessment of the proposals, the DEWR–Finance evaluation panel set 11 criteria. It ranked two proposals substantially ahead of the others and conducted a further, comparative analysis of that short-list. The Bentleys proposal ranked first on eight of the 11 criteria, equal on two and second on one, 'Whole of contract costs'.[199] In relation to this criterion, the panel concluded, *inter alia:*

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[194] Performance Guarantee between DEWR and Bentleys MRI, 17 December 2001. The text of the guarantee appears as schedule 6 to the contract between the Commonwealth and SEES.

[195] Email to DEWR from Bentleys MRI, 29 October 2001, and return email from DEWR, 30 October 2001.

[196] See letter from Group Manager, Workplace Relations Implementation, DEWR, to Bentleys MRI Sydney, 2 November 2001.

[197] See email from DEWR, to Finance, 5 November 2001.

[198] See letter from SEES to Group Manager, Workplace Relations Implementation, DEWR, 'Financing for SEES Pty Ltd: Report on results of banking tender', 8 November 2001. See also the 'Record of video conference' 9 November 2001.

[199] See *Record of Evaluation of SEESA RFP 2002/24*, signed 9 November 2001. There is no mention in the evaluation report of the relative merits of a fixed price versus a 'time and materials' approach.

> As the costs of the loan will significantly outweigh the costs of the service from the company, the evaluation team was able to form the view that the optimal combination of performance against the criteria as required in the value for money judgement is represented by the proposal from Bentleys MRI.

4.16 The panel had concluded that relatively higher rates of charge from the preferred tenderer were consistent with the Commonwealth obtaining value-for-money, given the other qualities offered. These included its assessment of Bentleys' likely capacity to perform the required contract work overall, including securing and managing the loan.

4.17 In his interim probity advice of 24 October 2001, the probity adviser stated that:

> One issue however, that remains to be resolved definitively is the actual cost to the Commonwealth should the preferred bidder, selected in accordance with the Evaluation Plan, proceed to contract. This is not unexpected given the turnaround time for the bids and the broad requirement.[200]

4.18 The probity adviser expressed concern that bidders had expressed their costs in ways that made them difficult to compare, as one offered a fixed price and the other a costs 'ceiling'. He went on to state that 'By entering into contract negotiations with the preferred bidder the Commonwealth can focus on costs and achieving the best price for the Commonwealth, taking into account all of the circumstances.'[201] In his final probity adviser's report (9 November 2001) he stated that the panel's view that Bentleys' proposal 'satisfied the value-for-money judgement' was defensible in the circumstances.

4.19 During the week after the recommendations of the evaluation report had been endorsed by the Secretary of DEWR, correspondence between DEWR panel members noted that:

- whether Bentleys' contract rates were GST inclusive or exclusive had become a 'significant issue' in contract negotiation;[202] and
- DEWR had asked that Bentleys' hourly rates be reassessed following a review of those rates relative to IPAA [Insolvency Practitioners' Association of Australia] standards and those quoted by the other bidders.[203]

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[200] Para. 2.2.

[201] Para. 2.3(f).

[202] DEWR argued that Bentleys' proposal had not indicated that its pricing was GST exclusive. Therefore, the panel considered it to be GST inclusive and had assessed the proposal on that basis. See email from DEWR, 20 November 2001. However, Bentleys argued—and DEWR accepted—that Bentleys had, at a meeting of 26 October 2001, identified its bid as exclusive of GST (Record of video conference, 21 November 2001). That was also the day that Bentleys were notified of their 'preferred tenderer' status.

[203] See DEWR internal email to Group Manager, Workplace Relations Implementation, DEWR, 19 November 2001.

4.20 By this time, as noted above, Bentleys had been advised that it was the preferred tenderer. Moreover, it had begun substantial work, with departmental authority, and DEWR was incurring costs.

4.21 If it were to meet the Government's stated objectives for the Scheme, DEWR had little option but to arrange for some work to proceed before contract finalisation. However, these arrangements increased the risk that DEWR's negotiating position in finalising the contract with Bentleys would be substantially weakened. Given the concerns expressed within DEWR about Bentleys' fees (such as those set out above), the ANAO sought to establish whether DEWR had recognised this risk and whether it had sought to mitigate it.

4.22 The ANAO found that, during contract negotiation, SEES had provided DEWR with a letter setting out its proposed hourly rates of charge by level of staff. This included two sets of rates, its 'standard' rate and a reduced set of rates intended for lower risk aspects of the work. The letter stated to DEWR that the rates reflected the high priority of the task and that the 'drop everything' aspect had attendant opportunity costs.[204]

4.23 DEWR provided the ANAO with evidence that the hourly rates of charge for work by SEES staff adopted in the contract were, for the most part, the reduced set.[205] The contract makes it clear that these are GST-inclusive. However, a fixed fee payable at the commencement of the work had increased by $30 000. This was attributed by SEES to the extensive work arising from its analysis of taxation consequences of transactions under SEESA and delays it attributed to the caretaker period before the election and delays in the availability of the Ansett Administrators to negotiate and deal with SEES.[206]

4.24 The contract includes a cap for the overall fees to be charged by SEES. In particular, if eligible employee payments exceeded $180 million, the total fee payable for the services provided cannot exceed one per cent of the total employee payments. Given that, at that time, the actual amount of work involved in completing each tranche could not be estimated with a reasonable degree of confidence, the contract specified a fixed monthly fee, hourly rates and the cap limiting the overall expense. The ANAO considers this to be a reasonable approach in the circumstances.

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[204] See record of video conference, 21 November 2001.

[205] This is evident from comparing the SEES 'fee letter' with the contract prices.

[206] See p. 4 of SEES's fee letter. The Ansett Administrators, in response to a draft of this report, advised the ANAO that they did not agree that there were delays in their availability.

Selection of financier for the Scheme

4.25 Under the contract with DEWR, it was SEES's responsibility to obtain a loan or a series of loans from one or more financial institutions to enable the SEES to:

- make eligible employee payments in accordance with the contract; and
- to pay amounts that may be due to SEES in accordance with the contract.

4.26 The contract between the Commonwealth and SEES also governs the selection of the financier. Even though SEES agreed under the contract to take out the loan under its own name and not as an agent of the Commonwealth, it is clear that the intention was the Commonwealth would exercise substantial discretion over the choice of provider of funds.[207]

4.27 SEES was required to use its expertise to advise the Commonwealth in writing as to the best way to borrow the funds for the loan. It also had to identify the three 'best value for money' loans. This would then allow the Commonwealth to consider those options and make a selection. SEES's entry into a loan facility adequate for the Scheme was specifically subject to Commonwealth approval.[208]

4.28 As a part of Bentleys' preparation for its (successful) bid, it held discussions with several financiers to gauge their willingness to enter into the project. It is likely that some of Bentleys' competitors would have taken similar preparatory action in constructing their bids for the contract. From 8 October forward, this would have alerted a number of financiers to the existence of the financing opportunity.

Early proposal

4.29 On 5 October 2001, the Commonwealth Bank of Australia (CBA) submitted a proposal, to finance SEESA, to the Minister for Transport and Regional Services.[209] The CBA proposal stated that it was 'unsolicited' and was copied to

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[207] The ANAO wished to gain an understanding of the degree of control that the Commonwealth had formally, despite parts of the contract seeming to place the Commonwealth at some distance from the business of securing the loan (such as a reference to SEES not being the Commonwealth's agent: Clause 4.4) and other parts seeming to give the Commonwealth the power to approve such a loan (Schedule 1, Item A). The ANAO sought a legal opinion on the discretion available to the Commonwealth in the selection of the financier under the contract. That opinion concluded that 'A court would come to the view that it was the intention of the parties that the Commonwealth would select the loan facility (and hence, the financier) from the three best options presented by SEES.'

[208] See DEWR–SEES contract, clause 4.4 and Schedule 1. As discussed later, the records show that this is what happened, lending support to a high level of Commonwealth discretion.

[209] Letter from CBA to the ANAO, 5 October 2001.

three other ministers (the Treasurer, the Minister for Finance and Administration, and the Minister for Employment, Workplace Relations and Small Business) and the Secretary, Department of Prime Minister and Cabinet.[210] This preceded DEWR's seeking proposals to select the private sector entity responsible for sourcing finance for the Scheme on 8 October 2001 and, therefore, precedes any discussions Bentleys and its competitors may have had with prospective financiers.

4.30 After consulting officers of DOTARS, Treasury and Finance, DEWR advised the CBA on 12 October 2001 that the department had already released a Request for Proposal to a selected group of potential bidders for the private sector entity contract.[211] However, they offered to make available the CBA's proposal to the selected bidders.[212] After getting the CBA's agreement,[213] DEWR provided advice regarding the CBA proposal to each of the companies who had indicated that they wished to place a bid.[214]

'Informal discussions with government'

4.31 In a formal response to the request for tender from SEES the CBA provided a comprehensive tender application. The CBA proposal undertook that its Government Finance Unit would 'continue its involvement in successfully progressing an outcome', referring particularly to the head of the unit, as a former government minister, having an 'excellent understanding of government processes and drivers'.

4.32 The response also stated that 'The Bank has been involved from a very early stage in structuring a financing package for the Scheme, including a number of informal discussions with Government and the submission of an unsolicited finance offer'.[215] That offer is the one of 5 October 2001, referred to in paragraph 4.29.

4.33 The CBA states in the letter accompanying its proposal: 'Notwithstanding the relatively tight timeframe we are pleased to be able to confirm that we have credit approval for the facility outlined below' and 'Due to our early involvement in the process, ... we are well positioned to partner SEES'.

4.34 The ANAO asked DOTARS and DEWR whether they were aware of these 'early informal discussions with government'. DOTARS advised that it had no

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[210] Addressed to the 'Director-General', PM&C.

[211] Email to Government Finance, CBA, from DEWR.

[212] Email to Government Finance, CBA, from DEWR.

[213] 18 October 2001.

[214] DEWR internal email, 18 October 2001.

[215] Letter from Senior Finance Executive, CBA, to SEES, 2 November 2001.

records of any discussions between its officers (or indeed any other party) and the CBA before 5 October 2001.[216] Following the ANAO's query, DEWR provided a letter from SEES stating that it was 'not aware of any other prior discussions between potential financiers for the SEESA scheme and any other person on behalf of DEWR, the Commonwealth, or any other interested party.'[217] The ANAO found no evidence that DEWR had made any contact with the CBA on this matter before it became aware of the early CBA proposal.

4.35 The Department of the Prime Minister and Cabinet, in commenting on the draft of this report, provided the advice of one of its senior executives, who stated that:

> My recollection of this matter is that the CBA approached [*a former senior executive of PM&C*]. He asked me to speak to an officer of CBA to ascertain exactly what they were proposing. Following that discussion I believe I mentioned CBA's interest to DEWR, although my recollection is that they were already well advanced in their selection process.[218]

4.36 The CBA advised the ANAO that its position on the matter is as follows:

> It was the Bank's expertise, acumen and skill in identifying a business opportunity, gained in part through its past experience in such matters—specifically the MIFCO Waterfront Redundancy Scheme—that enabled the Bank to provide a financing proposal as quickly as it did in this matter. Indeed, Mr Murray [*the Chief Executive Officer*] recollects suggesting such a scheme in a discussion (incidental to a meeting on another matter) with [*a senior minister*] and/or his advisers in which he pointed out that, because of the Bank's prior experience, it would be well placed to assist.[219]

4.37 The ANAO sought DEWR's advice as to whether any probity advice had been sought in relation to the selection of the financier. The selection of the financier was likely to involve substantially greater expenditure than the selection of SEES, for which DEWR had obtained probity advice. Given the control that the Commonwealth clearly had over the selection of the financier, and the fact that most of the risks and benefits accrued to the Commonwealth, the ANAO considers that the onus was on DEWR to make certain that probity principles were adhered to in these circumstances.[220] DEWR advised the ANAO that:

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[216] DOTARS also stated that the relevant branch head of the time could not recall any such discussions taking place. The letter was regarded as an unsolicited offer prepared by the CBA on the basis of media reports of the proposed arrangements and drawing on the CBA's past involvement in similar funding arrangements for MIFCO redundancies. Email advice from DOTARS, 17 April 2003.

[217] Letter from SEES to DEWR, 31 March 2003.

[218] Letter from the Department of the Prime Minister and Cabinet to the ANAO of 16 October 2003.

[219] Letter from the CBA to the ANAO of 8 October 2003.

[220] The role and importance of good probity management in purchasing are discussed in Chapter 4 of Audit Report No.14 2002–2003, *Health Group IT Outsourcing Tender Process*.

> Under clause 4 of the contract ... it is SEES that is required [to] obtain the loan—not the Commonwealth. Therefore, any probity issues associated with SEES's procurement process were obviously for SEES to deal with, not the Commonwealth. Indeed, given that SEES, a private sector entity, was obtaining the loan, the scope for legal liability flowing from any non-compliance with probity principles was greatly reduced. However, the department recognised that probity principles needed to be complied with as a matter of good practice, and informed SEES of this. The department was kept aware of the process used by SEES to identify and assess loans and was satisfied that the process complied with probity principles.[221]

Finalisation of selection

4.38 On 8 November 2001, SEES provided DEWR with an initial report on the results of the tender for a financier. Consistent with its contractual obligations, it recommended a short-list of three for the final stage of the tender. This was agreed at a video conference with DEWR and Finance on the following day.[222] The short-list was then invited to lodge a 'firm and final' proposal.

4.39 On 20 November 2001, SEES provided a further report on the final proposals from the short-listed financiers.[223] It concluded that each of the three tenderers 'would be capable of providing competitive and flexible financing' and that 'the final choice of financier is not clear cut on price'. SEES did not recommend any single proposal as ranking first but suggested a further video conference with the department. This was held on 21 November 2001. At that video conference, the Group Manager, Workplace Relations, DEWR suggested that it would be:

> worthwhile to leave the three proposals on the table until there is an ability to provide clearer information and commitment in order to be able to finalise the deal.[224]

4.40 The ANAO understands the reference to 'clearer information' to relate to the conclusion of discussions between the Government and the Ansett Administrators (see Chapter 2).

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[221] Advice from DEWR, 10 April 2003.

[222] See the 'Record of video conference' 9 November 2001.

[223] Email of Tuesday 20 November 2001 from Bentleys MRI, Sydney, to DEWR, forwarded by DEWR to Finance. SEES has advised the ANAO that it negotiated with several banks including the three on the final short-list independently and without any input from DEWR prior to submission of its report dated 20 November 2001 (Letter of 8 October 2003).

[224] See the notes by Employee Entitlements Branch, DEWR, of the (second) SEESA video conference, 21 November 2001, distributed within DEWR, 21 November 2001.

4.41 SEES has advised the ANAO that 'the minutes of a meeting of directors of SEES on 30 November 2001 resolve that SEES accepts the CBA proposal of 15 November 2001'.[225] SEES advised that those minutes go on to state:

> This decision was taken after discussion of the proposals with DEWRSB at which [*the Group Manager, Workplace Relations Implementation, DEWR*] expressed a preference for the CBA based primarily on their past experience with the similar MIFCO financing. It was noted that on a financial basis, and taking account of uncertainties associated with the draw-down and repayment profile, that the [*another short-listed potential financier*] and CBA proposals were broadly equivalent.[226]

4.42 SEES also advised that it took account of the contractual requirement that the services it was to provide included 'entry into a loan facility approved by the Commonwealth adequate for the scheme'.[227] It stated that, since the contract did not stipulate that the approval was to be written, SEES is of the view that it obtained approval.[228] The ANAO concludes that SEES regarded the contractually required Commonwealth approval as having been given orally, as part of the discussion referred to above, during which (according to SEES) DEWR's Group Manager, Workplace Relations Implementation, expressed a preference for the CBA proposal.[229]

4.43 DEWR has stated to the ANAO that 'there is significant evidence to support that the department was informed of and did not object to the selection of the CBA by SEES'. This, in DEWR's view, comprised such items as briefs to ministers and the existence of the Commonwealth guarantee.[230]

4.44 In the ANAO's view, there is a significant difference in emphasis between the department's statements, such as that 'it had been informed and did not object to SEES's decision' and SEES's account, that it had made its decision only after a senior departmental officer had expressed a particular preference and provided Commonwealth approval. SEES's account reflects more closely the higher level of discretion that the contract actually provides to the Commonwealth (see the earlier discussion on this point).

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[225] Letter of 8 October 2003, Annexure 2.

[226] Letter of 8 October 2003, Annexure 2. The ANAO has not seen the minutes of the SEES meeting of directors.

[227] Schedule 1, Item A.

[228] Letter of 8 October 2003, Annexure 2.

[229] SEES's advice presents chronological difficulties. If the decision was taken after those discussions it is not apparent how the approval could have been provided during the discussions, unless it was given contingently on the preferred outcome. However, given the lack of documentation, it may not be possible to resolve this point.

[230] Email from DEWR to ANAO, 18 June 2003.

4.45 Regardless of the actual balance of discretion in the selection of the financier, the expression of preference itself (and any implied approval, if one were given) and the reasons for that preference/approval are important elements in the selection process. It is reasonable to expect that they would be documented and that the department would have retained a copy.

4.46 DEWR was not able to provide any documentation of the final decision to select the CBA as financier. As mentioned earlier, there was a contractual requirement for specific Commonwealth approval of 'entry into a loan facility approved by the Commonwealth adequate for the Scheme'.[231] At a minimum the ANAO would have expected to see some formal record of DEWR's approval of the loan facility proposed by SEES. However, even if SEES alone had made the decision, DEWR should then have been able to provide the ANAO with a copy of the documentation which set that out clearly.

4.47 It is not adequate, in the ANAO's view, that evidence of such a decision be represented merely by the instruments that followed its being taken, such as the guarantee of the loan. Rather, as DEWR's own *Practical Guide* (which DEWR stated it had followed) puts it:

> It is particularly important to document each step of the contract process, including any decisions associated with contracts and the accompanying reasons, through the keeping of written records.

4.48 Given the size of the loan, in the ANAO's view, DEWR should be concerned that no documentation for this approval can be provided as part of its accountability obligations.

Contract management

4.49 To be consistent with DEWR contracting guidelines, a contract must specify the measurable outputs to be delivered. The *Practical Guide* states that the first step is:

> to translate your business requirement into measurable outputs. If you are unable to articulate what it is that needs to be done, it will be impossible for a contractor to understand what is required. Define clearly what it is you want the contractor to deliver—it may be a report/advice on a particular issue or it may be a service to a particular standard.[232]

4.50 This is consistent with the department's earlier view in its submission to the Joint Committee of Public Accounts and Audit (JCPAA) inquiry in 2000 into Contract Management in the Australian Public Service, in which the department stated that:

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[231] Schedule 1 of the contract, part A.

[232] See paragraph 8 of the *Practical Guide to Contract Management*, DEWR Intranet.

> A crucial step in specifying the initial RFT [request for tender] and contract documentation is the identification of the required product or service and its quality—the contract deliverables.[233]

4.51 Clear specification is important not only to ensure that the contractor understands what is required. It is only when the department has specified adequately the services it needs that it can determine whether those services have been delivered to the required standard, and obtain the necessary assurance that it has received value-for-money.

4.52 In the report of its inquiry, the JCPAA concluded, *inter alia*, that: 'A major part of effective contracts is the inclusion of appropriate performance measures, and an effective monitoring framework.'[234]

4.53 Therefore the ANAO decided to review DEWR's contract specification, including any standards for service delivery under the SEES contract. These required consideration of SEES's letter of engagement, the procedures SEES agreed to follow, and two key performance criteria, accuracy and timeliness. In addition, the ANAO examined DEWR's contract management and the associated performance monitoring and reporting arrangements.

Contract specification

4.54 DEWR advised the ANAO that its business requirements are set out in the contract and its schedules.[235] The contract, which was entered into on 17 December 2001, set out in clauses 5, 6, and 8 and schedule 1 the services to be provided by SEES. SEES was required to do the following:

- Stage 1: Negotiate and prepare all contracts for the operation of the Scheme including the loan contract (for financing the Scheme) and the administration agreement (between SEES and the Ansett Administrator relating to the practical operation of the Scheme). A fixed fee of $430 000 was payable for Stage 1.
- Stage 2: Deliver services in accordance with clauses 5, 6, and 8. SEES lends money to the administrators to allow the payment of eligible employee payments in respect of the eligible employees the subjects of the requests. These clauses generally specify SEES's role in the advancement process ranging from the verification of claims made by the administrator through to a role in the recovery process and reporting information back to the

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[233] Submission of the Department of Employment, Workplace Relations and Small Business, p. 5, February 2000,

[234] JCPAA, *Contract Management in the APS*, Report No. 379, Parliamentary Paper: 676/2000; tabled 2 November 2000. See: http://www.aph.gov.au/house/committee/jpaa/contracts/contents.htm

[235] See written advice to the ANAO received from DEWR, 9 August 2002.

Commonwealth. A fixed fee of $5000 per month, plus an hourly rate for services undertaken is charged for stage 2 services.

- Stage 3: Maintenance of SEES's records related to the contract. A fixed amount of $10 000 is payable at the commencement of stage 3.

4.55 One of the first steps in the ongoing management of the contract is the development and documentation of contracted service delivery standards.[236] The ANAO sought evidence of DEWR having stated its requirements or expectations before or during the development of the standards set out in the contract and supporting documentation. The ANAO also sought to establish whether and, if so, how these expectations were reflected in any agreed standards to perform the work. In part, this process can be traced from the request-for-proposal (RFP) forward.

4.56 The RFP set out the three essential tasks that DEWR required of SEES:

(a) to borrow money to make payments under SEESA and meet the contractor's fees;

(b) to make SEESA payments; and

(c) to pursue recovery.

4.57 The standard required of the delivery of these services, as set out in the draft contract that accompanied the RFP, was that successful tenderer would agree to perform them 'to a standard recognised as a high professional standard by the industry to which the tenderer belonged.'[237]

4.58 When selecting SEES, the selection panel had depended on the positive assessment it had formed of SEES's expected performance on the financing part of the contract (see paragraph 4.16). However, DEWR was not now able to translate this aspect into specific expectations of SEES's performance. DEWR proposed, instead, to depend on the notion of unspecified professional industry standards as a way of setting performance standards for SEES under the contract. DEWR stated that it was not clear to the department how it could otherwise establish appropriate standards for the financing component of the contract.[238]

4.59 However, a difficulty in this plan arose when it became apparent that DEWR had not identified what industry, precisely, SEES was in. DEWR put its view that a reference to the finance industry was desirable in the relevant clause of the contract as financing was a critical element in the project. SEES's legal advisers told DEWR that neither SEES nor Bentleys were in the finance industry

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[236] Australian National Audit Office, *Contract Management: Better Practice Guide*, February 2001.

[237] See the Request For Proposal, October 2001.

[238] See DEWR internal email, 13 November 2001.

and so could not accept an amendment to the clause that required them to adhere to standards relevant to that industry.[239]

4.60 The signed contract appears to represent a compromise between these positions and refers to a 'high professional standard by the accounting and finance industries'. There is nothing further in the contract that specifies what, exactly, the relevant standards are. However, it provides for the subsequent development of SEES's service standards in performing the second of SEES's three tasks, making payments.[240]

Letter of engagement

4.61 Under the DEWR–SEES contract, SEES was required to 'verify claims by the Insolvency Practitioner [in this case, the Ansett and Hazelton administrators] having regard to risk management principles agreed in writing with the Commonwealth'.[241] These principles needed to be agreed before any SEESA payments were made.

4.62 To satisfy this requirement, on the day of the execution of the contract, SEES provided DEWR with a letter, known as its 'letter of engagement'. According to senior managers at SEES, there were early discussions with DEWR regarding service delivery. These were reflected in the terms set out in this initial letter, which includes the practices and risk management principles SEES would adopt in carrying out its engagement for DEWR.

4.63 According to a file record by the DEWR officer who discussed DEWR's requirements with SEES when SEES was drafting its letter of engagement:

> I advised that the letters [*of engagement and pro forma requests for payment*] should reflect that Bentleys were engaged to provide professional verification services and advice to govt [*sic*] on risk mitigation and best feasible validation practice in light of the complexity, hardship issues and expediency requirements of the project. If necessary, Bentleys' advice should include recommendations for any follow-up checks required to give added level of assurances.[242]

4.64 This is the only available written clarification of DEWR's requirements of SEES under the contract (other than SEES's letter of engagement itself). It clearly seeks 'professional verification services' and advice on 'best validation practice'. However, there is nothing to clarify what 'verification services' means nor the degree to which DEWR would allow the expediency requirements, and so on, to place limits on the validation practice. In particular, it does not clarify how the

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[239] Letter from Eakin McCaffery Cox to DEWR, 12 November 2001.

[240] The parties acknowledge that they will consult and agree on that they will each decide on the final form of the matters as specified in 5.3 prior to making a payment to the insolvency practitioner.

[241] Clause 5.3 of the contract.

[242] DEWR internal email, 12 December 2001.

urgency of processing should be balanced with the expectation of accuracy.

4.65 However, an important statement by SEES in its letter of engagement is that 'Our engagement will be conducted in accordance with Australian Auditing Standards applicable to agreed-upon procedures engagements.'[243] Under those standards:

> An agreed-upon procedures engagement does not enable the auditor to express assurance. The auditor is engaged to carry out procedures of an audit nature in order to meet the information needs of those parties that have agreed to the procedures to be performed. However, because the auditor does not determine the nature, timing and extent of the procedures performed, no assurance is expressed. The recipients of the report of factual findings must form their own conclusions from the agreed-upon procedures performed and the factual findings reported by the auditor.[244]

4.66 Consistent with this, SEES's letter of engagement promises to 'perform the following *procedures* ... and report to you the *factual findings* resulting from our work' [emphasis added].

4.67 An agreed-upon procedures engagement, as compared with an audit or review engagement, effectively places a substantial risk with the principal rather than the auditor. It would mean that the department had to form its own conclusions about the verification processes carried out for it by SEES. The procedures agreed upon may well be sufficient for DEWR to derive the level of assurance that it requires: but it would be up to DEWR to form those conclusions.

4.68 About a week before the contract was signed, SEES had provided DEWR with a draft of the proposed letter of engagement and draft pro forma it proposed to use when seeking authority to make a SEESA payment. A file note records that DEWR found the draft terms of engagement letter acceptable and that that view had been conveyed to SEES.[245] In DEWR's internal consideration of the draft, the reference to Australian Auditing Standards was noted, though not the reference to the type of engagement under those standards or to the fact that an agreed-upon procedures engagement had been specifically proposed.[246]

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[243] The agreed-upon procedures nature of the engagement was also emphasised by SEES at the discussion in Sydney with ANAO officers and an officer of DEWR, 12 July 2002.

[244] AUS 106, *Explanatory Framework for Standards on Audit and Audit-related Services*, paragraph .18. This is to be contrasted with an *audit* or a *review engagement*. The auditor's objective in an *audit* is to provide a high level of assurance through the provision of relevant and reliable information and a positive expression of opinion about an accountability matter. In a *review engagement*, the objective is to provide a moderate level of assurance, being a lower level of assurance than that provided by an audit, through the provision of relevant and reliable information and a statement of negative assurance.

[245] DEWR internal email recording a meeting with corporate legal advisors on 14 December 2001.

[246] DEWR internal email, 12 December 2001.

4.69 DEWR was unable to provide evidence that it was aware of either this implication in the choice of auditing standard at the time or that it understood that, as a result, greater risk would flow back to the department. DEWR advised the ANAO at the commencement of the audit that it relied wholly on SEES's advice that payments have been made accurately.

4.70 In August 2003, after the ANAO raised this issue, DEWR obtained an explanation from SEES of the letter of engagement. The explanation states that SEES considered that it did assume some responsibility for providing assurance to DEWR and did not place all risk on the client. Specifically, it cited the second paragraph of its letter of engagement, which stated:

> We acknowledge that it is our responsibility to determine the adequacy of the procedures agreed to be performed by us to meet the requirements of Clause 5.3 of the Contract including agreement with the Commonwealth of Australia of the risk management principles set out in section 3 [*of that letter*].

4.71 In SEES's view, this presented a:

> modified approach [which] achieved the dual aims of restricting SEES's exposure to unintended risk that might have flowed from a full audit approach, whilst providing DEWR comfort with our assurance that the procedures that were agreed upon met the requirements of the contract.[247]

4.72 This is the first occasion on which an 'aim of restricting SEES's exposure to unintended risk' has been articulated. In the ANAO's view, it would have been better practice for this intention and its consequences to have been clarified between the parties when contract and terms of engagement were being settled.

4.73 It is not clear from this material the degree to which the implications of strict agreed-upon procedures engagement were, in fact, modified by other statements in the letter of engagement, nor the final distribution of risk between DEWR and SEES.

4.74 In October 2003, in comments on a draft of this report, SEES provided a further explanation of its engagement, citing, on this occasion, another Australian Auditing Standard—that relating to assurance engagements:

> Where, in the judgement of the professional accountant, the procedures agreed to be performed are appropriate to support the expression of a conclusion that provides a level of assurance on the subject matter, and the professional accountant intends to do so, then such an engagement becomes an assurance engagement governed by this Standard.[248]

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[247] Letter from SEES to DEWR, 14 August 2003.

[248] Assurance Engagements Standard, AUS 108, paragraph .07. Note that even high level assurance is intended, under this standard, to provide a high but not an absolute level of assurance (paragraph .32).

4.75 SEES stated that 'This is our judgement and our assurance is given in the reports on factual findings'. Further, it asserted that each of its reports to DEWR on factual findings, given on each claim from the administrators, includes a 'statement of high level assurance'.

4.76 However, if this judgement could have been made at the commencement of the engagement then its engagement would have been governed by the assurance engagement standard, not that for agreed-upon procedures, as SEES had actually proposed and agreed with DEWR.

4.77 From the ANAO's perspective, the important aspect is not now to determine, *ex post*, whether SEES was providing assurance nor, if it were, the degree of assurance being provided. Rather, the ANAO's observation is that, at the commencement of the engagement, DEWR had not clarified the level of assurance being provided. The fact that DEWR had to refer to SEES for such clarification reinforces the view that insufficient attention was given to this aspect of accountability.

4.78 Although DEWR received the final, signed letter of engagement from SEES, the department provided no evidence that it did, in fact, formally agree to that letter in writing, as the contract required. Nor, therefore, could it show that its formal agreement (if it occurred) was given before the first payment was made, as was also contractually required.[249] However, there is evidence (noted above) that DEWR had agreed to the terms of the letter. It is not likely that it could now successfully claim that it had not so agreed.

4.79 The ANAO concludes that, at the time it engaged SEES, DEWR was not aware of the nature of the relevant professional standards or the options available under them, even though, in formulating its contractual requirements, it had required them to be observed. This left DEWR in a weak position to agree and settle arrangements with SEES.

Procedures

4.80 The procedures set out in SEES's letter of engagement included:

- reviewing and/or testing the process used by the Ansett Administrators to calculate entitlements; and
- sampling each tranche of payments to verify the calculations made by the Administrators were correct, that the employees comprising the tranche had been informed of their redundancy and that the employees did actually exist and were eligible.

[249] The letter of engagement from SEES invited DEWR to 'sign and return' the letter to show that it met the department's requirements under the contract. However, DEWR was unable to provide the ANAO with a signed copy of the letter.

4.81 The letter set out various procedures designed to achieve these objectives, which SEES undertook to follow for each tranche. Some of these procedures used computer-aided techniques and this enabled some tests to be exhaustive. For example, all claims were examined to detect any duplication within the records that formed the basis of the claims. SEES used its computer-aided auditing software to select samples for detailed verification of the Administrators' calculations (this process is discussed further, below).

4.82 SEES proposed amended terms of engagement in respect of the Ansett Group in May 2002, at the initiative of DEWR's principal SEESA project officer. This was directed at reducing costs of the verification process for future tranches of claims by conducting the work in Sydney rather than at Ansett headquarters in Melbourne. This was duly agreed to by DEWR.[250]

Accuracy

4.83 To verify each claim made by the Ansett Administrators for a SEESA payment, the letter of engagement proposed that SEES would examine a stratified random sample of each payment tranche. In practice, stratification of the sample meant that SEES verified all of the high-value individual claims in a tranche. The meaning of 'high-value' has varied from tranche to tranche. For example, in Tranche 1, high-value claims comprised those greater than $49 999 (comprising 149 of the 3847 claims in that tranche). In Tranche 2, high-value claims comprised those over $124 999 (comprising 23 of 502 claims).[251]

4.84 SEES stated that 'the remainder of the population would be sampled using statistical sampling techniques'. Random sampling, SEES stated, would be 'based on a 95 per cent confidence level of identifying errors based on an assumed error rate of 0%'.[252] DEWR has not indicated how it understood this proposal, whether it satisfied DEWR's prior expectations nor, indeed, what those expectations had been.

4.85 SEES provided the ANAO with an explanation of its approach to sampling.[253] To determine the size of the random samples to be drawn from each tranche SEES decided that a tolerable deviation rate (error rate) of 5 per cent would 'provide an appropriate level of assurance in this engagement'. SEES estimated a population deviation rate of zero. It based this on its positive professional assessment of the extent of the Ansett Administrators' internal

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[250] A similar letter was provided in September 2002 in respect of the Hazelton Group and this was duly signed by DEWR.

[251] This information is set out in the tranche payment requests provided by SEES to DEWR seeking authorisation of each payment.

[252] Letter from SEES to Group Manager, Workplace Relations Implementation, DEWR, 17 December 2001.

[253] Letter from SEES to the ANAO, 8 October 2003.

audit process, quality of its computer modelling and the extent of legal advice on specific entitlements and awards. Finally, it set a sampling risk (allowable risk of over-reliance) of 5 per cent. That is to say, it sought 95 per cent confidence that it could draw a conclusion about the whole population, based on the sample it selected.

4.86 These parameters required a minimum sample size of 60. That was generally the size of the random sample selected from each tranche.[254]

4.87 SEES stated to the ANAO that, had it been auditing in a conventional environment, where the population being sampled was not subject to amendment:[255]

> in such testing, the results would be evaluated using statistical tables based on the above parameters and the number of actual errors detected to determine if the upper precision limit [*residual error rate*] is within the tolerable deviation rate. For example, based on the above parameters, if no errors were detected the upper precision limit would be 4.9% meaning that the auditor could conclude that the true deviation rate does not exceed 4.9% with a 95% chance that the conclusion is right and a 5% chance that it is wrong. ... If, however, 2 errors had been detected, the upper precision limit would be 10.1% which is beyond the tolerable deviation rate. The test would therefore fail and the auditor would need to decide whether to increase the sample size or to adopt alternative procedures.[256]

4.88 Contrary to the 'conventional approach' set out above, the SEESA population being sampled (each tranche of claims) *was* subject to amendment. That is, as SEES identified errors, it discussed their cause with the Administrator, who took remedial action to correct the claims affected. Where the error affected a class of employees within a claim (for example, pilots) the entire class was either recalculated or removed from the tranche.[257]

4.89 In the case of SEESA, SEES frequently detected errors in the claims making up the tranches, some being systemic and others, individual errors. In reporting on its sampling and verification work, SEES stated the size of each tranche population, the size and dollar value of the stratified and random samples, and the proportion of cases verified in each case. Although it reported on errors

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[254] In a number of cases, the size of the tranche was less than 60 and SEES verified the entire tranche (a census rather than a sample). In the case of Tranche 9, no random sample was verified. SEES explained that this was because the high-value stratum tested (38 out of the tranche population of 244) comprised a 'high percentage coverage'.

[255] SEES cited a population of sales invoices or payment vouchers within a trading company as examples of such an environment.

[256] Letter from SEES to the ANAO, 8 October 2003. The ANAO notes that, despite this explanation, when SEES *did* detect errors in a sample, it did not revise its estimated population deviation rate. This could, of course, have implied a larger sample being taken for subsequent tranches if SEES had been undertaking a statistical sampling process, rather than using professional judgement.

[257] This procedure was set out by SEES in its memorandum of 21 July 2002.

detected (and remedial action) it did not report the error rate in the random sample, as determined by its analysis.

4.90 Because the population had been amended, it was not possible to draw a statistical conclusion about the level of residual error in the population (the tranche as a whole). SEES stated that such a calculation would have required the final population (the tranche with corrected claims) to be re-sampled and tested 'leading to a duplication of our entire verification work, doubling the time to verify claims and doubling the costs to verify the claim'.

4.91 The consequences of this approach are that no statistical conclusion could be drawn about the residual error rate in the tranches after testing. This would then have enabled SEES or DEWR to draw conclusions within specified confidence limits about the overall accuracy of SEESA payments. However, this was not done and cannot now be done on the basis of the information supplied to DEWR by SEES in tranche claims.[258] SEES stated to the ANAO that:

> The determination of an upper precision limit (residual error rate) is not necessary in this situation as the final evaluation ... is based on high-level professional judgement.[259]

4.92 Statistical sampling for audit purposes has two elements: the random selection of a sample and use of probability theory to evaluate sample results, including measurement of sampling risk.[260] The second element was absent from the work undertaken by SEES and the testing undertaken would, in the ANAO's opinion, be regarded as non-statistical, despite the process used to calculate the original random sample size and the reference to statistical sampling in SEES's letter of engagement.

4.93 The choice between the two types of sampling (statistical and non-statistical) rests on a consideration of the costs and benefits, as SEES's remarks above indicate. If DEWR had imposed a numerical accuracy requirement upon the verification process there could have been further delay to payments and additional administrative costs. SEES's professional judgement in these matters may have provided sufficient assurance for DEWR. However, there has been no evidence of any consideration of these issues by DEWR.

4.94 It would also have been possible, in the light of the actual detected error rate, for SEES and DEWR to consider whether the extent of checking being carried out by SEES was more or less than DEWR required. However, there was no evidence that any consideration had been given to this possibility.

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[258] This is because where SEES encountered errors it reported to DEWR the number of claims affected by those errors in the tranche, and not the number of erroneous claims in the random sample tested.

[259] Letter from SEES to the ANAO, 8 October 2003.

[260] Auditing Standard AUS 514, Audit Sampling and Other Selective Testing Procedures, para. .10.

4.95 On some occasions, the difficulty of obtaining all the required records for verification led DEWR to direct SEES to use 'alternative means of verifying data (where possible)' if files could not be found.[261] SEES then reported in its subsequent tranche request that the Ansett Administrators' inability to locate these files precluded the performance of certain tests set out in its letter of engagement. It did not specify which tests these were. However, it reported that it had used other sources, which, although flawed, were not, in its view, so flawed as to compromise the validity of its tests.[262] SEES did not provide an estimate of any consequential change in the confidence that could be placed in the verification procedures. This problem occurred both in tranches paid before the timeliness standard was announced and in subsequent tranches.

4.96 The sampling undertaken by SEES, in its view, 'was aimed at verifying the final claim by the IP and ... determine whether systemic errors, isolated errors and IP changes were correctly treated in the final population.'[263] It appears to the ANAO that SEES's operational aim was to detect and correct errors, especially those of a systemic nature, which was of obvious value in enhancing the integrity of the claims for payment.

4.97 The testing of the validity of claims for payment under SEESA was examined in an earlier ANAO audit of key controls. This raised no concerns about the accuracy of the draw down requests to make tranche payments.[264] The issue, from the ANAO's viewpoint, is the lack of any clear specification or expectation on the part of DEWR as to the standards of service to be provided by SEES, as well as no evidence being available that the department clarified the meaning of SEES's proposal once it had received it.

4.98 The tenor of SEES's letter of engagement (see the extract at para. 4.70) presumes that the setting of work standards is largely, or even primarily, at its discretion. This possibility suggests an important lesson for agencies, without making any judgements about SEES's performance. Where a contractor has discretion in setting its own work standards there is a risk not only of insufficient checking, should the standard not be as high as the purchaser requires. There is also a risk that a contractor will set an excessively high standard, as this will enable it to provide more services than the department needs, at the

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[261] DEWR internal email, 5 March 2002.

[262] Tranche 7 request, 7 March 2002 [mis-dated 2001].

[263] Letter from SEES to the ANAO, 8 October 2003.

[264] The ANAO conducted, separately from this performance audit, a review of systems and controls operating over payments and the reporting of liabilities/expenses under SEESA. This was part of audit of the Department's financial statements for the year ending 30 June 2002 and the context of the testing was to provide assurance as to whether the 2001–2002 DEWR financial statements were free of material misstatement. The objective of the specific review was to assess the effectiveness of key controls over the SEESA scheme to ensure the Commonwealth's interests are protected and expenditure is compliant with terms and conditions agreed to under the SEES and DEWR contract.

Commonwealth's expense. Having set the standard for performance at 'a high professional standard', it would be very difficult to suggest that, by exceeding that high standard, a contractor had not performed in accordance with a requirement like clause 2.1. Thus it is important that the agency engaging a contractor have a capacity to formulate—independently of that contractor—its own expectation of the standards of performance it requires. The ANAO has found no evidence that DEWR developed such an expectation in this case.

4.99 The Ansett Administrators advised the ANAO that 336 redundancies (in a total of 12 894)[265] have required 'an adjusted claim to be lodged with SEES in excess of $1000.' They attributed adjusted claims to:

- pay rises granted prior to administration and not processed in the payroll system;
- errors in employee start dates due to secondments and transfers between Ansett and Air New Zealand;
- historical input errors made in processing annual leave and long service leave taken; and
- incomplete conversion (prior to administration) of Flight Attendant annual leave and long service leave between payroll systems.[266]

Timeliness

4.100 As noted earlier, a primary government objective was prompt payment of employee entitlements. The contract between DEWR and SEES imposes a range of obligations with timeframes upon SEES. These include matters such as immediate provision of a performance guarantee (clause 2.3), and the provision of advice about methods of debt recovery before the first payment is made (clause 6.2). However, the only reference in the contract to timeliness of making payments to help Ansett meet employee entitlements is a requirement that SEES make payments 'in a timely manner'.[267]

4.101 The ANAO acknowledged that it may have been difficult to articulate rigid timeliness objectives at the start of the Scheme, when the rate of delivery and quality of claims from the Ansett Administrators was untested. However, by the time the contract was signed, work on the verification of the initial tranches

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[265] This number excludes claims for the 100 employees made through the Hazelton Administration.

[266] Letter from KordaMentha to the ANAO of 6 October 2003.

[267] There is a related requirement in the SEES Administration and Loan Agreement (between SEES and the Ansett Administrators) that that SEES *immediately* lends money to the Administrators to make eligible employee payments (clause 2.1). However, this must happen after the Commonwealth has approved the advance. That approval is only sought after SEES has completed its verification of the claim submitted by the Administrators.

of claims had been completed. This could have provided an opportunity for an ongoing timeliness target or standard.

4.102 By March 2002, DEWR was able to advise that SEES could 'undertake the accountability checks we ask of them for each tranche of claims in about 3 days'.[268] This was followed, on 6 March 2002, by a ministerial press release stating that 'The Government expects to provide Special Employee Entitlements Support for Ansett Scheme (SEESA) monies to the Ansett Administrators for distribution to workers within five working days of receiving data from the Administrators about entitlements owed to individual workers.' However, there was no amendment to the contract or other record of understanding to reflect DEWR's expectation that SEES would maintain this standard.

4.103 Nonetheless, the ANAO found no evidence that the timeliness of SEES's verification work has been unsatisfactory. It has not impeded the process of advancing payments to the Administrators, which has usually been achieved within five days of receiving their claim for each tranche.[269] However, neither the contract nor the letter of engagement included a standard or a mechanism for applying a standard for timeliness to SEES's activity. This is not sound contract management practice as it could have placed at risk DEWR's ability to control a main objective of the Scheme to ensure required performance.

Contract reporting and monitoring

4.104 DEWR's *Practical Guide* states that a contract manager should develop and implement a targeted monitoring strategy based on an assessment of the risks of the contractor not achieving the contract deliverables and complying with contract obligations. Moreover, the key to contract management is regular monitoring of performance, with particular attention paid to performance indicators.

4.105 In this particular case, it is reasonable to expect that monitoring of performance would include both provision of key performance reports to DEWR by SEES and independent assurance activities based on risk.

4.106 Clause 8 of the contract requires SEES to provide a range of reports and statements to DEWR. This includes a monthly report on SEES's operations, including eligible employee payments made, matters relating to the CBA loan, services for recovery action and other matters. It also requires three-monthly reports showing how funds in the separate account have been received and

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[268] Minute from Group Manager, Workplace Relations Implementation, DEWR to Minister Abbott, undated, but signed off by Minister on 6 March 2002.

[269] Actual performance is discussed in Chapter 4. There is some doubt about whether Tranche 6 achieved the timeliness requirement. However, any delay seems to have been only for a few days.

expended and, for each Ansett company and by each category of entitlement, a statement of the number of employees to whom payments have been made.[270]

4.107 The ANAO identified regular reports received on all of the above matters except the report concerning the numbers of employees to whom payments had been made.

4.108 On each occasion when SEES has submitted a request to DEWR for approval for it to make an advance to the Administrators (a 'tranche payment request'), it has provided extensive information.[271] Tranche payment requests comprise a wide range of useful information including:

- a breakdown of the Administrators' claim by category of entitlement, including the details of the amounts requested;
- the numbers and types of employees included in the tranche and the relevant companies;
- results of SEES sample testing; and
- any matters arising from the verifications including what has been done to resolve the matters.

4.109 As discussed earlier, where errors in the calculation of employee entitlements by the Ansett Administrators had been detected, SEES advised what action had been taken to correct them. This included action required of the Administrators to correct claims and resubmit them, if necessary.

4.110 In addition to their primary function, these reports may satisfy, partially, the intent of the contractual requirement for payment details expected to be included in the three-monthly reports. However, although these reports set out the numbers and categories of employee for whom the *claim* was made, they do not provide any 'details of the number of Eligible Employees to whom Eligible Employee Payments have been made' as required under clause 8.1(b)(i) of the contract.[272]

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[270] This is required under clause 8.1(b)(i). SEES's reports explicitly relate to the requirements under clauses 8.1(a) (which are monthly) and 8.1(b)(ii) (which are three-monthly). There is no report under 8.1(b)(i) in the material provided by DEWR to the ANAO.

[271] This is consistent with its undertakings in the letter of engagement.

[272] The contract definition of an Eligible Employee Payment is 'a payment or other advance made by SEES to an Insolvency Practitioner in accordance with this contract for the purposes of making a payment to an Eligible Employee to discharge the Eligible Employee Priority Debt in whole or in part'. SEES has stated that this implies that 'Eligible Employee Payments' does not, therefore, refer to the payments made by the Insolvency Practitioner to the employee. The ANAO disagrees as the alternative interpretation would render absurd the contractual requirement for 'details ... of the number of Eligible Employees to whom Eligible Employee Entitlements have been made'. SEES's interpretation would require that SEES report on the number of tranche payments it makes, which is self-evidently unnecessary as it must seek DEWR authorisation each time it makes such a payment. The intention of the parties to the contract is clearly that a report be provided on the number of terminated employees who have been paid their SEESA payment.

4.111 In some cases, the tranche request letter includes a report on the acquittal of funds by the Administrators. The first such report accompanied the request for funds for tranche 8. It noted that, at that time, of the 7943 former Ansett employees who had been included in the first seven tranches, some 228 were yet to be paid the funds advanced to the Administrators to pay them. Most frequently, this non-payment was attributed to the employees' failure to return Ansett property.[273] Furthermore, sample testing undertaken by SEES as part of its agreed processes had revealed instances where amounts transferred to employees were different from the amounts notified in the respective redundancy notice. These instances were explained satisfactorily in the report accompanying the next tranche payment request.

4.112 SEES advised the ANAO of the detailed procedures it carried out when the Ansett Administrator provided a bank reconciliation. This allowed SEES to conclude that all of the payments made from Administrators' account containing SEESA funds were made to redundant employees for whom funds had been advanced. SEES states that it ensured no employee was paid twice and identified those who had not been paid. Therefore SEES was able to conclude that the great majority of employees had received their payments.

4.113 The reports by SEES did include an account of queries received by the Administrators from former employees about their SEESA payments and, where possible, their resolution. For example, the Tranche 17 request reported that some 1407 queries had been received since the commencement of SEESA payments.[274] The details provided record that, in some cases, the employee had been in error and, in other cases, adjustments had to be made to the payment.

4.114 Tranche payment request reports were also the vehicle used by SEES to report reconciliation of the separate bank accounts held by the Administrators containing the funds paid to them under SEESA. Frequently, a substantial amount of the funds advanced to the Ansett Administrators in earlier payments remained in the special bank accounts maintained by them for SEESA purposes at the time of the next payment. In most cases, the Administrators had withheld payment pending return of Ansett property, security cards or the employee had yet to supply certain details, in particular, rollover fund details to enable the Administrators to pay rollover amounts.[275]

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[273] This may include airline identity cards, which were required to be returned for security purposes.

[274] Employee queries are attributed to various reasons. However, among the categories reported as the most frequent are 'Discrepancy with leave balances' (354 cases or 25.2 per cent of queries) and 'Service date/exit date queries' (277 or 19.7 per cent). SEES reports indicated that the Ansett Administrators had reported to SEES that resolution of queries had been delayed due to a lack of resources in the relevant department of the company.

[275] See advice from SEES, letter of 8 October 2003.

4.115 SEES reported regular remittance of any interest earned on the funds held by the Administrator to SEES. These funds were returned to SEES's separate account.

4.116 On one occasion, SEES reported that the Ansett Administrators had invested some $26.8 million of SEESA funds, intended for payment of employee entitlements, on the short-term money market.[276] This had been done without consultation with either SEES or DEWR. SEES reported that this was done while the Ansett Administrators calculated tax liabilities payable in respect of redundancy payments. SEES also stated that it had been the Administrators' intention to return to SEES interest earned through this investment and, later, that it had closed the account.[277] There is no evidence to suggest that DEWR took action following this event to reduce the risk of such an event occurring again.

4.117 In response to a draft of this report, SEES advised the ANAO that 'the Administrator undertook that no further such transaction would occur, and that all funds would remain in the Special Account [used by the Administrators to hold SEESA monies] and interest earned thereon remitted to SEES as the funds were held in Trust for SEES.'[278]

Monitoring quality and cost

4.118 While the contract and letter of engagement did not outline an approach for DEWR to independently and adequately assure itself of the quality of SEES's service, DEWR arranged for its principal SEESA project officer to be present at the conduct of the operations of verifying each tranche to monitor and assist with the work. The ANAO noted extensive situation reports recording that officer's substantial involvement in that processing, to facilitate it, and address contingencies as they arose.

4.119 However, the ANAO found no general statement of approach outlining the work undertaken and only ad hoc (although frequent) reports on the work performed for DEWR by SEES during the tranche processing. The ANAO found no evidence, for example, of a working paper to demonstrate that appropriate analysis had been undertaken to ensure compliance with, and value for money from, the contract. This would include any finding and/or observations from any verification work undertaken at SEES's premises during the processing of each tranche.

4.120 There are a number of risks associated with a time and resources costing structure, one of which is that, in the absence of any systematic monitoring

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[276] Application for approval of tenth payment, 3 June 2002.

[277] Application for approval of eleventh payment, 5 July 2002, para. 3.2.

[278] The ANAO has seen no written undertaking on this point.

strategy by DEWR, a contracted service provider could allocate resources up to the cap rather than maximising value for money. The ANAO, therefore, conducted an analysis of SEES's invoices to DEWR.

4.121 The ANAO found that, for the work undertaken, SEES's invoices broke down costs into the fixed monthly fee, allowances and total costs for verification. They were also often accompanied with a detailed listing of activities charged by SEES staff to managing the Scheme, after receiving a request from DEWR to this effect. The ANAO found that, after Tranche 11, the form of the invoices changed and no longer attributed SEES's costs to a specific tranche, making it more difficult to monitor costs. The ANAO considers that DEWR could have suggested an acceptable invoice format to SEES for their mutual benefit.

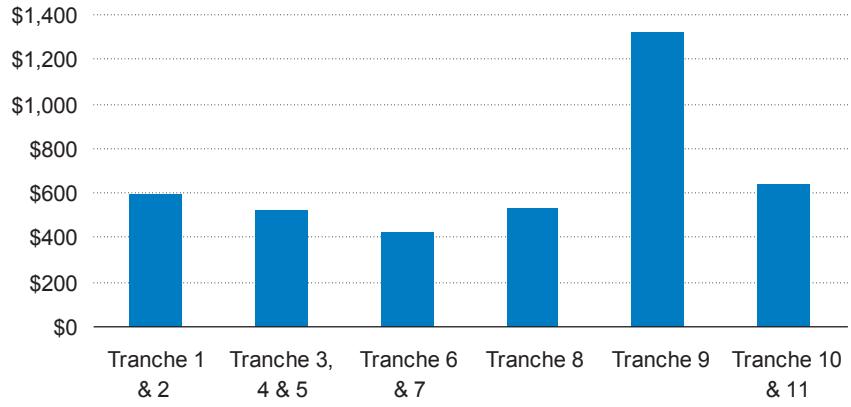
4.122 An example of a risk-based analysis would be removing the 'indirect costs' (for example, bank fees, insurance requirements and allowances) and 'fixed costs' that is, the costs associated with the board approval, which would occur for each request) and calculating an average cost per verification actually performed by SEES. DEWR could then form a view as to whether the costs were acceptable. For example, it may be useful to compare the unit costs of verification with DEWR's in-house costs for corresponding work in relation to GEERS.[279] Any fees charged in excess of this acceptable cost would then need to be explained to the satisfaction of the Commonwealth, as outlined in clause 3.6 of the contract. This type of monitoring would allow DEWR to manage the risks associated with the costing model in a cost effective manner.

4.123 Figure 4.1 is an example of the type of analysis that that could be undertaken by DEWR to monitor the average costs associated with the verification work undertaken by SEES.

[279] DEWR reported GEERS costs as $434 a payment for 2001–02. DEWR 2001–02 *Annual Report*, p. 85. The ANAO understands that the great majority of GEERS claims are individually verified. This figure therefore approximates the cost per verified claim.

Figure 4.1

How much, on average, did it cost for SEES to verify the samples of claims it selected from each tranche?



Source: ANAO analysis of data supplied by DEWR. The data represents the mean cost per verification performed—the fees charged divided by the number of individual claims in the sample actually verified by SEES. This means that it is a measure of the cost of work actually being done by SEES in checking the sample it actually verified for each tranche. Note that this analysis cannot be extended past tranche 11 on current data because of a change at that point in the information provided by SEES in its invoices.

4.124 The figure illustrates the average variable fee charged per sampled case actually verified by SEES. (It should be noted that this does not purport to represent the cost per verification for the whole tranche.) The analysis excludes the fixed monthly fee and any allowances and/or reimbursements paid to SEES by the Commonwealth. It illustrates that average costs have been highly variable, and were particularly high in respect of tranche 9.

4.125 It is important to note that because of the format of the data contained in SEES's invoices it is not possible to draw definitive conclusions about these costs. The issue here is that this analysis represents the *type* of monitoring activity that DEWR could have undertaken, especially with a more informative invoice format.

4.126 DEWR has not provided any views as to why the mean cost per verification has varied, as indicated. SEES has advised the ANAO that the high mean costs for Tranche 9 are due to certain 'separate detailed work' in relation to the Administrators' bank account and acquittal of funds.[280]

[280] However, the ANAO notes that this is not apparent from SEES's invoice in respect of Tranche 9, which identifies only 'examination of the Administrator's claims for Tranche 9', legal fees, fixed fees and allowances.

4.127 Early in the life of the Scheme, DEWR requested a higher level of detail in SEES invoices.[281] It also found recurring errors such as the inclusion of an additional amount for GST on a price that was already GST inclusive, duplicate claims, and other problems and anomalies that DEWR officers considered 'worrying', given the high standards of accounting expertise the department had been seeking. The ANAO's financial controls audit of SEESA in June 2002 found and reported on the same minor control breakdowns in DEWR's handling of SEES invoices.

4.128 In the course of the performance audit, the ANAO queried a number of additional items invoiced by SEES and paid by DEWR. DEWR has subsequently sought to recover the fees it paid in respect of certain of these items. In relation to other items, DEWR was unable to explain why it had paid the amounts without seeking further advice from SEES.[282]

4.129 A more detailed analysis of the invoices and the supporting documentation may also be beneficial in providing assurance that the Commonwealth has been invoiced for the correct services. This is a matter for DEWR's management and its own assurance and accountability.

[281] Email from DEWR to SEES, 25 January 2002.

[282] See, for example, SEES's letter to DEWR of 31 March 2003.

5. SEESA Performance

This chapter examines the actual performance of SEESA, based on the available data.

Introduction

5.1 To make an assessment of how SEESA has performed it is necessary to examine the available systematic performance information. Robust performance information is a standard requirement of managing Commonwealth programs. It enables managers to allocate resources, identify areas for performance improvement and measure and/or assess individual achievement. It also promotes internal and external accountability. External accountability includes: meeting the mandatory requirement on Commonwealth agencies, that they provide Parliament with sufficient information in their Portfolio Budget Statement (PBS) and Portfolio Additional Estimates Statement (PAES), to explain resourcing and proposed performance in relation to outcomes and outputs.[283]

5.2 In relation to SEESA it is reasonable to expect that:

(a) there would be a clear statement of how the Scheme was expected to perform. To support this, performance criteria relating clearly to the Scheme's objectives, would have been identified and standards set. Ideally, this would occur before its commencement. However, with an accelerated implementation timetable, as was required in this case, this might well happen in parallel with other implementation activities;

(b) actual performance would be measured and/or assessed; and

(c) there would be a clear record of actual performance, which would be reported and which would allow DEWR to manage the Scheme and provide appropriate transparency as to the achievement of the required outcome and outputs.

Performance criteria

5.3 Given that the announcement of SEESA took place in September 2001, the first opportunity for a statement of performance indicators was in the DEWR Portfolio Additional Estimates Statements (PAES) 2001–02.[284] This included the proposed changes to the allocation of resources to Government outcomes since the previous Budget as well as information on the resources involved in the introduction of SEESA.

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[283] See ANAO, *Performance Information in Portfolio Budget Statements: Better Practice Guide*, May 2002.

[284] See DEWR PAES 2001–02, p. 15. This was tabled in Parliament on 14 February 2002.

5.4 The PAES states the projected resource implications of SEESA but provides no information about performance criteria, or expected performance of the Scheme. It shows an expected increase in administered appropriations of $468.4 million in 2001–02. DEWR has advised the ANAO that this amount was the estimated cost for the full life of the Scheme. However, the PAES provides no information that identifies separately the prospective operating costs of the Scheme (comprising departmental costs and costs of engaging the contractor, SEES), as distinct from the costs of the advances to the Administrators.

5.5 In May 2002, the DEWR Portfolio Budget Statements (PBS) 2002–03 were tabled.[285] The three employee entitlements support schemes (which comprise the original Employee Entitlements Support Scheme (EESS), its successor, the General Employee Entitlements and Redundancy Scheme (GEERS) and SEESA) are referred to in the effectiveness indicators listed in the PBS (p. 41). However, DEWR advised the ANAO that the indicators set out there are intended only for EESS and GEERS and not SEESA.[286]

5.6 From the statement to the Parliament under s. 24 of the Collection Act for the period 1 April 2002 to 31 March 2003 it is apparent that the key criteria for payments under SEESA are the *timeliness* and *accuracy* of those payments. Therefore each of these two indicators will be discussed further here.

Performance standards

5.7 The ANAO has not found any statement either in a formal budget paper (such as the PAES or PBS) or elsewhere as to any targets or standards of performance for the accuracy of payments made under SEESA. Therefore, it is not clear to the ANAO what considerations were taken into account by DEWR in making its decisions on the degree of checking that it thought appropriate in balancing its program objectives. In contrast, DEWR does specify a standard in its PBS for the accuracy of processing of claims made under the other employee entitlements support schemes and the DEWR Annual Reports 2001–02 and 2002–03 report against it.[287]

5.8 There was no standard for the timeliness of payments at the commencement of SEESA. However, a standard applying to the part of the process under DEWR and SEES's greatest control was developed and announced in March 2002.

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[285] The DEWR PBS 2002–03 is dated 8 May 2002.

[286] Oral evidence from DEWR at the opening interview for the audit.

[287] DEWR Portfolio Budget Statements 2003–04, p. 45; DEWR Annual Report 2001–02, p. 84; DEWR Annual Report 2002–03, p. 150.

5.9 Timeliness of SEESA payments had gained particular attention in late February and early March 2002, following the collapse of the Tesna bid (see Chapter 2). More staff—including some who might previously have expected to obtain employment with Tesna—were now likely to be terminated. There were reports in the media that workers might not receive entitlements for up to two years. Such reports may have been based on the outlook for payment of that part of employee entitlements not encompassed by SEESA and which would need to be funded from the realisation of Ansett assets. However, the Department of Transport and Regional Services raised the issue with DEWR, with a view to some public statement being made to clarify the likely timeliness of SEESA payments.[288]

5.10 DEWR was concerned that much of the time that elapsed in making SEESA payments was consumed by the Ansett Administrators' preparation of claims. This involved the processing of personnel records, to determine what was owed to terminating staff, and then lodging a claim with SEES. DEWR's view was that it took a minimum of two to three weeks for Ansett to process a batch of such records.[289] The Ansett Administrators' staff, according to DEWR, had been consistently unable to provide verified claims for SEESA payments at their 'target rate of some 800 a week'.[290] The department stated that the average rate at which claims had been processed and submitted by the Ansett Administrators, had declined from 900 a fortnight in early January to 700 a fortnight at the end of February.

5.11 The Ansett Administrators had noted in the first report to creditors (January 2002, p. 39) that a substantial amount of work had been undertaken in separately calculating and verifying the entitlements of each employee. According to their report, this took a team of up to 40 people a number of months to complete. They advised the ANAO that, 'during the peak of the redundancy program, up to 1000 estimates [of redundancy entitlements] were processed per day and gave rise to large SEESA claims for Tranche 1 of 3847 and Tranche 8 of 3263 former employees.' They also pointed out that 'All other tranches were considerably smaller in size as there were fewer employees to be made redundant as we were endeavouring to sell the business and maximise the return to the creditors.'[291] The Ansett Administrators provided the ANAO with the profile set out in Table 5.1 as the *average* duration for each redundancy tranche.

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[288] Email exchange between the Secretary, DOTARS, and Group Manager, Workplace Relations Implementation, DEWR, particularly 4 March 2002 ff.

[289] Email from Group Manager, Workplace Relations Implementation, DEWR to the Secretary, DOTARS, 5 March 2002.

[290] Minute from Group Manager, Workplace Relations Implementation, DEWR, to Minister Abbott, undated but seen by Minister 6 March 2002. The Ansett Administrators, commenting on a draft of this report, pointed out that tranche 1, in December 2001, had included payments to 3847 employees.

[291] Letter from KordaMentha to the ANAO, 6 October 2003.

Table 5.1

Average durations during the redundancy process (as reported by the Ansett Administrators)

Process	Business days
Update leave accruals up to exit date for each redundant employee	3
Print and despatch redundancy schedules	7
Compile SEESA claim documentation	2
SEES audit of claim	5
DEWR drawdown of SEESA funds	2

Source: Data supplied by Ansett Administrators (6 October 2003)

5.12 However, the records show that DEWR had formed the view, over the period from the previous November, that there were weaknesses in the Ansett pay system.[292] DEWR was concerned that staff who were experienced with the system's operations were now even more likely to be leaving the company themselves. This could compound the delays.[293]

5.13 DEWR had concluded, by early March 2001, that SEES could undertake the verification of a tranche of payments in about three days. The drawdown of funds from the CBA and transfer to the Administrators took another day. Therefore DEWR was prepared to commit to SEESA funds being transferred to the Administrators' bank account within five business days of SEES's receipt of final data for a tranche of claims.[294]

5.14 As noted in Chapter 4, on 6 March 2002, the Minister for Employment and Workplace Relations issued a press release stating that 'the Government expected

[292] The Ansett Administrators provided the following information as context for this conclusion: 'Ansett maintained a payroll system that comprised 20 unique payruns. Each payrun was integrated with the greenfields redundancy model [developed by the Administrators] to ensure accuracy in relation to payrates, leave accruals, employment commencement dates and other pertinent data. Development of the redundancy model identified data integrity issues within the Ansett payroll systems. To mitigate the risk of producing inaccurate redundancy schedules, we maintained Ansett's pre-existing payroll department (approximately 28 staff) and contracted a team of auditors and IT specialists until such time as we were confident that the redundancy model was producing accurate redundancy schedules.'

DEWR subsequently acknowledged the 'mammoth effort by Andersen's/Ansett HR and SEES Pty Ltd staff to achieve the target of payment of the 3476 former employees in T[ranche] 8 prior to Easter (including pressured work thru yet another weekend) ... My report to [DEWR senior executive staff] will highlight that high levels of responsiveness by Andersen's/Ansett HR to SEES Pty Ltd during the review was instrumental in achieving the target (Email from DEWR's principal project officer to various others, 27 March 2002).

[293] The Ansett Administrators, commenting on a draft of this report, stated that the Administration had in fact retained 28 of the 32 employees in the relevant part of the company.

[294] Minute from Group Manager, Workplace Relations Implementation, DEWR, to Minister Abbott, undated but seen by Minister 6 March 2002. DEWR had discussed the implications of this schedule with the Ansett Administrators on 1 March 2002.

to provide SEESA monies to the Ansett administrators for distribution to workers within five working days of receiving data from the administrators.'

5.15 At the point at which this statement was made more than half of SEESA payments had already been made.[295]

5.16 The clear intention of this standard was for it to relate to those processes over which the department and its contractor, SEES, had substantial control. They did not wish to be held to account for the then apparent uncertainties of the formulation and lodging of the claims nor the time taken to distribute the funds to individuals after those funds had been advanced to the Administrators.

5.17 The Ansett Administrators advised the ANAO that there was an agreement between themselves and DEWR that SEESA claims would be submitted approximately once a month on dates that were agreed from time to time. Further, it had been DEWR's preference that large claims be submitted to reduce the costs of verification. This would have meant that the process of lodging claims was understood and predictable.[296]

5.18 However, there are also practical difficulties in setting a timeliness standard, especially in determining the starting point. It could not be the point at which the SEES received the formal claim from the Ansett Administrators for a tranche. The formal claim was received only after the review process by SEES had been completed,[297] to allow the formal claim to take account of any adjustments identified as a result of the review process.

5.19 DEWR defined the commencement of the five-day period as the date on which the Ansett Administrators supplied verified employee entitlement data for those former employees included in the respective tranche. This was supported by hard-copy personnel files and associated records. DEWR reported that delays frequently occurred in the provision of those files as records needed to be obtained from many business units across the country, with varying records management practices. It is clear from departmental records that, to the extent possible, analysis of a tranche of claims actually commenced as soon as substantial data relating to a tranche was available. This is rational, given the need to adhere to a strict timeframe. However, there was then no single date upon which all such records became available.

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[295] On 6 March 2002, payments in respect of some 58 per cent of employees had been made under SEESA. On 7 March, following another tranche payment, this figure had risen to 61 per cent.

[296] Letter from KordaMentha to the ANAO, 6 October 2003.

[297] This was noted by DEWR's principal project officer in a situation report, 5 March 2002. This sequencing is also reflected in SEES's account of the process in its letter to the ANAO of 8 October 2003. In one case (Tranche 6), SEES had sought authority from DEWR to make the advance *before* it had received the letter from the Administrators requesting the advance of funds for the tranche. SEES submitted its request in a letter dated 27 February 2002, in which it promised to forward a copy of the formal request 'tomorrow'. A faxed copy of that letter (also dated 27 February) was received on 28 February. DEWR gave its authority for the drawdown of funds on 28 February 2002.

5.20 From the account set out above of the origin of this timeliness standard it is apparent that its purpose was primarily to make clear that verifying SEESA claims was not adding significantly to the time taken to pay former Ansett employees their entitlement payments. It is also apparent from DEWR records that the relevant departmental and SEES staff strove to meet the standard and applied themselves assiduously to the task of processing the claims. The ANAO has identified only one occasion where the records indicate an error and the need to recalculate claims caused a delay beyond the five days. This pre-dated the setting of the five-day standard.[298]

Alternative timeliness measures

5.21 The Deputy Prime Minister and Minister for Transport and Regional Services, the Hon. John Anderson MP, stated in a media release on 22 November 2001 that 'The Government's objective in putting SEESA in place was to ensure that retrenched Ansett workers received their entitlements on a timely basis'. Clearly, one implication of that statement is that the timeliness of receipt by the Ansett worker would be a measure of the performance of the Scheme. The period relevant to that objective would encompass more than the period taken to verify the Administrators' claims. A suitable measure would account for the entire period from when the Ansett employee had been terminated to the point when they received their entitlement payment under SEESA.

5.22 The additional periods that this would include would be:

(a) the period between the date of termination and the commencement of verification; and

(b) the period between SEESA funds being received by the Administrators and paid into the former employee's bank account.

5.23 There are no reports available from DEWR that provide information on the timeliness of SEESA payments with timeliness defined in this way.

5.24 When the ANAO raised this question with DEWR during the course of the audit, the department put the view that 'The time taken to pay former employees from the date of their redundancy is entirely the responsibility of the administrators and is dependent on them being satisfied that the entitlements are in fact due and payable. Neither SEES Pty Ltd nor DEWR can influence this process.'[299] However, DEWR could have exercised influence (and, in some instances, did exercise influence) over the relevant actions of the Administrators.

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[298] This is reported as occurring in relation to Tranche 6, delaying the payment of the advance by three days. See internal DEWR report, 5 March 2002.

[299] DEWR response to issues raised by the ANAO.

5.25 In the first instance, SEESA did not proceed until the SEESA Deed was executed on 14 December 2001. There is no obvious reason that a public commitment, about prompt supply of verified claims, could not have been sought from the Administrators during the period leading to the execution of that deed. Such a commitment could have helped to achieve, for example, a greater focus and more predictable approach to the calculation and submitting of claims by the Administrators. Indeed, the Minister for Employment and Workplace Relations, the Hon. Tony Abbott MP, later directed that his department 'insist on a statement by the [Ansett] Administrators as soon as possible' with a view to letting employees know how soon they could expect their entitlements.[300]

5.26 Second, there is evidence that DEWR did seek to take action that affected the time of submission of the Administrators' claims. DEWR advised the Ansett Administrators in early December 2001:

> the review process and sample size required for small numbers in a tranche is not significantly less than for large numbers. Consequently, in order to maintain levels of efficiency in completing the total task, the tranche sizes need to be large.[301]

5.27 Further, DEWR advised the Administrators at one point that the Government's preference would be for a claim not to be submitted until numbers were at a greater volume than the 190 or so then in prospect. That would mean postponing the submission of the imminent claim for two weeks. This advice was given on the basis that the cost to DEWR of the review process would not be substantially greater with a tranche of 2000 than a tranche of 200. DEWR recognised the trade-offs involved: 'there are sensitivities involved (i.e. people waiting for payment and possibility of perception that govt [*sic*] may not be acting with max[imum] responsiveness) which will need to be balanced against review cost implications.'[302]

5.28 Third, DEWR was also in a position to influence the time taken for the Administrators to disburse the funds to the former employees. There is a direct precedent in the other employee entitlements support schemes, EESS and GEERS, in which the department requires insolvency practitioners to formally agree to pass on the funds to the employees within a specified period. Moreover, it does not advance the funds until it has received that commitment. We were not

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[300] Minister Abbott's handwritten annotation to minute to him from Group Manager, Workplace Relations Implementation, DEWR, signed off by him 6 March 2002.

[301] DEWR internal email providing a situation report, 8 December 2001. There is written evidence that this had been specifically referred to senior DEWR staff for any amendment before explicitly becoming 'an item of record on our files'.

[302] DEWR internal email, 18 February 2002, 'SEESA—review of tranche 6 claim – situation report 7:30pm Mon 18 Feb'. DEWR has stated to the ANAO that this was 'an isolated incident'. However, this does not take account of the general instruction it had already given to the Ansett Administrators in early December 2001.

able to discover why DEWR did not invoke a similar arrangement for SEESA, especially given the Government's emphasis on prompt payment.

5.29 As well as not obtaining an undertaking from the Administrators about distributing payments to the former employees, DEWR did not obtain any firm data on what the Administrators did achieve in this regard. Thus in March 2002, when considering the timeliness issue, DEWR was only able to say 'we understand that in most cases, they [the Administrators] transfer payments to the individual claimants' accounts in the following 24 hours.'[303]

5.30 Notwithstanding the above, it is also clear from the file record that deadlines (rather than timeliness targets) were set for *certain* tranche payments. Payment of the first tranche was contingent on the completion of the Federal Court hearing (in December 2001) that ratified the terms under which SEESA advances and repayment would be made. Minister Abbott issued a press release on 11 December 2001 stating that 'The Federal Government hopes that today's Federal Court hearing, with co-operation from the Ansett Administrators, will pave the way for Commonwealth scheme payments to flow to Ansett workers (who have already been made redundant) by 19 December [2001]'. The ANAO found evidence on file (and it is noted in Chapter 3) that, in the period leading to Christmas 2001, DEWR and SEES staff were working diligently to achieve this.

Performance reporting

5.31 It is evident from the file record that each tranche request and payment has been managed closely and contingencies addressed as they arose. However, DEWR was unable to provide any evidence of systematic or regular internal reports on actual SEESA performance that could have been used to help manage the program.[304]

5.32 To date, DEWR's public reporting on the performance of SEESA has been limited. There are two places in which it has reported publicly: in its Annual Report and in reports to the Parliament required under the Collection Act.

5.33 DEWR's two relevant annual reports state that the cost of administering SEESA was $33.1 million (2001–02, p. 85) and $97.9 million (2002–03, p. 151) including monthly repayments of the loan facility. They also report the

[303] Ministerial brief from Group Manager, Workplace Relations Implementation, DEWR, 6 March 2002, p. 2, para. 7. See also, later in this chapter, the advice received by the ANAO from the Ansett Administrators about the actual timeliness of distribution of payments to employees by the Administrators for the largest two tranches.

[304] Such reports would provide key performance data on the Scheme and note any trends that might require attention. (This is in contrast to the detailed, on-the-ground situation reports which were provided frequently by DEWR's principal project officer, as noted earlier.)

entitlements paid in each respective financial year ($300.2 million and $35.49 million respectively) and numbers of employee recipients (11 852 and 1138). The fact that no recoveries have been made is noted. No other SEESA-specific performance data is provided.

5.34 DEWR has also prepared two reports to the Parliament to meet the requirement set out in s. 24 of the Act. These are primarily directed at explaining certain payments made from the special appropriation in the Collection Act.[305] The first report covers the period from 1 October 2001 to 31 March 2002, and the second, 1 April 2002 to 31 March 2003. The Act requires the reports to state, for the period being reported upon, the following:

- *Payments to an entity for the purpose of helping the entity to meet payment obligations in respect of money borrowed for the purpose of making payments in connection with the Scheme*. This comprises payments to SEES to meet repayments of the loan. The total authorised to 31 March 2003 (across both reporting periods) is reported as $104 million.
- *Payments by the Commonwealth under a guarantee given by a minister on behalf of the Commonwealth in connection with a borrowing*. This relates to the guarantee provided in respect of the loan facility secured with the CBA. No payments have been made.
- *Payments to meet the costs incurred by the Commonwealth in connection with the collection or administration of the Levy*. This comprises payments to DOTARS to meet its Levy-related departmental costs. The total authorised to 31 March 2003 is reported as $1.06 million.
- *Payments to meet the costs incurred by the Commonwealth in the establishment or operation of the Scheme*. This comprises payments to DEWR to meet its SEESA-related departmental costs. The total authorised to 31 March 2003 is reported as $1.98 million.

5.35 The ANAO notes that the costs incurred by SEES for services provided are drawn down upon DEWR authorisation from the loan facility (see Appendix 2 for an explanation of the cash flows under SEESA). That means that they are not paid directly from the appropriation but that the Commonwealth meets the cost ultimately through the repayment of the loan.

5.36 The first report records that $1.25 million was authorised as fees charged by SEES. The second report does not identify the amount DEWR authorised to be drawn down for this purpose during the relevant year. For Parliament to be fully informed on the cost of the operation of the Scheme, the amounts paid to SEES for its fees will need to be stated explicitly.

[305] The second report was tabled on 4 November 2003.

[306] DEWR email, 19 June 2002.

Actual performance

5.37 SEES's requests for approval of each tranche payment state the number of employees covered by the proposed payment. However, as Chapter 4 notes, the reports provided by SEES to DEWR do not contain a statement of the number of employees to whom payments have been made. The contract requires SEES to provide a three-monthly report showing details of the number of Eligible Employees to whom Eligible Employee Payments have been made. As a result, it was not immediately clear from those reports how many former Ansett employees had, in fact, received their SEESA entitlements. In June 2002, DEWR, in the light of ANAO enquiries about verification of receipt by former employees of SEESA funds, asked SEES to provide a statement on its activities or planned activities relating to verification that former employees had received payment of SEESA funds from the Administrators.[306]

5.38 Towards the end of the audit, DEWR provided the ANAO with a letter from the Ansett Administrators[307] that certifies that all SEESA funds forwarded to them have been distributed to eligible claimants, except for four. DEWR was able to advise when supplying a copy of this document, that three of the remaining four had now also been paid. The remaining employee turned out not to have an entitlement. The Ansett Administrators advised the ANAO that they had returned the funds forwarded in respect of this employee.[308]

5.39 On this basis, as of 11 August 2003, some 12 994 former Ansett group employees had been paid their SEESA entitlements (including 100 employees paid through the Hazelton administrator). They have received some $336.1 million in total.

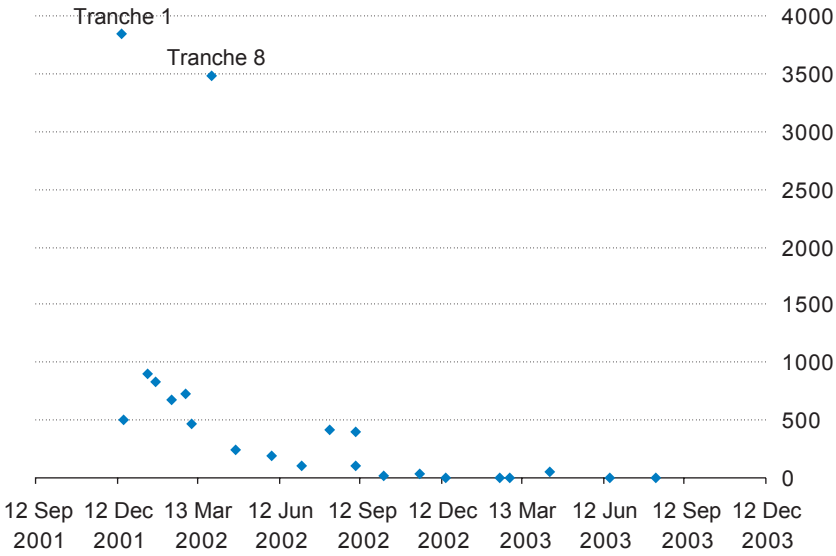
5.40 The ANAO examined data supplied by DEWR to gain an understanding of the size and distribution of the payments made under the Scheme. The results are set out in the figures below.

[307] The letter is dated 29 May 2003.

[308] Oral advice by telephone, 29 September 2003.

Figure 5.1

Numbers of terminated Ansett employees, by tranche (tranches 1 – 20, including Hazelton claim), by payment date of SEESA advance to Administrators



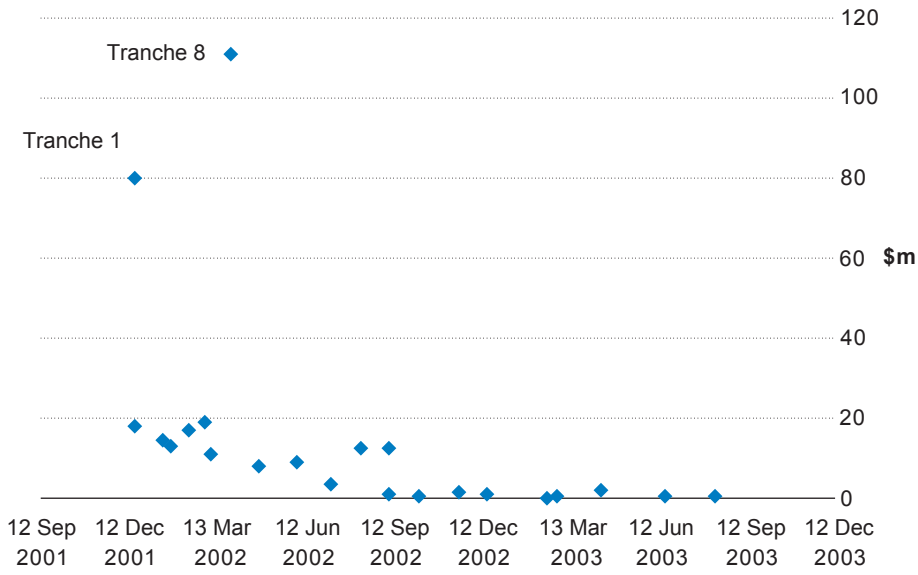
Source: Statistics provided by DEWR

5.41 The data shows that some tranches have comprised several thousand employees, whereas others have comprised only a very few (see Figure 5.1). The two largest tranches have been tranche 1, covering 3847 employees, for whom funds were advanced to the Administrators on 18 December 2001, and tranche 8, covering 3476 employees, for whom funds were advanced on 28 March 2002.

5.42 The amounts advanced for any particular tranche is the total of the calculated employee entitlements available under SEESA rules and due to the employees who comprise the tranche. The amounts advanced have varied accordingly but tend also to reflect the numbers of terminated workers in the tranche (see Figure 5.2). As might be expected, tranches 1 and 8 attracted the largest advances, of $80 million and $111 million respectively. All other tranche payments have been less than $20 million each.

Figure 5.2

Total amounts of SEESA advances to Administrators, by tranche (tranches 1 – 20), by payment date of SEESA advance to Administrators



Source: Statistics provided by DEWR

5.43 Table 5.2 (next page) sets out the numbers of employees for whom SEESA funds were advanced, by tranche and by the date of that tranche.

Table 5.2

Dates of payment of advances to administrators, amounts and employee numbers, by tranche

Tranche payment number	No. of employees in this tranche	Total amount of tranche payment	Mean payment per employee for tranche	Date of payment
T1	3847	$79 966 687.01	$20 786.77	18 Dec. 2001
T2	502	$18 050 191.77	$35 956.56	19 Dec. 2001
T3	895	$14 548 535.00	$16 255.35	17 Jan. 2002
T4	829	$13 103 245.36	$15 806.09	25 Jan. 2002
T5	674	$16 843 366.07	$24 990.16	12 Feb. 2002
T6	731	$18 791 057.26	$25 705.96	28 Feb. 2002
T7	465	$11 097 108.99	$23 864.75	7 March 2002
T8	3476	$110 937 860.85	$31 915.38	28 March 2002
T9	244	$7 759 454.63	$31 801.04	26 April 2002
T10	189	$9 136 351.95	$48 340.49	4 June 2002
T11	107	$3 276 984.34	$30 626.02	9 July 2002
T12	417	$12 541 720.00	$30 076.07	9 August 2002
T1 Hazelton	100	$1 249 023.80	$12 490.24	6 Sept. 2002
T13	390	$12 668 910.42	$32 484.39	6 Sept.2002
T14	25	$635 201.99	$25 408.08	9 Oct. 2002
T15	31	$1 379 847.22	$44 511.20	19 Nov. 2002
T16	7	$931 978.28	$133 139.75	18 Dec. 2002
T2 Hazelton[309]	0	$5 105.99	–	17 Feb. 2003
T17	5	$485 493.38	$97 098.68	28 Feb. 2003
T18	48	$2 063 787.68	$42 995.58	14 April 2003
T19	8	$252 587.31	$31 573.41	19 June 2003
T20	4	$403 056.80	$100 764.20	11 Aug. 2003
Total	**12 994**	**$336 127 556.10**	**$25 867.90**	

Source: Data supplied by DEWR

5.44 The Ansett Administrators advised the ANAO that they had distributed SEESA funds by electronic means to former employees ('net payments'), the ATO (PAYG Withholding) and nominated funds (Eligible Termination Payments (ETPs) rolled over).[310] They stated that their policy had been to 'distribute

[309] DEWR advises that this represents an adjustment payment following advice from the administrator.

[310] Email of 29 September 2003.

net payments to former employees immediately' on receipt of monies from SEES. PAYG Withholding and rollover payments to nominated funds were settled monthly. For security purposes, net payments were not made to former employees until Ansett Airline Identity Cards were returned. In addition, where a former employee's SEESA entitlement included an ETP, the Administrators could only distribute the ETP component when the employee had made the required cash/rollover election. In such cases, the Deed Administrators stated that they had immediately distributed the non-ETP SEESA component and withheld the ETP component until the employee had made the relevant election.

5.45 The Ansett Administrators also provided the ANAO with their analysis of the time they took to distribute SEESA payments to individual former employees in the two major tranches, 1 and 8. These comprise approximately 57 per cent of all payments to individuals under SEESA. The data provided is set out in Table 5.3.[311]

Table 5.3

How quickly did the Administrator pay the employees?

No. of calendar days	Tranche 1 (December 2001)	Tranche 8 (March 2002)
0 – 2	81%	75%
3 – 7	3%	6%
8+	16%	19%

Source: Ansett Administrators, email to ANAO of 29 September 2003

5.46 This data provides further evidence that, in a substantial majority of cases, funds were distributed promptly to individual former employees.

[311] The Ansett Administrators also offered to make available for review 'voluminous reports' providing details of SEESA claims and payments made to former employees. (letter of 6 October 2003).

6. Management of the Air Passenger Ticket Levy

This chapter examines DOTARS' management of the Air Passenger Ticket Levy, which was introduced to fund SEESA.

Introduction

6.1 The Air Passenger Ticket Levy (the Levy) was introduced to meet the cost of payments by the Commonwealth under SEESA.[312] This chapter considers DOTARS' management of the Levy, including its implementation and ongoing monitoring. The chapter therefore reflects the ANAO's examination of the:

- administrative framework supporting the collection of the Levy;
- estimation of amount of Levy to be raised;
- monitoring of airline compliance with the legislation; and
- declaration of the final levy month.

Administrative framework supporting the Levy collection

6.2 Adequate business rules, procedures and guidelines assist departments to deliver Government objectives in accordance with relevant legislation. An administrative framework designed to address the key risks and to establish key controls are necessary to protect the Commonwealth's interests and to achieve a consistent implementation of the legislation. An administrative framework should be flexible so that it may adapt to changes in the operating environment. A sound framework will, therefore, include the capacity to make amendments when necessary. Given the tight implementation timeframe the procedures for collecting the Levy needed to be compatible with existing industry practices.

Legislation and Regulations

6.3 The *Air Passenger Ticket Levy (Imposition) Act 2001* and the *Air Passenger Ticket Levy (Collection) Act 2001* (the Collection Act) were supported by the Air Passenger Ticket Levy (Collection) Regulations 2001. The regulations supported the legislation by outlining specific detail about the Levy, whom it would apply to and how it would operate (see the panel 'What did the Levy apply to?' below).

[312] See section 7 of the Collection Act.

What did the Levy apply to?

Regulations were made on 27 September 2001 under the Collection Act and were gazetted on 28 September 2001.[313]

For the purposes of the Act only one air passenger ticket was taken to have been issued if a person purchased more than one air passenger ticket for travel by one person on different but connecting flights, and the scheduled time between the flights was 24 hours or less, even if the flights were provided by two or more operators.[314]

The regulations prescribed that the Levy did not apply to:

- infants not occupying a seat;
- an employee of the operator of an Australian flight travelling as a passenger as part of the employee's duties (for example, positioning of crew and maintenance staff);
- diplomatic, overseas mission, consular and international organisation personnel;
- paper and electronic tickets taken possession of overseas (that is, the Levy was not imposed on inbound travellers such as overseas tourists);
- a passenger on an aircraft that had 16 passenger seats or less; and
- Air Security Officers while on duty as part of the Commonwealth Air Security Officer Program.

6.4 The Air Passenger Ticket legislation was introduced into Parliament on 20 September 2001. During the consideration of the legislation by the House of Representatives the Government stated that it (through DOTARS) was consulting with airline operators to identify the best system for administering the Levy at the lowest cost for both airlines and the Government.[315]

6.5 Following the introduction of the legislation into the Parliament, meetings with Virgin Blue, Qantas and the Regional Airlines Association identified a number of potential difficulties with implementation. As a result of the consultations the Government presented a number of amendments to the bills. The Government stated that the amendments were primarily administrative and aimed at facilitating the collection of the air passenger ticket Levy by airline operators.[316]

6.6 Upon suggestion from the airlines, the payment of the Levy was changed to be payable at the time the ticket was purchased and due to be collected by the ticketing airline at the same time. There were also some minor changes in the definition of terms used in the legislation. The most substantial amendment to the Bill was the insertion of section 12A, which allowed for special arrangements for the payment of the Levy. Principally, s. 12A arrangements were agreed with airlines, such as Virgin Blue Airlines, who do not link return and connecting

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[313] Amendments to the regulations were made and gazetted on 12 September 2002.

[314] Air Passenger Ticket Levy (Collection) Regulations 2001, regulation 4.

[315] The Minister for Employment, Workplace Relations and Small Business, the Hon. Tony Abbott, Second Reading Speech: Air Passenger Ticket Levy (Imposition) Bill 2001, 20 September 2001.

[316] Supplementary Explanatory Memorandum – Air Passenger Ticket Levy (Collection) Bill 2001.

flights. Virgin Blue's s. 12A arrangement allowed them to charge a $5 levy per sector.

6.7 In the event that a flight operator sought an arrangement under s. 12A, the Minister was required to assess such an application against the two requirements set out in that section which are:

- the desirability of mitigating, or limiting, any distortions that the operator's ticketing arrangements would otherwise cause in the incidence of the Levy on air passenger tickets issued by the operator (compared with the Levy on air passenger tickets issued by other operators of relevant flights); and
- any other relevant matter.

6.8 DOTARS advised that the Minister considered applications for s. 12A arrangements on a case-by-case basis. These arrangements are described in the panel below.

Description of the s. 12A arrangements

A number of airlines applied to the Minister to approve an arrangement under s. 12A. Until December 2002, Virgin Blue Airlines and Skipper Aviation Services (both granted s. 12A arrangements in 2001) were the only two airlines operating under such an arrangement. DOTARS advised the ANAO that, in these cases, the airlines had argued that they would suffer a commercial disadvantage if required to impose the Levy in the manner prescribed by the legislation. More specifically, Virgin Blue and Skipper Aviation do not use the International Air Transport Association (IATA) ticketing system and were therefore unable to link return and connecting flights.

Virgin Blue argued that the levy their passengers pay would be higher than that paid by passengers using competing services because a separate ticket is issued for each sector of the journey. The airline believed that it would suffer a commercial disadvantage unless some other arrangement for payment of the Levy were reached.

The Minister approved the initial s. 12A arrangement with Virgin Blue in September 2001 on the basis that it would be given 12 months to amend its computer booking system to enable it to collect the Levy at the normal rate. He granted a further three-month extension at the end of September 2002.

The Minister also approved Skipper Aviation's initial s. 12A arrangement with the expectation that it would be able to move towards a standard levy collection over time. The initial arrangement expired on 30 November 2002 but was extended until 28 February 2003.

In June 2002, both Qantas and Flight West (now known as 'Alliance Airlines') lodged s. 12A requests, arguing that they were suffering a commercial disadvantage when competing with Virgin Blue over the same routes for one-way tickets. The Minister did not approve the requests on the basis that the existing arrangement with Virgin Blue ensured a degree of equity for the majority of passengers who book return flights with the airline and that the agreement with Virgin Blue was only temporary while they altered their ticketing arrangements.

In December 2002, Virgin Blue requested a further extension. It also asked that the requirement for it to amend its ticketing system be dropped, arguing that it would place an additional cost burden on the airline and would force it to adopt costly, inefficient and out-of-date systems. The Minister agreed to extend the Virgin Blue s. 12A arrangement until

such time as the Levy ceased, based on the limited time the Levy was then expected to continue.[317] At the same time, he also agreed to grant a s. 12A arrangement to any airline able to demonstrate that the Virgin Blue arrangement had a detrimental commercial impact on their operations. DOTARS distributed a circular to this effect to all airlines on 16 January 2003.

Skipper Aviation subsequently requested that, following the expiry of its agreement on 28 February 2003, its s. 12A arrangement be extended until the Levy ceased based on similar considerations that applied in the case of Virgin Blue. The Minister agreed to this request.

Alliance Airlines, Regional Express and Qantas subsequently sought and were granted s. 12A arrangements on the basis of the detrimental commercial impact of the Virgin Blue s. 12A arrangement on their operations. On 4 March 2003, DOTARS distributed a further circular to all airlines advising them of the availability of s. 12A arrangements should they be able to make the case that they were commercially disadvantaged by another domestic airline operating under a s. 12A arrangement.

Guidelines and Procedures

6.9 In addition to the legislative framework for the Levy, DOTARS developed documents to assist its own staff and airlines to administer and implement the ticket Levy effectively in compliance with the legislation. DOTARS had four procedural documents to guide the administration of the ticket Levy. They are as follows.

- *Implementation Guidelines* (approved October 2001) for the guidance of airlines and DOTARS staff. These were intended to help air travel ticket agencies with the administrative arrangements for processing their monthly Levy returns and making payments of the Levy.[318]
- *Crediting Guidelines* (approved January 2001) to assist in the assessment of refunds of the Levy to the ticket purchaser in the event of overpayment of the Levy or if the ticket is not used.[319]
- *Compliance Guidelines* for the department to assess the need for prosecution of airlines in contravention of the Collection Act and the regulations.[320]
- *Internal Levy-specific procedures* were developed to assist DOTARS staff to manage collection of the Levy in a manner consistent with the legislation and guidelines. The procedures must be read in conjunction with a number of other key documents including the legislation, regulations and other Levy guidelines.[321]

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[317] No official estimate was specified as to how long the levy would remain in place.

[318] Air Passenger Ticket Levy Implementation Guidelines 2001.

[319] Air Passenger Ticket Levy Crediting Guidelines 2001.

[320] Air Passenger Ticket Levy Compliance Guidelines 2001.

[321] Air Passenger Ticket Levy Procedures, February 2003.

6.10 The ANAO acknowledges that from the time of the Ansett collapse DOTARS performed well by preparing for the implementation of the ticket Levy program in only two weeks. DOTARS advised the ANAO that the development of the business rules and guidelines for the Levy were based on the department's previous work implementing the Stevedoring Levy.[322]

6.11 As with the legislation and regulations, the ANAO found that DOTARS had consulted with industry participants throughout the development of both the implementation and crediting guidelines. Airline representatives made a number of practical suggestions related to these guidelines. Legal and other relevant advice was also sought throughout the development of the documents, including the compliance guidelines.

6.12 The internal Levy-specific procedures were developed in late 2002 in response to an internal audit report, which was undertaken as part of DOTARS internal audit program. The procedures were internally reviewed three monthly with key contacts used throughout the procedures reviewed and updated monthly.

6.13 The ANAO identified some minor deficiencies in these procedures, which the department subsequently addressed.

Estimation of amount of Levy to be raised

6.14 Providing an accurate estimate of the rate at which Levy receipts would be collected is an important element of the efficient management of SEESA. An accurate estimate of the Levy collection rate would help to set an appropriate amount for the Levy and predict how long the Levy would need to be in place. The estimated rate of ticket Levy receipts was also used by DEWR to set the monthly amount payable by the Commonwealth to SEES Pty Ltd to repay the loan.[323] (That is discussed in detail in Chapter 3.)

6.15 At the same time, the design of the Scheme allowed for a degree of flexibility in terms of repayments and the duration of the Levy. Therefore, some over or underestimation of the rate of Levy receipts was not critical to the operational effectiveness of the Scheme.

6.16 Ticket Levy receipts were originally estimated at $8 million a month. Initial estimates of Levy receipts were calculated on estimates of ticket numbers. Actual receipts exceeded initial estimates by a substantial amount (see Figure 6.1). Levy receipts peaked at $16.5 million for the month of September 2002. Overall, the

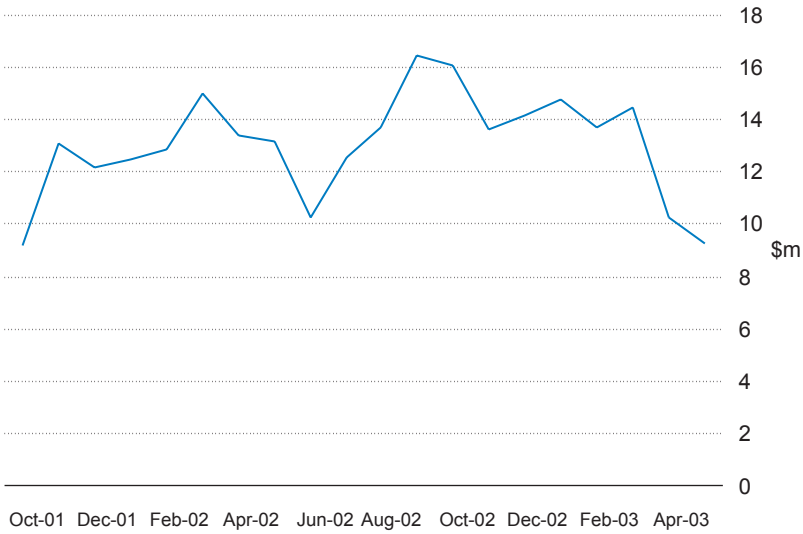
[322] Oral advice obtained during a meeting with DOTARS, November 2002.

[323] Letter from DEWR to Bentleys MRI, Sydney, 28 February 2002.

mean rate of receipt was $13 million per month and total receipts to August 2003 were about $286 million.[324]

Figure 6.1

Air Passenger Ticket Levy Receipts per month



Source: DOTARS – Air Passenger Ticket Levy – Receipts per Month.

6.17 In July 2002, DOTARS undertook a detailed analysis to examine the reasons for the difference between the initial estimates of Levy receipts and the actual collections. The Department's analysis identified that original estimates were made using generally conservative assumptions.[325] The major problem in estimating the rate of the ticket Levy stemmed from airlines historically calculating taxes or levies in passenger numbers rather than ticket sales. DOTARS advised that there are considerable difficulties in matching ticket sales to passenger numbers. These include the fact that:

- one ticket can encompass any number of flight sectors, while passenger number statistics cover each sector individually;
- all flights on one ticket may not be with the same airline; and
- exemptions exist for tickets taken possession of overseas that cover the domestic and regional Australian flights on those tickets.

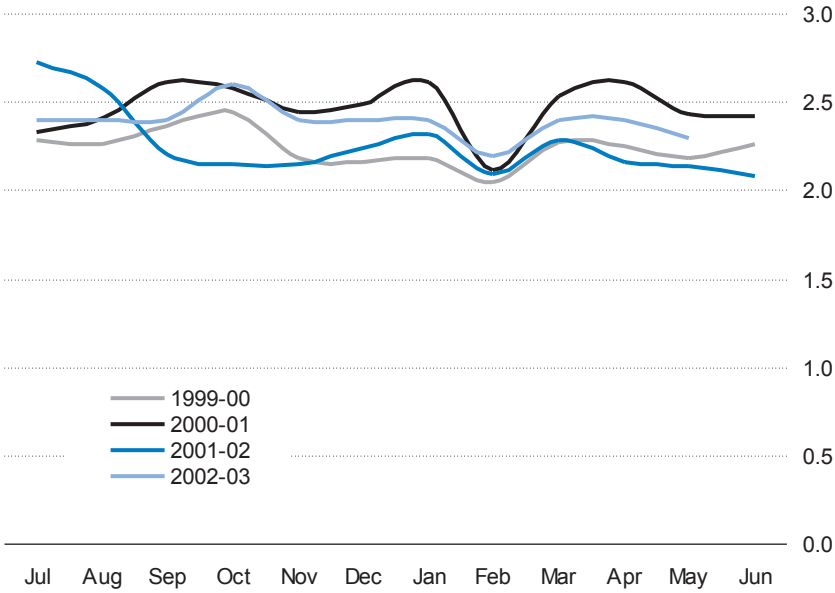
[324] See the answer to Question No 1743, Senate Hansard, 27 October 2003 and advice to the Senate Rural and Regional Affairs and Transport legislation committee at supplementary estimates hearings, 4 November 2003.

[325] Industry Programmes Branch, DOTARS, July 2002, 'Air Passenger Ticket Levy collections – Why are they higher than the original estimate?'

6.18 The ANAO acknowledges the difficulty experienced by DOTARS in estimating the Levy receipts accurately, particularly given the state of the aviation market immediately after the events in the United States of America on 11 September 2001. Figure 6.2 shows the numbers of domestic air passengers over four years from 1999–2000 to 2001–03.

Figure 6.2

Number of Domestic Air Passengers (million/month)



Source: The Bureau of Transport and Regional Economics, Air Transport Statistics, Australian Domestic Airline Activity, various editions, July 2001–May 2003, www.btre.gov.au.au/avstats/ and Statistics Digest (pre-July 2001), www.btre.gov.au/avstats/docs/top30july1994on.xls

6.19 The ANAO notes that conservative estimates of Levy receipts gave greater scope to future decision-making including the possibility of terminating the Levy earlier than expected or making additional repayments. Overestimating Levy receipts would have tended to limit the scope of such decision-making. Therefore, the approach that DOTARS adopted was sound.

6.20 During the course of the audit, DOTARS advised the ANAO that it was calculating Levy estimates based on actual ticket numbers from the previous year to improve accuracy. This would have helped inform decision-making on the declaration of the final levy month.

Monitoring airline compliance with the legislation

6.21 One of DOTARS' major roles in administering the Levy was ensuring airline compliance with legislation. DOTARS should be able to provide the Parliament with assurance that airlines were collecting, and remitting to the department, correct levels of Levy. By implementing an airline audit program DOTARS has been able to monitor registered airlines' compliance with the legislation.

6.22 During September 2001, DOTARS provided information on the Levy and registration process to both domestic and international airlines through a variety of media. All airlines responsible for collecting the Levy were required to register with DOTARS by 15 October 2001.[326]

6.23 The ANAO found that DOTARS regularly monitored the industry for new entrants to ensure that required airlines were registered and collecting the Levy.[327]

6.24 In January 2002, DOTARS engaged consultants to develop and undertake the airline audit program. The audit program included regular checks of all registered airlines, with the frequency of the audits determined by the size of the airline. Major airlines were audited every six months, medium size airlines were audited annually and smaller airlines were to be audited once over a three-year period. Table 6.1 shows the completed and proposed audits for 2002–03.

6.25 The consultants have provided DOTARS with a report following the completion of each audit. The report includes major findings and recommendations, which DOTARS then follows up with relevant airlines. As at 27 July 2003, the completed airline audits had found instances where airlines had remitted incorrect amounts of Levy.[328] Both overpayments and underpayments were identified. Many of the errors were due to miscalculating ticket sales, Levy payable or return amounts. The majority of the errors were minor and could be rectified through adjustments to following month's return. However, DOTARS advised that:

> The auditors[329] identified more substantial errors with Air New Zealand and Virgin Blue. Virgin Blue has not responded to a letter from DOTARS (February 2003) requesting clarification about matters raised in the auditors' report. Until these

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[326] Air Passenger Ticket Levy Information – Questions and Answers, http://www.dotars.gov.au/transprog/aviation/airticketlevy/air ticketlevy_info.htm

[327] Procedures—Air Passenger Ticket Levy, February 2003.

[328] *Airline Audits—findings and action summary*, provided by DOTARS, 11 December 2002.

[329] The term 'auditor' is used here to identify WalterTurnbull, consultants conducting the airline audit program on behalf of DOTARS.

matters are clarified, the auditors are unable to conclude that Virgin Blue is complying with the legislation.[330]

Table 6.1
DOTARS airline audit program (2002–03)[331]

Airline	Date audit completed	Audits proposed
Qantas Airways Limited	March 03	September 03
Virgin Blue Airlines	March 02, February 03 and July 03	
Air New Zealand Limited	November 02	September 03
Garuda Indonesia	March 02 and May 03	
Japan Airlines Company Limited	May 03	
Thai Airways International	April 02 and May 03	
United Airlines	May 02 and May 03	
Cathay Pacific Airways Ltd	May 02 and May 03	
Malaysian Airlines	May 02 and May 03	
Singapore Airlines	March 02 and May 03	
Freedom Air	November 02 and September 03	
Regional Express	May 03	

Source: DOTARS – WalterTurnbull Airline Audit Program

6.26 As part of their reports the airline auditors made system improvement suggestions to the airlines, which were followed up by DOTARS.

Declaration of the final levy month

6.27 The declaration of the final levy month has been an important consideration in the administration of the ticket Levy and the Scheme as a whole. This has been in part due to the public discussion that has surrounded the imposition and duration of the ticket Levy.

6.28 The Minister for Transport and Regional Services had responsibility under the Collection Act for declaring the final levy month. Because the Levy was imposed to minimise Commonwealth exposure under SEESA, the declaration of the final levy month was related to the overall cost of the Scheme. The decision to declare the final levy month was taken by the Government in June 2003. The official notification was given on 16 June 2003.

[330] *Audit Program—Final audits to be undertaken following the cessation of the Air Passenger Ticket Levy*, provided by DOTARS, 27 July 2003. Air New Zealand subsequently acknowledged to the ANAO that Levy calculation errors had occurred. It attributed these to 'system issues'. Air New Zealand also advised the ANAO that the calculation errors had been adjusted for and the correct amounts paid (email of 8 October 2003).

[331] Extract of *Airline Audit Program 2002 – 2003*, provided by DOTARS, 27 July 2003. See also Appendix 4.

6.29 To facilitate a sound decision on a final levy month, the Minister needed to have accurate and full information regarding the progress of the Scheme (including, specifically, the payments to be made), the Ansett administration and the amounts of levy being collected.

6.30 DOTARS and DEWR have been required to exchange certain key information. DOTARS required DEWR's advice to help decide when to terminate the Levy and DEWR needs DOTARS' advice to inform the reports of the Workplace Relations Minister to the Parliament.[332] DOTARS drafted a memorandum of understanding (MOU) in December 2001.[333] However, the formalisation of the agreement did not take place until May 2002. Both DEWR and DOTARS advised the ANAO that the delay in DEWR's ability to consider and agree to the MOU was a result of the priority given to operations at the time of the first SEESA payments. Although the MOU took several months to finalise, the ANAO has found that the information flow between DOTARS and DEWR has been generally satisfactory.

6.31 Determining the total cost of SEESA was a key element in the decision to cease the Levy. Although the special appropriation in the Collection Act limits expenditure to no more than $500 million, working out the actual cost within that limit depended on:

- the total amount of SEESA funds used to meet the entitlements of the former employees and Commonwealth administrative costs (including SEES's fees, the unintended tax liability (see Chapter 3)[334] and loan costs); and
- the total amount of funds returned to the creditors, including SEES, from the administrators. The amount returned to creditors is contingent upon: the success of the administrators in realising Ansett's assets; the outcome of legal disputes such as that between the Ansett Ground Staff Superannuation Trustees and the Administrators; the outcome of the dispute between DEWR and the Administrators over the payment of PILN; and the length of the Ansett Administration (which itself consumes resources).

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[332] *Air Passenger Ticket Levy—Procedures*, February 2003, p. 8.

[333] Acumen Alliance Internal Audit report, Management Comment. Final report states 'December 2002' but has been corrected by hand to say 'December 2001'. The final report was issued in July 2002.

[334] Originally DEWR provided advice to DOTARS (email of 8 July 2002) that the unexpected tax liability would need to be met from revenue raised by the Levy. On 8 December 2002 DEWR advised DOTARS that there was no need to include the impact of any tax when considering the duration of the Levy. This was because the imposition and payment of tax would be budget-neutral and the Treasurer had agreed that tax payments did not need to be funded by Levy receipts.

6.32 The outcome of the superannuation dispute—which had the potential to claim some $200 million from Ansett assets—was considered a major contingent factor in the declaration of a final levy month.

6.33 Given the contingent nature of the levy collections and the overall costs of the Scheme, it is reasonable to expect that the likely outcome would be monitored, with appropriate tolerances for uncertainty. The ANAO found that DEWR and DOTARS used a common spreadsheet to project the length of time the Levy would need to be left in place and the associated cash flows. The spreadsheet allowed parameters to be changed to simulate the various remaining possible outcomes. The spreadsheet provided officials with a clearer picture of the Commonwealth exposure from SEESA, allowing them to provide reasoned advice on the range of possible required durations of the Levy.

6.34 DOTARS also provided the ANAO with evidence that it had provided ongoing advice to its minister to keep him up to date with the developments affecting the Scheme and the Levy as they arose.

Canberra ACT
22 December 2003

P. J. Barrett
Auditor-General

Appendices

Appendix 1: Terminated Ansett employees—statistics

Introduction

1. The data below showing the location of the terminated Ansett employees is derived from an academic study that, in turn, obtained it direct from the Ansett Administrators.

2. All subsequent data in this appendix has been derived by the ANAO from a spreadsheet supplied by DEWR. The data includes tranches 1 – 19 only, encompassing 12 890 terminated Ansett employees. That is, it does not include four Ansett employees included in Tranche 20 nor the 100 terminated Hazelton employees.[335] The total amount of employee entitlements due to be paid upon termination to the 12 890 employees was $694 million.

Location

3. Ansett employees terminated through the collapse of the Ansett group of companies were based in all States and Territories. However, by far the greatest number were based in Victoria.

Table A1.1
Ansett retrenchments by State/Territory

State of workplace	No.	Percentage
Victoria	4949	39.7
New South Wales	2872	23.0
Queensland	1831	14.7
Western Australia	1198	9.6
South Australia	787	6.3
Tasmania	400	3.2
Australian Capital Territory	246	2.0
Northern Territory	146	1.2
Not stated	43	0.3
Total	**12 472**	**100.0**

Source: Webber and Weller 2002, 'The post-retrenchment labour market experiences of Ansett workers', School of Anthropology, Geography and Environmental Studies, University of Melbourne, October, based on data held in the Administrators' database.

Note: This data represents only 12 472 of the former employees, whereas other data in this appendix covers some 12 890 former employees.

[335] See Table 5.2, which sets out the numbers of terminated employees by tranche and by date of payment.

Entitlements owed

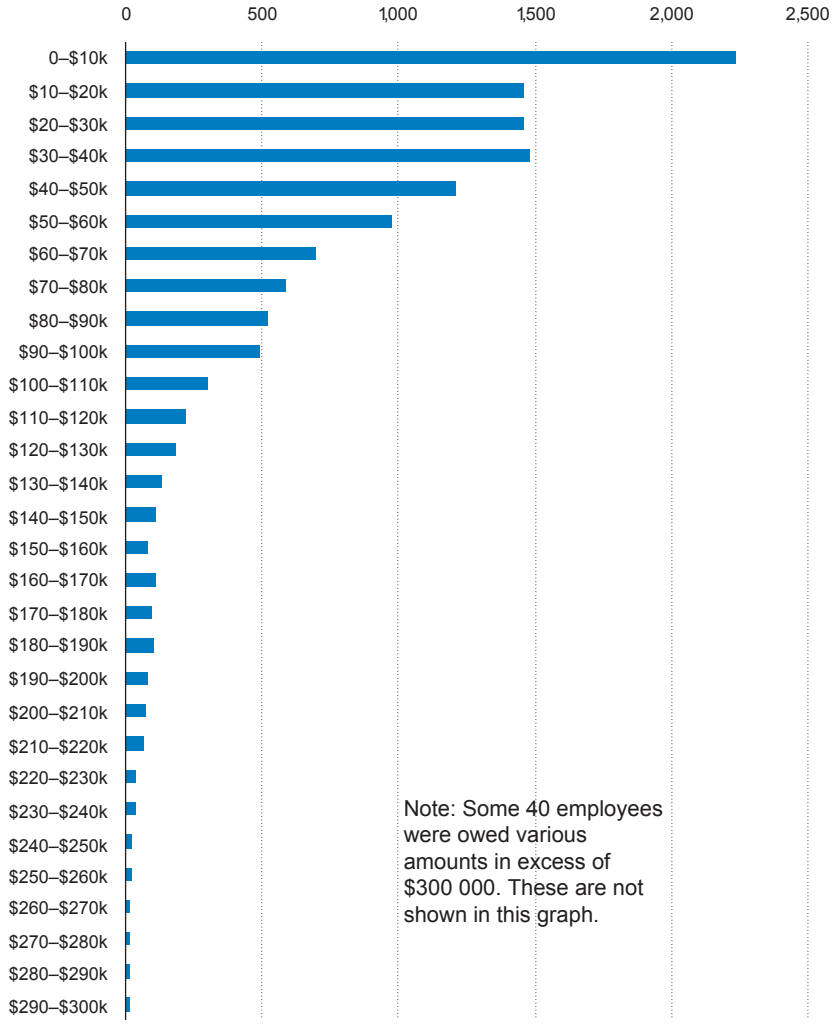
4. From data provided by DEWR, the mean value of employee entitlements owed to Ansett workers upon termination was about $53 800, and the median, $38 400. However, the distribution of these entitlements varied widely. About 50 workers were owed less than $1000 each and over 120 workers were owed over $250 000 dollars each. The highest individual unpaid entitlement was just over $625 000.

5. Table A1.1 shows the distribution of entitlements due to employees at termination, with the population stratified into $10 000 cohorts, up to $300 000. The data shows, for example, that the largest cohort was that with between zero and $10 000 in unpaid entitlements at termination. This cohort comprised over 2200 of the former Ansett workers.

6. Note that the data is this figure represents the whole of employee entitlements upon termination of employment, *before* any payments by the Administrators either from Ansett resources or from SEESA funds.

Figure A1.1

How much was owed by Ansett to its terminated employees? [Numbers of employees, stratified in $10 000 groups]



Source: ANAO analysis of data supplied by DEWR

SEESA funds advanced

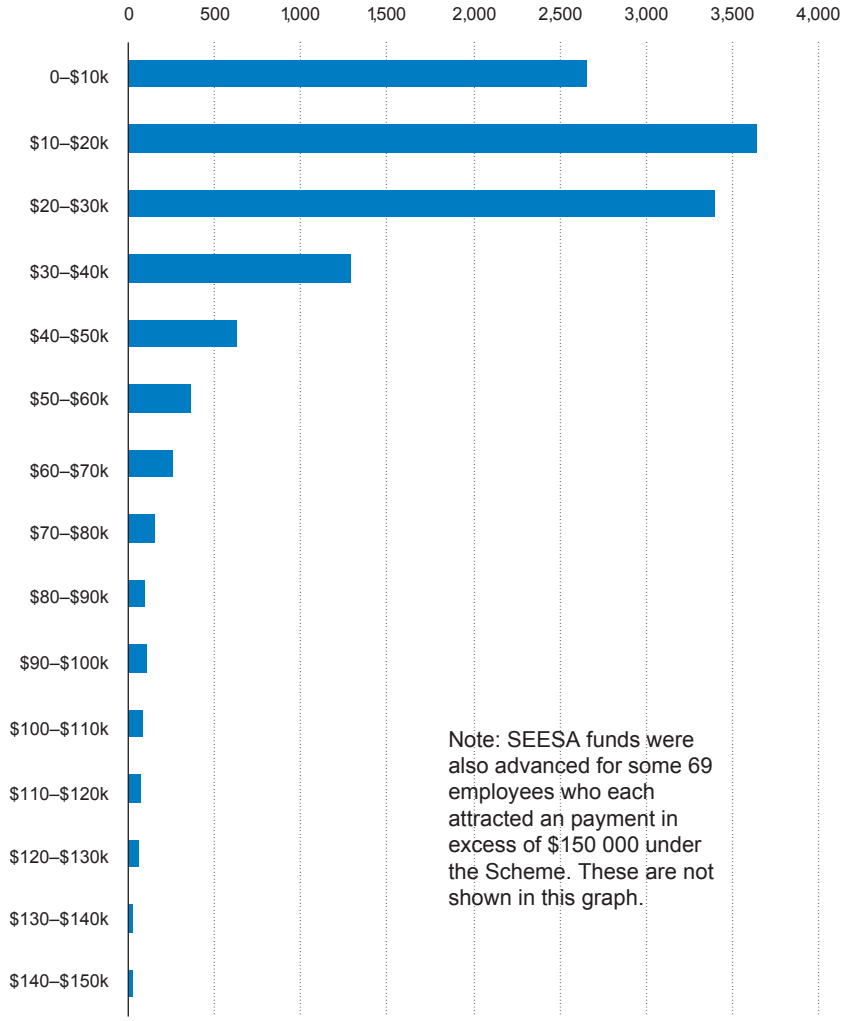
7. Some $334.5 million had been advanced to pay the SEESA entitlements of 12 890 terminated Ansett employees.[336] SEESA has provided over $200 000 each for 23 individuals. The largest SEESA payment in respect of an individual is just under $450 000. The mean of individual payments under SEESA is $25 700 and the median is $20 300.

[336] As noted above, this analysis excludes the four Ansett employees in Tranche 20 and the 100 Hazelton employees.

8. A stratified distribution by $10 000 increments is set out in Figure A1.2. This shows, for example, that the largest cohort (over 3500 individuals) attracted between $10 000 and $20 000 each in SEESA payments.

Figure A1.2

How much has SEESA advanced to the Ansett Administrators to pay its employees? [Numbers of employees, stratified in $10 000 groups]



Source: ANAO analysis of data supplied by DEWR.

Entitlements (other than SEESA entitlements) yet to be paid

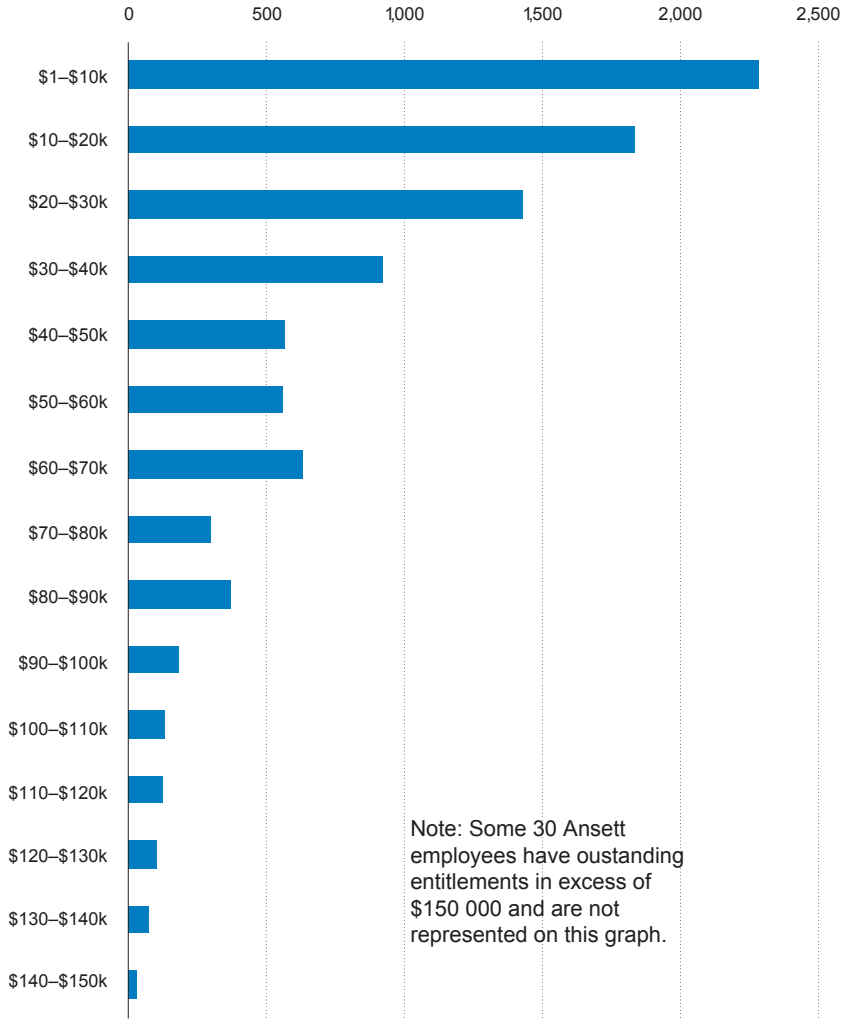
9. Some 3348 of the former Ansett employees who have received payments under SEESA have also been paid all employee entitlements owed to them at termination by Ansett. However, the other 9542 employees have some employee entitlements—over and above SEESA entitlements—unpaid. In these cases, the outstanding amount is not payable under SEESA and any payment must await the distribution of assets in priority order by the Ansett Administrators.

10. The distribution of the amounts outstanding, in $10 000 cohorts, is set out in Figure A1.3, below. This shows, for example, that the largest cohort is that with up $10 000 unpaid, comprising over 2200 individuals.

11. Some 486 individuals have over $100 000 each unpaid. The mean outstanding unpaid entitlement among the whole group is $34 900 and the median is $24 600.

Figure A1.3

How much is still to be paid to terminated Ansett employees from Ansett assets? [Numbers of employees, stratified in $10 000 groups, excluding those with no further employee entitlement payment due]



Source: ANAO analysis of data supplied by DEWR.

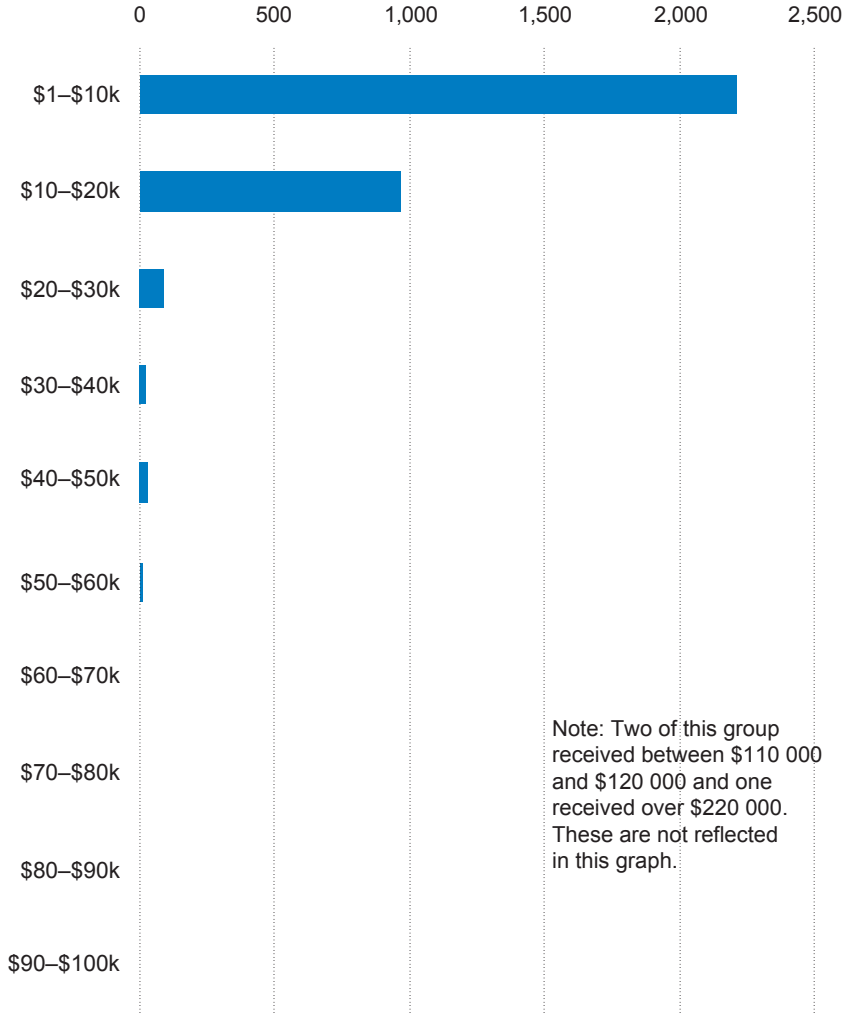
Entitlements fully paid

12. Most of those terminated employees who have been paid their full entitlement had less than average entitlements for all terminated employees. It is likely that they these employees had been employed for less time and had accrued less entitlements.

13. The distribution of these cases, in $10 000 cohorts, is set out in Figure A1.4, below.

Figure A1.4

Of those employees who have been paid their full entitlement, how much have they received? [Numbers of employees, stratified in $10 000 groups]



Source: ANAO analysis of data supplied by DEWR.

Table A1.2

Average entitlement by amount paid (stratified by $10 000 groups)

Amount actually paid ($)	Mean Payment ($)	Mean Entitlement ($)	Mean payment as a proportion of mean entitlement	Number of Employees in this cohort
1–10 000	5 447.66	5 943.70	91.7%	2284
10–20 000	15 850.24	26 380.24	60.1%	3084
20–30 000	24 503.88	48 439.02	50.6%	3914
30–40 000	34 285.77	75 057.82	45.7%	1450
40–50 000	44 510.73	91 497.32	48.6%	686
50–60 000	54 592.17	111 229.06	49.1%	454
60–70 000	64 445.40	131 842.33	48.9%	288
70–80 000	74 361.92	158 736.52	46.8%	162
80–90 000	85 107.63	171 355.24	49.7%	100
90–100 000	94 904.38	186 514.22	50.9%	95
100–110 000	104 957.10	197 785.61	53.1%	99
110–120 000	114 378.95	201 597.01	56.7%	75
120–130 000	125 302.69	226 626.01	55.3%	65
130–140 000	134 911.48	236 750.81	57.0%	29
140–150 000	145 758.71	267 361.03	54.5%	24
150–160 000	153 914.86	270 030.44	57.0%	24
160–170 000	166 033.75	277 594.29	59.8%	9
170–180 000	174 781.41	299 584.52	58.3%	12
180–190 000	182 820.37	319 736.10	57.2%	5
190–200 000	192 527.35	336 143.71	57.3%	3
200–210 000	205 829.25	324 590.38	63.4%	5
210–220 000	213 799.88	326 814.62	65.4%	4
220–230 000	224 866.36	307 030.31	73.2%	4
230–240 000	235 014.92	391 482.05	60.0%	4
240–250 000	244 489.32	380 783.73	64.2%	2
250–260 000	–	–	–	–
260–270 000	264 756.39	396 604.58	66.8%	1
270–280 000	272 700.08	382 384.05	71.3%	1
280–290 000	–	–	–	–
290–300 000	–	–	–	–
300–310 000	305 024.87	528 597.08	57.7%	2
310–320 000	316 581.54	432 320.97	73.2%	2
320–330 000	–	–	–	–

Amount actually paid ($)	Mean Payment ($)	Mean Entitlement ($)	Mean payment as a proportion of mean entitlement	Number of Employees in this cohort
330–340 000	–	–	–	–
340–350 000	345 742.53	469 078.79	73.7%	1
350–360 000	–	–	–	–
360–370 000	369 930.36	481 771.81	76.8%	1
370–470 000	–	–	–	–
470–480 000	476 139.92	578 321.46	82.3%	1

Source: ANAO analysis of data supplied by DEWR.

Appendix 2: How SEESA works

This appendix sets out how SEESA works. It explains the operation of the Scheme, the cash flows involved and how former Ansett employees receive their entitlements.

Introduction

1. The operation of SEESA is complex. That complexity is apparent from the diagram used by SEES and DEWR to explain that operation to prospective financiers (see Figure A2.11 at the end of this appendix).

2. The purpose of this appendix is to set out, as simply as possible, an explanation of how the major processes involving the flow of funds have operated. It does this by incrementally assembling a picture of the entire operation. The key processes that are mentioned here are analysed in the body of this report.

Insolvency and employee entitlements

3. To explain the flow of funds in the SEESA case, it is helpful to begin with a simplified account of what generally happens to employee entitlements in a business insolvency.

4. Employees terminated through insolvency may be owed wages and other entitlements by their former employer. Those employees are deemed to be creditors of the insolvent business. Of course, there may also be many other creditors. Where the business is wound up (liquidated), the insolvency practitioner (IP) appointed to manage the affairs of the business must pay creditors according to the priorities set out in the Corporations Act. Employee entitlements are specifically listed in the priorities for payment set out in s. 556.

5. As one alternative to winding up a company, a deed of company arrangement can be entered into. However, the Corporations Act gives no guidance for priority of payment. One industry view is that in most such cases the priority set out in s. 556 of the Corporations Act, which would apply in a liquidation, is picked up.[337] This is attributed to the fact that there are normally a number of employees and they are unlikely to vote for a deed that gives them a result which is not at least equal to that which they would obtain in a liquidation.

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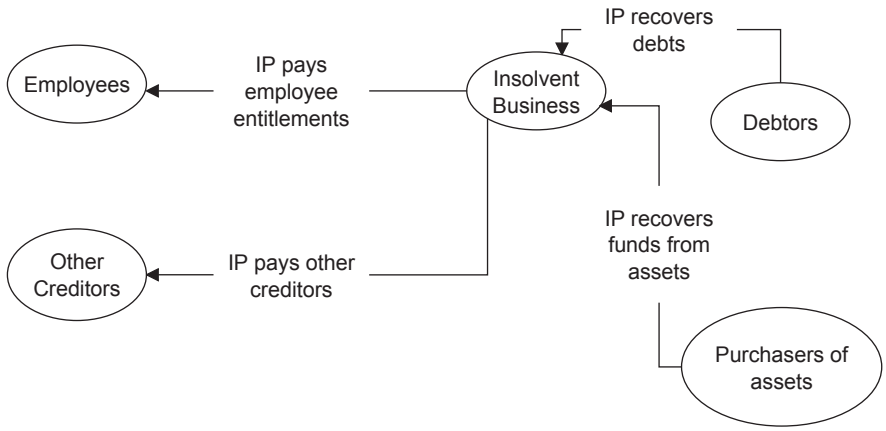
[337] Michael Quinlan, Partner, Allens Arthur Robinson, 'Potential Changes to Priorities for Secured Lenders', paper given to the seminar 'Proving Insolvency and Securing Debt', June 2002, p. 4. See: www.aar.com.au/pubs/insol/insjun02.htm.

6. The list of priorities for repayment is particularly important where there are insufficient funds available from the realisation of assets to pay all creditors. Many businesses have few or no assets when they become insolvent. Where there are insufficient assets, some creditors (including former employees) may never be repaid or they may receive from the business only part of what they are owed.

7. Insolvency practitioners must assess all creditors' claims against the insolvent business and creditors must lodge their proof of debt with the IP. The IP must pay creditors in accordance with the priority set out in the Corporations Act or the deed of company arrangement. When an employee entitlement payment can be made, the IP makes appropriate deductions (such as income tax, which is remitted to the Australian Taxation Office), and forwards the payment to the employee. This process is illustrated in outline in Figure A2.1.

Figure A2.1
How workers receive entitlements in an ordinary business insolvency



Source: ANAO, based on the performance audit Employee Entitlements Support Schemes, (Audit Report No.20, 2002–2003).

8. Ordinarily, there are two difficulties that can arise. These are that the realised value of the assets of the business may not be sufficient to meet all of its debts and the time taken to realise assets—sometimes several years—can mean that the creditors, including employees, will not be paid promptly, if at all. When an employee is terminated without being paid all of their employee entitlements because of a business insolvency they bear two consequential but separable risks:

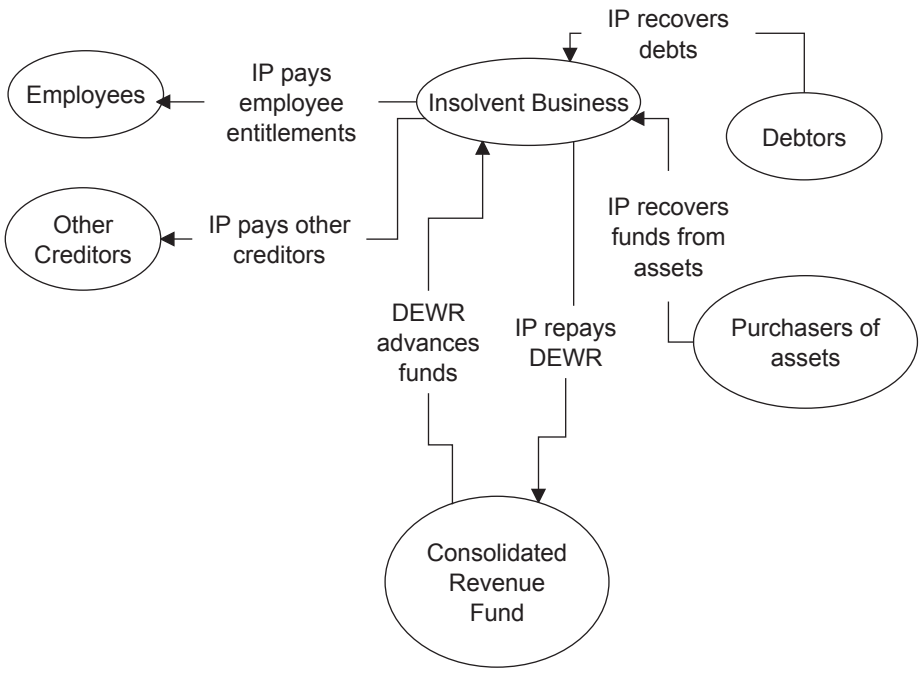
– they may not be paid all of their outstanding entitlements (the shortfall risk); and

– if they are paid, payment may not be prompt (the delay risk).

9. Before the establishment of SEESA, the Government had put in place the Employee Entitlements Support Scheme (EESS) to provide a 'safety net' for employees in these circumstances. EESS and its successor, the General Employee Entitlements and Redundancy Scheme (GEERS), address these two risks to the limits provided under each scheme. Under EESS and GEERS, employers remain liable for the payment of their employees' full entitlements. However, payments can be made under these schemes for eligible employees as an advance, where there are insufficient funds available from the assets of an insolvent employer.

10. For both EESS and GEERS, DEWR advances funds to the insolvency practitioner to allow them to pay certain employee entitlements. This is done under s. 560 of the Corporations Act, which enables recovery to be made by the Commonwealth to the extent of the advance made. EESS and GEERS are both budget-funded. This arrangement is illustrated in Figure A2.2.

Figure A2.2
Flow of funds through EESS and GEERS



Source: ANAO, based on the performance audit Employee Entitlements Support Schemes, (Audit Report No.20, 2002–2003).

SEESA financial flows

11. The remainder of this appendix constructs a diagrams representing the major financial transactions that take place under SEESA. The composition of the diagram also attributes these transactions among three spheres: those associated with the administrator; those associated with SEESA itself; and those associated with the Levy.

12. The following account also follows broadly the framework established for SEESA financial arrangements and to the extent possible the timing of the payments (as explained in Chapter 2). Thus it starts with the initial pay in lieu of notice (PILN) payments by the Ansett Administrators to certain former employees and adds, last of all, the transactions associated with recovery from the realisation of Ansett assets and disbursement of any surplus, should one occur, both of which were contingent on unresolved matters and, hence, during the audit, were yet to take place. [338]

Pay in lieu of notice (PILN)

13. As explained in Chapter 2 of this report, the Administrators reported that, at the commencement of SEESA, Ansett had no available cash.[339] Ansett subsequently obtained $150 million from Air New Zealand. The Administrators subsequently used those funds to pay 4–5 weeks' PILN payments to terminated employees from those resources. This is illustrated in Figure A2.3.

Figure A2.3
Pay in lieu of notice (PILN), paid by Ansett to some former employees

The Ansett Administrators used some of the funds Ansett received from Air New Zealand to pay PILN to some former Ansett employees.

Source: ANAO analysis of information obtained from DEWR.

[338] However, an announcement on this point was made as this report was being finalised. See the discussion in paragraph 26 and the footnote about that announcement.

[339] See Ansett Group (Administrators Appointed): First Report by Administrators, p. 2.

Payment of SEESA funds

14. DEWR has the responsibility for the management of SEESA. This includes payment of SEESA monies and any recovery. Bentleys MRI Sydney, a private firm, won a select tender to undertake the major tasks for DEWR. DEWR itself has undertaken the primary role of contract manager. Bentleys then established a special-purpose company, SEES Pty Ltd (SEES), for the sole purpose of carrying out work under the contract with DEWR.

15. The first requirement to fund the payment of employee entitlements under SEESA was to establish a source of cash. Under its contract with DEWR, SEES agreed to secure a loan or series of loans from one or more financial institutions from which to make SEESA payments. SEES secured a loan facility of up to $350 million from the Commonwealth Bank of Australia (CBA) for this purpose. The Government provided a guarantee for that loan.[340] SEES has made payments to the Administrators, each time obtaining DEWR's authority before drawing down on the loan. The funds are drawn down into a 'separate account' maintained by SEES for SEESA purposes.

16. SEESA payments have been made in 'tranches', in line with the termination of Ansett employees by the Administrators. As each group of employees has been terminated, the Ansett Administrators have forwarded to SEES a request for an advance of sufficient funds under SEESA to enable them pay unpaid legal entitlements to those employees. Each such request has comprised a 'tranche'. Each tranche then attracts an advance of funds to the Administrators from SEES, drawn from the loan facility with the CBA.

17. After SEES has received a tranche request from the Administrators it has been required to check that request to verify its accuracy. It has then sought the approval of DEWR to advance the relevant funds to the Administrators for payment to the employees. The Administrators have then transferred the funds received to the accounts of the relevant employees. The flow of funds in making SEESA payments is illustrated in Figure A2.4.[341]

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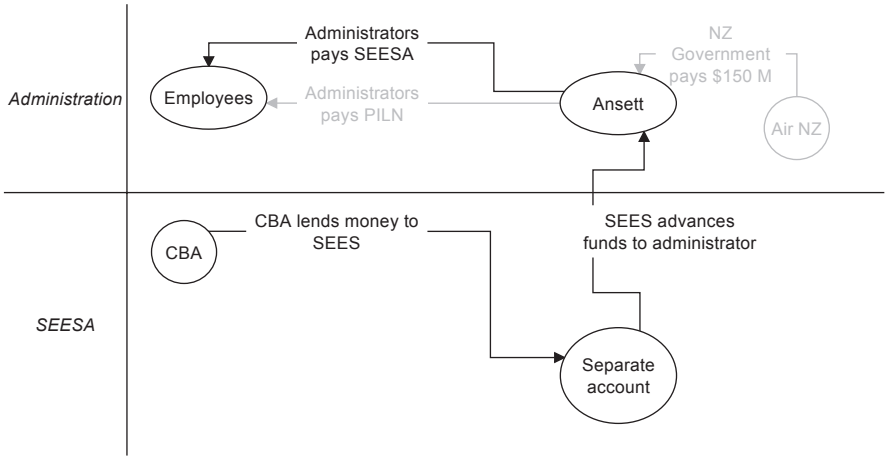
[340] Deed of Guarantee and Indemnity between the Commonwealth of Australia (as represented by the Department of Employment and Workplace Relations) and the Commonwealth Bank of Australia.

[341] The Ansett Administrators have advised that, in practice, SEESA funds received by them have been distributed by them by electronic means to the former employees (net payments), the ATO (PAYG withholding) and nominated funds (Eligible Termination Payments rolled over). These additional flows are not shown in the diagrams, to reduce complexity.

Figure A2.4
The flow of funds for SEESA payments



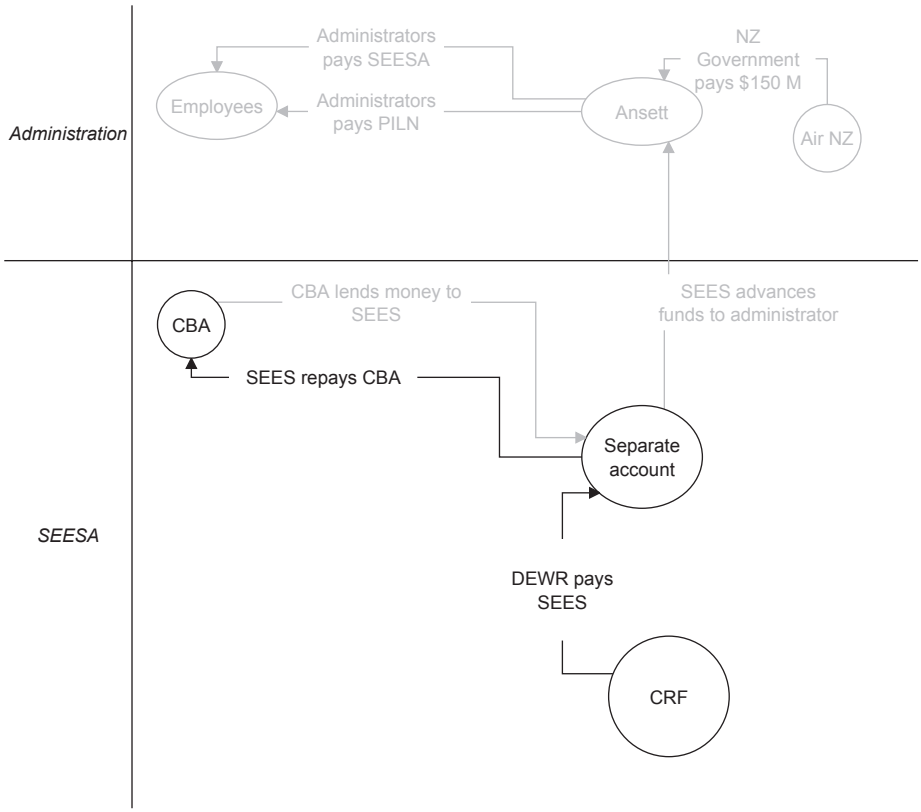
SEES draws down funds from the CBA loan facility and uses it to make advances to the Ansett Administrators, who use the funds to pay employee entitlements.

Source: ANAO analysis of information obtained from DEWR.

Repaying the loan

18. Using the special appropriation in the Collection Act, DEWR makes monthly payments from the Consolidated Revenue Fund (CRF) to SEES (Figure A2.5). These funds are paid into the Separate Account and used to repay the loan from the CBA. Starting in March 2002, and in each month thereafter, DEWR has paid $8 million a month for this purpose.

Figure A2.5
Repaying the loan



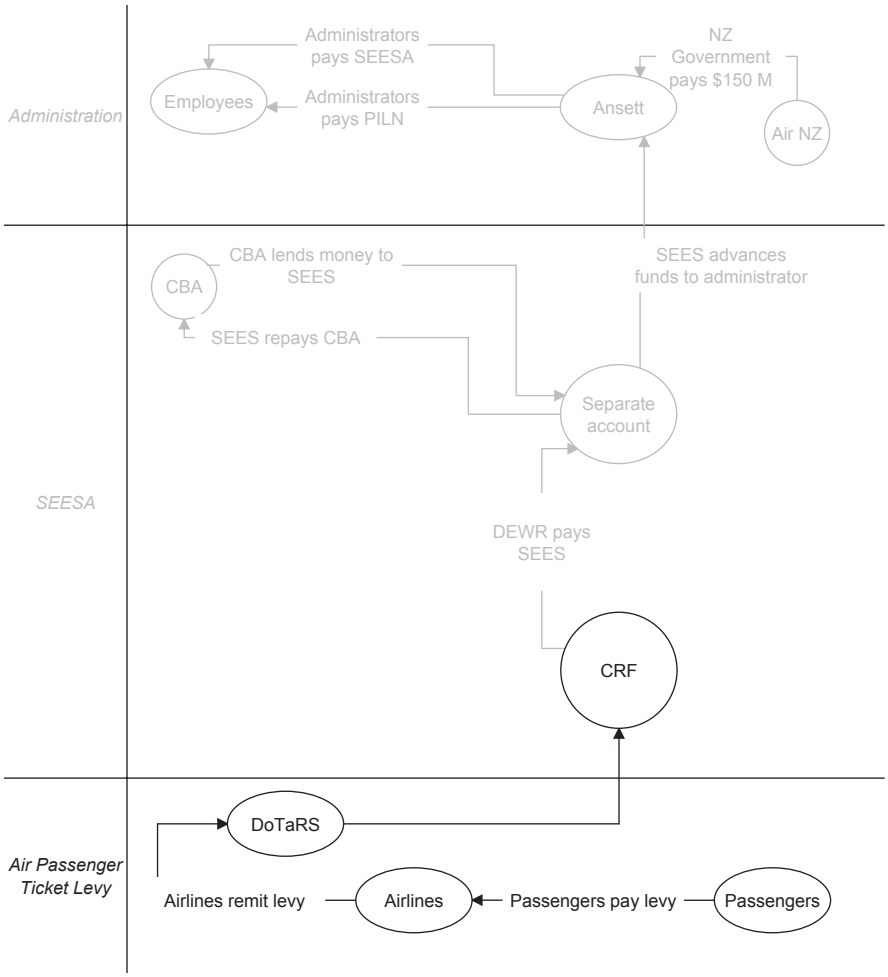
DEWR makes monthly payments to SEES, which SEES uses to repay the CBA loan.

Source: ANAO analysis of information obtained from DEWR.

Raising the Levy

19. DOTARS manages the collection of the Levy from air passengers through the ticketing airlines. Passengers pay the Levy when purchasing tickets from the airlines. The airlines remit the Levy funds they collect monthly to DOTARS. The revenue generated from the Levy is deposited into consolidated revenue (Figure A2.6).

Figure A2.6
Raising the Air Passenger Ticket Levy



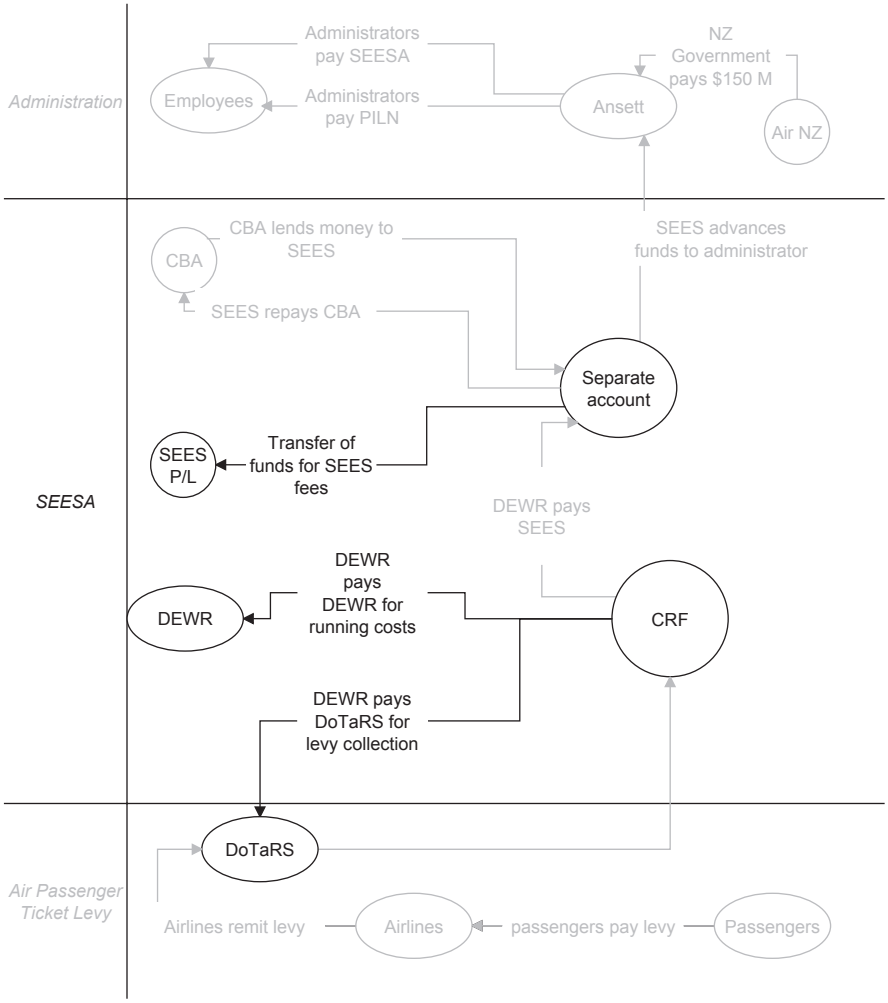
Levy is collected from passengers by airlines and remitted monthly by them to DOTARS.

Source: ANAO analysis of information obtained from DOTARS.

Administrative costs

20. There are costs incurred in the administration of these operations. The Collection Act (s. 22) authorises the Workplace Relations Minister to draw on the special appropriation to meet certain of these administrative costs, specified in that section of the Act. DEWR therefore draws on the CRF to meet departmental costs ('running costs') incurred by DOTARS in administering the Levy and itself in administering the Scheme (Figure A2.7).

Figure A2.7
Meeting the administrative costs



DEWR meets its and DOTARS' departmental costs from the special appropriation. With DEWR approval, SEES pays its own fees from the separate account.

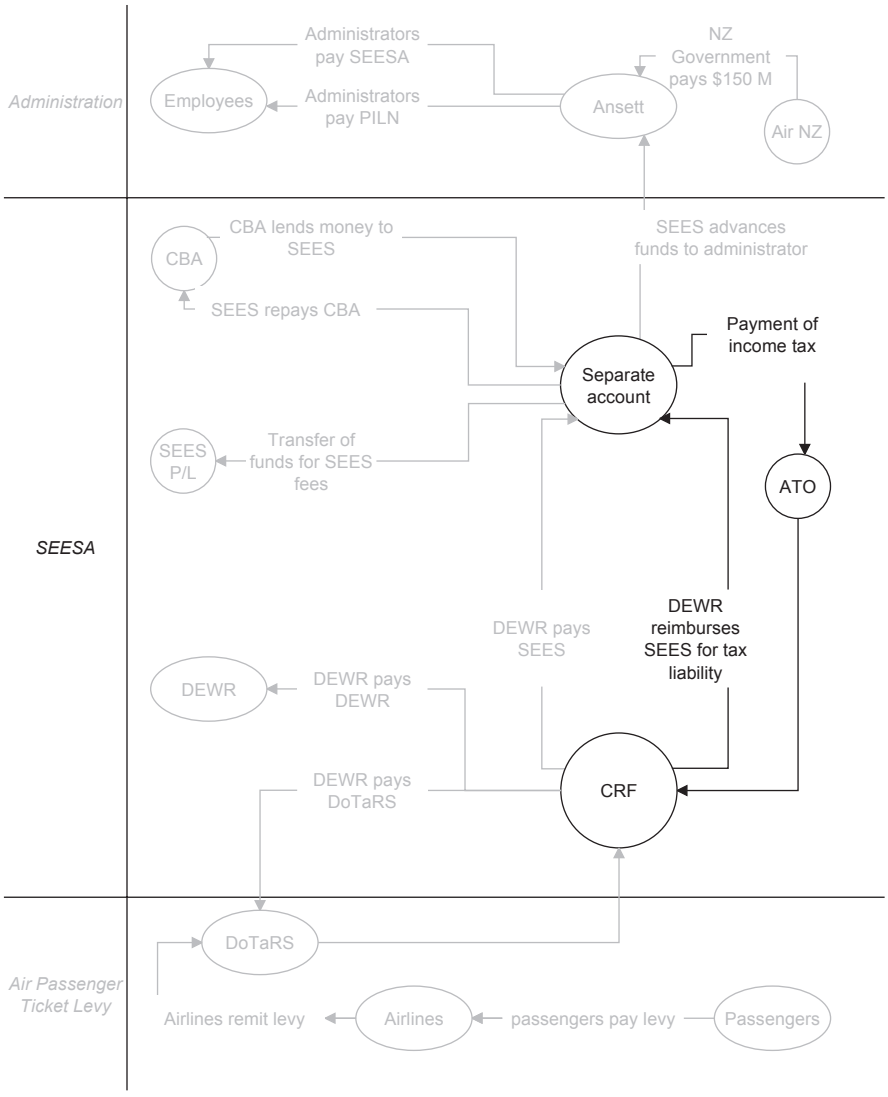
Source: ANAO analysis of information obtained from DEWR.

21. The loan obtained by SEES provides funds not only for employee entitlements but also to pay SEES its fees and charges incurred in carrying out its contractual obligations. SEES makes requests to DEWR for payment for its services. When DEWR is satisfied with the correctness of such a request for payment DEWR authorises SEES to draw money from the Separate Account to meet these costs.

Paying income tax

22. Under a private binding ruling sought and obtained by SEES, the monthly payments made by DEWR from the CRF to SEES are income and attract income tax at the company tax rate. This gives rise to taxation payments flowing from SEES to CRF (Figure A2.8).

Figure A2.8
Paying income tax



The monthly payments by DEWR to SEES attract income tax. SEES is compensated for tax paid by DEWR. The compensation payment itself attracts tax and so on.

Source: ANAO analysis of information obtained from DEWR.

23. Under its contract with SEES, DEWR has agreed to meet the cost of any such payments. Therefore, any such payment of income tax by SEES attracts a compensatory payment from DEWR. In turn, this compensatory payment is also regarded as income for SEES that attracts income tax and, hence, a further compensatory payment from DEWR. This loop continues until the Scheme ceases.[342]

Recovery

24. SEES has advanced funds to the Administrators for SEESA purposes in such a way that, if and when sufficient funds do become available to the Administrators (through realisation of Ansett assets) the amounts advanced under SEESA will be repaid to SEES by the Administrators to the extent possible. In effect, SEES has provided an advance to the Administrators to meet certain immediate employee entitlement payments, but is now (because of the operation of s. 560 of the Corporations Act) an Ansett creditor to be paid in due course.

25. Any money made available by the Ansett Administrators for the repayment of SEESA advances will be payable to SEES. Under clause 6 of the contract between SEES and DEWR the recovered funds will be deposited into the Separate Account. The recovered funds would be used to repay any outstanding amounts due on the loan facility and any other outstanding fees or liabilities. In accordance with clause 7.4 of the same contract, any money in the separate account at the time when the loan is repaid in full and all other fees and liabilities are met will be paid to the Commonwealth as a debt due to the Commonwealth (Figure A2.9).

Use of any surplus

26. Under section 23 of the Collection Act the Minister for Transport and Regional Services may determine how any surplus is distributed in accordance with a scheme prescribed by the regulations. The same section of the Act contains an appropriation for the purpose of these payments. However, the likely size of any such surplus was not clear at the time of preparation of this report.[343]

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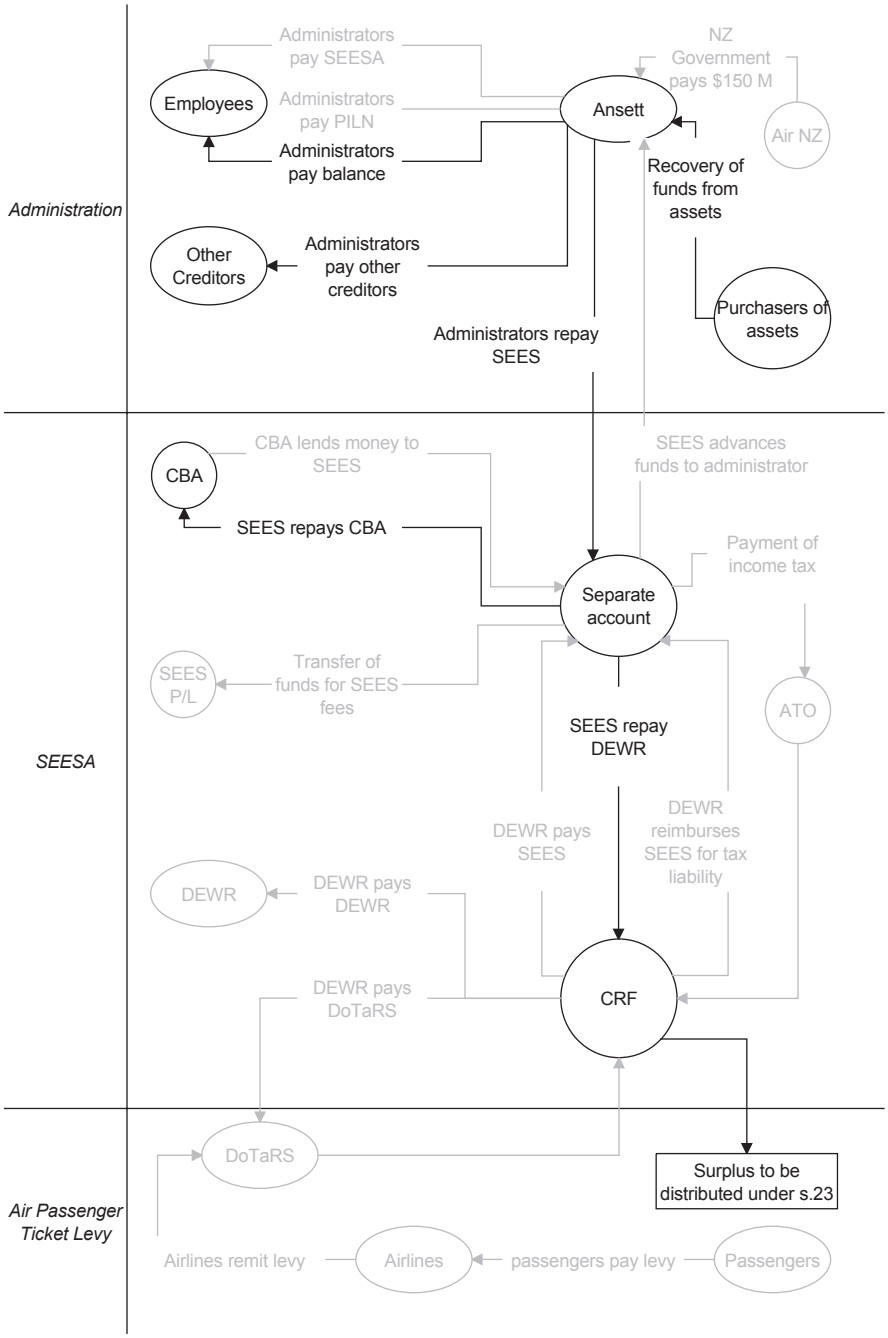
[342] Note that under an arrangement settled with the Treasurer in late 2002, these tax payments are not to be considered a charge against the Levy. This is discussed as part of the analysis of the income tax matter in Chapter 3.

[343] On 4 December 2003, the Hon John Anderson MP, Deputy Prime Minister and Minister for Transport and Regional Services announced the Government's *Enhanced Aviation Security Package*, comprising measures 'to reinvest any surplus money from the Ansett ticket levy to the benefit of the aviation and tourism sector'. See media release A155/2003 at http://www.ministers.dotars.gov.au/ja/releases/2003/december/a155_2003.htm

27. This flow of funds is also indicated on Figure A2.9. This also represents the completed representation of cash flows and is reproduced at Appendix 2. There are, in practice, other transactions taking place among the participants represented here.[344] However, there is none that is significant to this audit.

[344] For example, when the Administrators pay employee entitlements to employees they will deduct income tax and remit that to the Commissioner of Taxation.

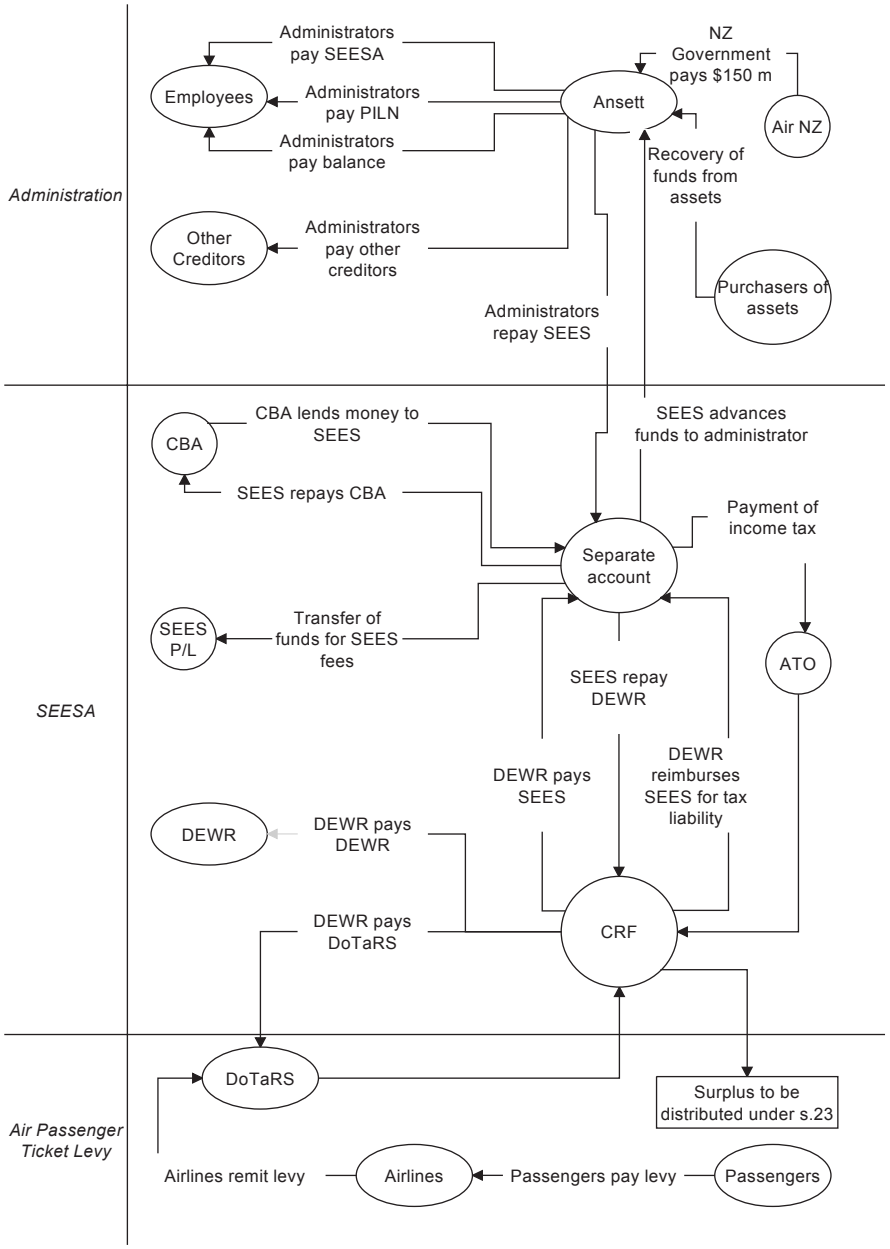
Figure A2.9
Recovery and use of any surplus



Source: ANAO analysis of information obtained from DEWR.

28. When the Administrators disburse assets, they will pay creditors according to the legal priorities, including repaying SEES, paying further employee entitlements and other creditors. SEES will repay the CBA loan or return funds to the Commonwealth.

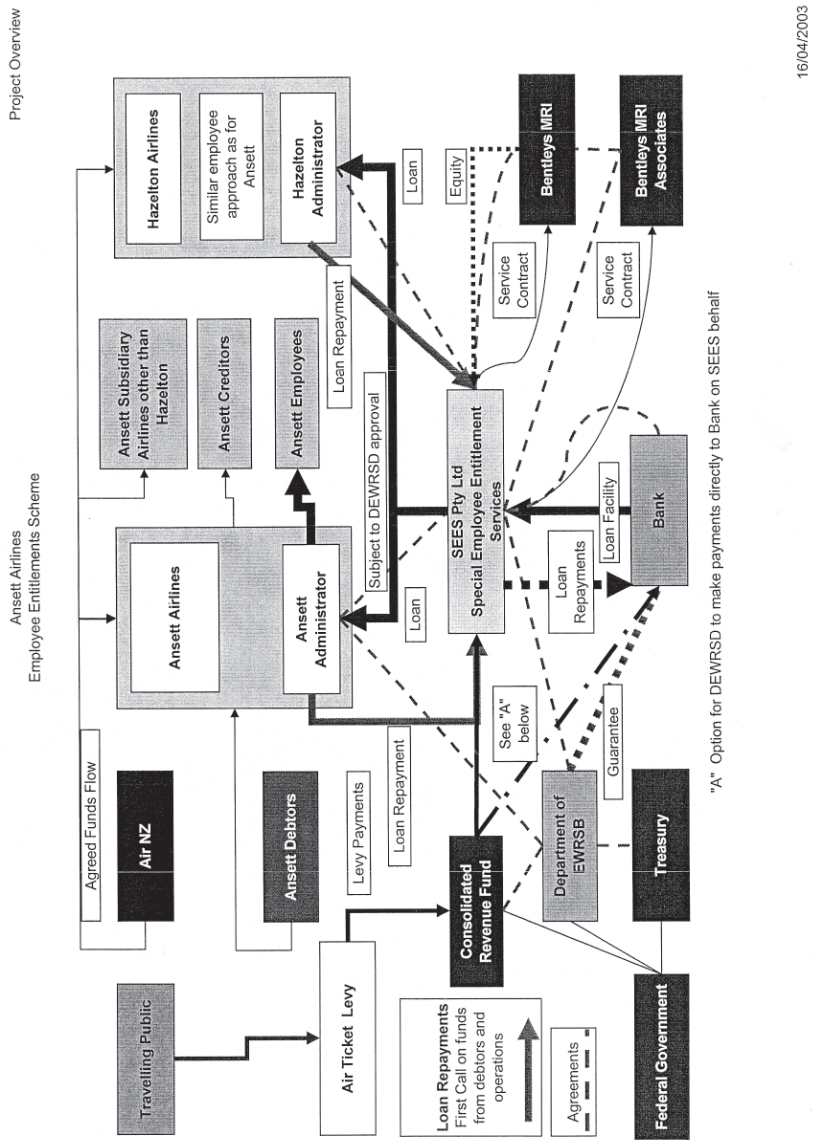
Figure A2.10
Cash flows in the operation of SEESA



Source: ANAO analysis of information obtained from DEWR.

Figure A2.11

Diagram devised by SEES in consultation with DEWR to represent the operation of SEESA



Appendix 3: DOTARS airline audit program

Table A3.1

DOTARS airline audit program 2002–03

Airline	Date Audit Completed	Audits Proposed
Large Airlines		
Qantas Airways	Mar 03	Sept 03 (s. 12A)
Virgin Blue Airlines	Mar 02, Feb 03 and Jul 03	
Medium Airlines		
Singapore Airlines Ltd	Mar 02 and May 03	
Air New Zealand Ltd	Nov 02	Sept 03
Freedom Air (South Pacific)	Nov 02	Sept 03
Regional Express (Australia Wide)	May 03	
Thai Airways International	Apr 02 and May 03	
Malaysian Airlines	May 02 and May 03	
Cathay Pacific Airways Ltd	May 02 and May 03	
Garuda Indonesia Ltd	Mar 02 and May 03	
Skywest Airlines	None proposed as yet	
Alliance Airlines Pty Ltd	May 03	
Emirates	May 03	
Japan Airlines Company Ltd	May 03	
United Airlines Inc	May 02 and May 03	
British Airways	Nov 02	
Small Airlines		
Air Pacific Ltd		
Air Canada	Jul 02	
Deutsche (Lufthansa) AG		
Lauda Air (Austrian Airlines)		Nov/Dec 03
Vietnam Airlines	May 02	
Royal Brunei Airlines	May 03	
Korean Air Lines Co. Ltd		
China South Airlines	May 02	
Phillippine Airlines (Rakso Aust)	May 02	
Airnorth Regional (Capitec)		
China Eastern Airlines	Apr 02	
Air France		Nov/Dec 03

Airline	Date Audit Completed	Audits Proposed
South African Airways	Apr 03	
Air China International Corp		Nov/Dec 03
Air Vanuatu Ltd	Nov 02	
Norfolk Jet Express	Feb 03	
Aerolineas Agrentinas SA	May 02	
EVA Airways Corporations	Dec 02	
O'Connor's Air Services Pty Ltd	Jun 03	
Asiana Airlines	Dec 02	
China Airlines		
Air Caledonie International		Nov/Dec 03
Olympic Airways SA		Nov/Dec 03
American Airlines Inc		
Air Mauritius (Aviation Services)		Nov/Dec 03
Turkish Airlines		
KLM Royal Sutch Airlines	Apr 03	
Polynesian Airlines	May 02	
Scandanavian Airlines		
Virgin Atlantic Airways Ltd		
Gulf Air Company GSC	Jul 02	
Lip Air Pty Ltd	May 03	
Air Niugini		
Macair Airlines	Nov 02	
National Jet Systems (Nat. Invest)	Jun 03	
Alitalia	Feb 03	
Maroomba Airlines	Apr 03	
Skippers Aviation		
Yugoslav Airlines	Feb 03	
Air Nauru	May 03	
Solomon Airlines		
Egyptair	Ceased operations Jul 02	
Air Link		Nov/Dec 03
Kuwait Airways Corp. (Transglobal)	Dec 02	
Aeropelican	May 03	
Continential Airlines		
PT Air Paradise International		

Source: DOTARS, July 2003

Appendix 4: Australian Government response to Ansett collapse

The Australian Government took a number of measures in response to the collapse of the Ansett group of companies, of which SEESA was only one element. The Department of Transport and Regional Services has provided the following summary of those measures.

The grounding of Ansett's services on 14 September 2001 and the terrorist attacks in North America have had serious repercussions for Australia's aviation industry. Ministers responded to the crises by implementing a number of Government assistance measures.

To provide assistance to the industry, the travelling public and Ansett employees, the Government implemented the following measures:

Resumption of air services

- a funding guarantee of $10 million to Ansett's administrators to enable Ansett to complete their services on the night of 13 September (not drawn down);
- a funding guarantee of up to $25 million for ticket refunds on Ansett's trunk route operations until 31 January 2002 (not drawn down);
- the Rapid Route Recovery Scheme, through which $30 million has been provided for assistance to air service providers in the form of one-off grants and commercial loans (fully allocated);

Stranded passengers

- an allocation of $20 million for reimbursement of expenses incurred by stranded passengers for transport and accommodation;
- a telephone help line to assist and inform Ansett ticket holders following Ansett's suspension of services;

Air Passenger Ticket Levy and Special Employee Entitlements Scheme for Ansett Group Employees

- the Special Employee Entitlements Scheme for Ansett group employees (SEESA);

Airport landing slots and capacity allocations

- landing rights for current slot holders to be maintained until 30 March 2002;

- assistance to the Administrators in retaining Ansett International's access to airport landing slots at the capacity restricted Narita (Tokyo) and Kansai (Osaka) airports;

Carriage of domestic traffic by foreign airlines

- a streamlined process to grant temporary dispensations to foreign airlines to carry passengers over domestic sectors as part of their international services;

Other arrangements

- underwriting for the gap between pre-existing coverage and the amount currently available in the commercial market, to airlines, airports and other key services and facilities associated with the aviation sector, in accordance with pre-existing insurance contracts held by those companies;
- ensuring that $35 million of the funds from the $150 million payment by Air New Zealand to administrators of Ansett will be used for a down-payment on Ansett employee entitlements, with $100 million used to maintain Ansett Mark II operations;[345]
- removing the price cap on aeronautical charges at Australian regional airports, including Adelaide, Canberra and Coolangatta; and
- organising the return home of 292 stranded Western Australian school children with the help of the Australian Defence Force and Centrelink; and
- rebate of en route aeronautical charges incurred by operators of aircraft with a maximum take off weight of 15 tonnes used in regular public transport and aeromedical services over the period 1 January 2002 to 30 June 2005.

[345] However, note the discussion in Chapter 2 regarding the use of the amount of $35 million referred to here.

Appendix 5: The Ansett redundancy process

The Ansett Administrators provided the following account of the process involved in the redundancy of Ansett employees.

1. Employees were provided with the opportunity to apply for redundancy, where applicable.

2. Decisions were made on the applications received or on the areas of the Ansett business that were required to be closed/reduced.

3. A redundancy estimate schedule was produced by the redundancy team.

4. A notice of redundancy was issued to the employee along with a redundancy estimate and a SEESA claim was compiled.

5 A redundancy exit checklist was completed by the exiting employee [a copy of this checklist is reproduced on the next page]. These checklists ensured all airline identity cards are taken out of circulation (required for airport security purposes) and provided a final verification of employee existence.

6. Payment in lieu of notice (PILN) was paid directly into the former employee's bank account once the redundancy exit checklist was returned (Tranches 1 – 7 only).

7. Net SEESA payments were paid directly into the former employee's bank account once the redundancy exit checklist was returned, SEES Pty Ltd (SEES) verified the SEESA calculation and the funds received from SEES.

8. SEESA rollover payments (Eligible Termination Payments) were made once the redundancy exit checklist was returned, the funds received from SEES and the employee had completed all required Australian Taxation Office (ATO) rollover elections.

9. PAYG Withholding SEESA payments were made once the redundancy exit checklist was returned, the funds received from SEES and the employee had completed all required ATO rollover elections. These payments were made in arrears in line with ATO PAYG Withholding lodgement requirements.

[Source: Letter from Ansett Administrators to the ANAO, 6 October 2003]

Ansett

IF YOU HAVE PREVIOUSLY COMPLETED AND SUBMITTED THIS CHECKLIST, PLEASE DO NOT RESEND.

Redundancy Exit Checklist – All Employees

(List to be retained on Personnel File)

Note: Please refer to the Employee Hotline on **1800 151 604** or the Employee Information page at **www.ansett.com.au** for checkpoint sites to return company property. Please note that your redundancy payment cannot be processed until this checklist is returned with any relevant company property.

Name: _____

Employee Number: _____

Department / Division: _____

Port:

Items to be returned to checkpoint	Tick Box ✓
Security/Employee ID card	
Company property	
Mobile phone	
Laptop	
Ansett Home Personal Computer	
Pager	
Diners Card and Golden Wing	
Fuel Cards – (Note: For Salary Packaged employees only – contact HR Shared Services on 03-9623-3000)	
Executive Pass	
Uniforms returned	
Pilot/Flight Attendant Training Manuals	
Employee contact address: ***For Payment Summary and other correspondence*** ***Postal Address:*** _____ _____ _____ ***Contact Phone Number***	
Bank Account Details ***(please circle)*** ***Normal Payroll Account*** Yes No ***If No:*** ***Nominate other account name:*** _____ ***BSB No.*** ***Account No.***	
Signed by Employee: _____ ***Signed by Collector:***	Date

IF YOU HAVE PREVIOUSLY COMPLETED AND SUBMITTED THIS CHECKLIST, PLEASE DO NOT RESEND.

Source: Letter from Ansett Administrators to the ANAO, 6 October 2003

Appendix 6: Agency comments

IN-CONFIDENCE

Australian Government
Department of Transport and Regional Services

File Reference: L2003/1305
Contact: Martin Cotton

Mr J Meert
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Meert

PERFORMANCE AUDIT – SPECIAL EMPLOYEE ENTITLEMENT SCHEME FOR ANSETT (SEESA)

Thank you for providing Mr Ken Matthews with a copy of the above report and for the opportunity to provide a written response. Mr Matthews has asked me to respond on his behalf.

The Department of Transport and Regional Services offers the following comments in relation to the Performance Audit of SEESA undertaken by the ANAO during 2002-03.

The Department of Transport and Regional Services agrees with chapter six of the report and sections relevant to the Air Passenger Ticket Levy.

On behalf of the Department, please extend my sincere thanks to the auditor's, Mr David Rowlands and Ms Rebecca Collareda for the professionalism and thoroughness they displayed throughout the conduct of the audit.

Yours sincerely

Sema Varova
First Assistant Secretary
Transport Programmes Division
1 October 2003

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IN-CONFIDENCE

Australian Government
Department of Employment and Workplace Relations

National Office
GPO Box 9879 CANBERRA ACT 2601

Mr Pat Barrett, AO
Auditor-General
Australian National Audit Office
Centenary House
19 National Circuit
Barton ACT 2600

Dear Mr Barrett

I am writing in response to your Office's proposed Report on the Special Employee Entitlements Scheme for Ansett group employees (SEESA) which was issued on 12 November 2003.

The Department has considered the revised version of the report and summits the following formal responses:

(a) specific comments on the recommendation **Attachment A**;

(b) general comment for publication in full in the final performance audit report **Attachment B**; and

(c) text for inclusion in the brochure **Attachment C.**

Yours sincerely

Robyn Kingston

Robyn Kingston
Chief Internal Auditor

26 November 2003

Telephone: 02 6121 6000 Internet: http://www.dewr.gov.au ABN 40 376 417 416

Department of Employment and Workplace Relations Response to ANAO Performance Audit of the Special Employee Entitlements Scheme for Ansett group employees (SEESA)

Introduction

1 The Department of Employment and Workplace Relations (DEWR) welcomes the ANAO's recognition of the successful implementation of SEESA in line with Government policy and within very tight timeframes. The department also notes the ANAO's acknowledgement that SEESA has effectively delivered in excess of $336 million in SEESA payments to almost 13,000 former Ansett employees. [*Source: page 14, para 33.]*

2 The DEWR response clarifies many aspects of the ANAO's account of the establishment and management of SEESA. DEWR is concerned that many areas of the ANAO report do not present their findings in an appropriate context. The report consistently neglects the fact that SEESA was managed against the threat of longer term risks and within the broader policy framework provided by the Government.

3 The ANAO do not adequately take into account the challenges of rapidly implementing a new scheme to address one of the most significant corporate insolvencies in Australian history.

4 The ANAO found that the Scheme has effectively delivered assistance to the former Ansett employees and that the majority of the issues raised have had only a minor impact on the Scheme's administration.

Overview

5 The ANAO's recognises the successful implementation of SEESA in line with Government policy and within very tight timeframes.

6 However, the ANAO fails to accurately assess the principal achievements of the Scheme by focusing much of its report on minor contract management issues, offering advice on risks that had been successfully mitigated, and drawing unfounded inferences on policy and administrative matters.

7 A key objective of the Scheme was to provide former Ansett employees with timely access to the defined employee entitlements payments. The department is firmly of the view that this objective was achieved, as is clearly reflected in the ANAO's findings.

8 The ANAO acknowledges that through the efforts of the inter-departmental Senior Officers Taskforce, the department and the private sector contractor (SEES

Pty Ltd), in excess of $336 million in SEESA payments have been made to almost 13,000 former Ansett employees.

9 In addition, the ANAO acknowledges that SEESA payments have been made far more promptly and with greater certainty than if the employees had to wait for payment through the normal insolvency processes.

10 The Government's decision to implement a Special Employee Entitlements Scheme for Ansett group employees, and the department's expeditious implementation of this initiative, ensured that the scale of the economic and social hardships that would otherwise have been experienced by these employees have been dramatically reduced.

11 Without the SEESA arrangements, the former Ansett employees would not, until very recently, have received any of their entitlements from the Ansett administrators – over two years following the collapse of Ansett.

12 The impact of the costs of the Scheme were minimised through the introduction of a levy. The *Air Passenger Ticket Levy (Collection) Act 2001* and *Air Passenger Ticket Levy (Imposition) Act 2001* were passed in September 2001, introduced in October 2001, and subsequently ceased in June 2003.

13 The department's position is detailed in the sections below.

Chapter 1 – Introduction

14 DEWR agrees with the ANAO's assessment that *"… public debate on SEESA has been based on apparent misunderstandings of how the Scheme operates"* (paragraph 1.20).

15 SEESA is a safety net scheme implemented solely to provide a defined level of assistance to former employees of the Ansett group of companies, quite distinct from the administration and insolvency processes.

16 Considerable effort was expended by the Government to keep the SEESA safety net arrangements and the ongoing administration of the Ansett group of companies separate. This was to ensure that former Ansett employees were able to clearly distinguish between the responsibilities of the Government, and those of their former employer, via the administrators, for the payment of any unmet entitlements. The SEESA Key Questions section of the ANAO report assists this process.

17 The Government's commitment to Ansett employees was made clear in September 2001 when the terms of the SEESA Scheme were publicly announced. The Government has delivered in full on that commitment for all terminated Ansett employees. ANAO references throughout the report to unpaid employee

entitlements relate to payments that are due from the administrators in excess of the payments already made under SEESA.

[*sic—no paragraph 18 in DEWR response***]**

Chapter 2 – Inception of the Scheme

19. DEWR is concerned that the ANAO's presentation of the policy issues that underpin SEESA does not accurately reflect the Government's policy intent or position.

20. The ANAO report incorrectly lists the priorities and key policy drivers underpinning SEESA, as outlined in numerous public statements made by the Government the priorities have always been:

a. to ensure former Ansett employees receive their defined employee entitlements payments in a timely way, and

b. that funds advanced under SEESA receive the standard repayment priority provided to employee entitlements under the *Corporations Act*.

Chapter 3 – Risk Management during implementation

21. DEWR strongly disagrees with the ANAO's presentation and findings on the success of the department's risk management processes. Effective controls for identifying and managing risks where in place throughout the Scheme's administration.

22. The department's approach was consistent with the ANAO's *Contract Management Better Practice Guide February 2001* which states:

> *"A comprehensive approach to risk management considers risk treatments both* ***actively*** *(designing and implementing controls to prevent the risk events occurring) and* ***re-actively*** *(to mitigate the consequences should the risk events actually occur). Risk management, through structured decision-making and a comprehensive analysis of business processes, provides opportunities for innovation and enhanced outcomes. Importantly, it is an on-going process."*

23. The ANAO's presentation does not adequately convey the fact that the implementation of SEESA involved the creation of a comprehensive legal framework. This framework served as the primary vehicle through which controls to mitigate foreseeable risks were established. Considerable care and effort went into the creation of such a framework.

24. As noted by the ANAO, the Taskforce and Government considered the risks associated with a number of implementation options. The two principal risks considered by Government were the costs of administering the Scheme

through a private sector provider and the potential delays in implementing the necessary arrangements. The report notes at paragraph 3.13:

> *"The Task Force advised that this approach would bring increased costs associated with fees, interest and administrative costs (then estimated to 'possibly exceed' $25 - $30 million) as compared with a model of operation based on the Commonwealth providing the finance directly. Also, it would increase the risk of delayed implementation while contractual arrangements were being settled.* ***However, the Government accepted the associated costs and risks, and this became its policy position for implementation of SEESA****."* [Emphasis added]

Unintended Tax Consequences

25. The department took all reasonable steps necessary to consider and mitigate the potential taxation risks associated with SEESA.

26. When considering the possible taxation implications, the risk of potential cost to the Commonwealth was thoroughly assessed against the imperative to implement SEESA swiftly and provide timely assistance to the former Ansett employees.

27. The ANAO do not, in their analysis of this issue, adequately recognise the human dimension associated with the implementation of SEESA. To delay implementation, as suggested by the ANAO, would have had a significant social and economic impact on the Ansett employees already without employment or alternative sources of finance. This in itself would have constituted a major risk, which the Commonwealth took into account during its risk assessment.

28. On this issue the ANAO report notes at paragraph 3.75: *"…a better approach would have been for DEWR to have advised ministers of the tax risk before the execution of the contract. That would have enable ministers to balance the priority they attributed to making initial SEESA payments before Christmas 2001 with the then known tax risk, or even whether they wished to reconsider broader options for implementation."* The potential taxation risk was assessed as being low, based on the available evidence including advice from senior counsel at the AGS and discussion with the ATO. The need to ensure the payments flowed to Ansett employees prior to Christmas was an imperative. As a consequence, the department's actions in not delaying the payments to Ansett employees were both appropriate and within identified risk tolerances. The Minister was only advised once the risk was realised.

29. As noted by the ANAO, the likely real increase in cost due to the realisation of the tax risk is small. This vindicates DEWR's assessment and management of that risk.

Management of the Appropriation

30. The thrust of the ANAO's analysis of this issue is not supported. The department had to balance a number of risks associated with the appropriation for SEESA. The most significant of these was the potential to breach the legislative $500 million appropriation cap. As noted by the ANAO, SEESA expenditure is not expected to exceed the cap. DEWR therefore maintains that management of the appropriation has been prudent, appropriate and financially responsible.

31. In our opinion, the ANAO has not given proper weight to these mitigating factors, and especially the then potential tax consequences of increasing the monthly repayments, in the revised report. We are concerned that this omission could be conducive of inaccurate and unfounded conclusions when the report is released.

32. It is noted that the ANAO has, at paragraph 3.96 of the report, suggested that the department has incurred unnecessary additional costs of $3.59 million due to its decision not to increase monthly repayment instalments and thereby reduce its interest-bearing debt. This figure is grossly overstated as it does not have regard to interest earned on the funds retained in Consolidated Revenue through the Commonwealth investments strategies.

Social Security Payments

33. DEWR accepts that during the rapid development and implementation of the complex SEESA arrangements the need to notify Centrelink of payments made to Ansett employees was overlooked. The ANAO report suggests that DEWR were unaware of, and therefore inactive, for 3 months in respect of this issue. The evidence does not support this finding. DEWR commenced to address this issue in early January 2002 – only a few working days from when the contract was signed in mid-December 2001.

Chapter 4 – Outsourcing

34. DEWR welcomes the ANAO's assessment that the selection of the private sector entity, SEES Pty Ltd, was conducted effectively and properly. The department also appreciates the ANAO's acknowledgement that the department's risk management activities minimised the possibility for delays in making payments for terminated workers.

35. However, DEWR disagrees with a significant number of the ANAO's findings in this chapter. The extent of the issues subject to disagreement, in DEWR's opinion, demonstrates the ANAO's lack of understanding of the arrangements that underpin the SEESA administration.

36. The department is disappointed with the ANAO's suggestion that the selection of the private sector loan facility provider by SEES Pty Ltd was not conducted properly. The ANAO has implied, without evidence, that the successful financier may have received an advantage in this process through an unsolicited approach to the Government. It should be noted that three finance providers proactively offered their services in relation to SEESA in similar approaches. All were dealt with in the same fair and open manner.

37. The ANAO has quoted Schedule 1A "… entry into a loan facility approved by the Commonwealth adequate for the scheme" [emphasis added]. The department believes that the ANAO continues to make an interpretation that suits its own conclusion. The interpretation of Schedule 1A by the parties to the contract is that the Commonwealth approval related to the adequacy of the facility for the scheme and not the selection of the financier. The process for selecting the financier was in accordance with Clauses 4.1, 4.2, and 4.3 of the SEES contract. The final selection of CBA was made by SEES and included consideration of comments by DEWR.

38. It is rejected that the terms of SEES Pty Ltd engagement were not clearly understood by both parties. When considering the tasks to be performed, SEES Pty Ltd and the department needed to make provision for the unknown quality, accessibility and quantity of material to be provided by the Ansett Administrators. Consequently the contract specified the terms of engagement would need to be jointly developed and agreed. The agreed terms represented best value for money, balancing price and risk. The success of the program, both in terms of the employees paid and the relatively small cost of administration, is testimony to the validity of the agreed terms.

39. SEES Pty Ltd advised the ANAO on 8 October 2003 that: *"The section appears to be somewhat contrived in an attempt to demonstrate that DEWR failed to understand the nature of the verification process of the contracted services and that SEES failed to ensure that it did. (Paragraph's 4.77 and 4.79) An allegation which, in our opinion …is incorrect. It is our opinion that neither assertion is supported by available evidence. We consider that the interpretation of the information examined the selective references from the available information and the failure to make further inquiries undermines the credibility of conclusions drawn."*

40. The department rejects the ANAO's findings that there was no systematic monitoring of SEES's performance. The contract requires a comprehensive reporting regime, which SEES Pty Ltd has met in full. DEWR has successfully monitored and managed the performance of SEES Pty Ltd. The ANAO has had access to all relevant program material including evidence of DEWR's monitoring of all required contract reports and related materials. DEWR can

only conclude that the ANAO has misinterpreted the requirements clearly set out in the contract.

41. The department also rejects the ANAO's criticism of the SEESA timeliness standard. The standard, announced by Minister Abbott, required the provision of SEESA funds to the Ansett Administrators within 5 working days of the receipt of verified data from the Administrators. This standard was met for 99.5 per cent (12,929 employees) of the terminated Ansett employees. SEESA funds were advanced for the remaining 0.5 per cent (65 employees) within 12 working days. The timeliness standard set, and achieved is consistent with the scheme's objectives. The ANAO suggested a standard which included the administrator's timeliness over which the department had no control.

42. DEWR believes that the presentation of the costing analysis contained in Figure 4.1 of the report, indicating costs of between $400 and $1300 per claim verified, to be incorrect and grossly misleading. It is the department's view that the ANAO figures have used many other types of work undertaken by SEES Pty Ltd, for example, the active creditor role, financing role, not incurred either to the same extent, or at all, in the typical GEERS assignment.

43. The department rejects the claim paragraph 4.116 that the department took no action to mitigate the possibility that the administrators might invest SEESA funds on the short term money market. As SEES Pty Ltd advised the ANAO on 8 October 2003, the administrators confirmed that that all funds would remain in the Special Account and undertook that no further such transactions would occur. Interest earned on the funds invested on the short term money market was returned to SEES Pty Ltd. The department questions, given this undertaking, what other action was it expected to perform to mitigate a now non existent risk.

Chapter 5 – SEESA Performance

44. The ANAO found that SEESA provided in excess of $336 million to almost 13,000 former Ansett employees much more quickly then would have occurred if those employees had to await the distribution of funds from the assets of the Ansett group.

45. As noted by the ANAO, the administration of SEESA has been reported to Parliament through the tabling of two annual reports made under section 24 of the *Air Passenger Ticket Levy (Collection) Act 2001*. In addition, the administration of SEESA is subject to scrutiny through the normal parliamentary processes.

46. DEWR rejects the ANAO's criticism of the Scheme's timeliness measure. As noted in the section above, the Scheme's timeliness standard was met for 99.5% of all payments for terminated employees. While it is open for the ANAO to

suggest alternative measures, DEWR has implemented the Scheme including the existing timeliness measure in line with government standards. The timeliness standard set, which was achieved, was consistent with the scheme's objectives. The ANAO suggested a standard which included the administrator's timeliness over which the department had no control.

Appendix 7: ANAO comments on the response from DEWR

The ANAO received comments from the two auditee departments to whom it had provided a copy of the report under s. 19 of the Auditor-General Act 1997 and eleven third parties to whom the ANAO had provided relevant extracts. The ANAO revised the report to take account of the matters raised. The ANAO then provided the revised report to DEWR, with detailed comments on the specific matters it had raised. The DEWR comments incorporated here are DEWR's comments on that revised edition of the report.

All of the points raised by DEWR in its comments have been fully explored by the ANAO with the department over the course of the audit and raise no new issues that have not been addressed subsequently by the ANAO.

Department of Employment and Workplace Relations comments (as set out in Appendix 6, including DEWR paragraph numbers.) ***Note: References by DEWR to ANAO report paragraph numbers relate to an earlier draft.***	***ANAO response*** ***(includes references to relevant paragraphs in the final report)***
Introduction	
1 The Department of Employment and Workplace Relations (DEWR) welcomes the ANAO's recognition of the successful implementation of SEESA in line with Government policy and within very tight timeframes. The department also notes the ANAO's acknowledgement that SEESA has effectively delivered in excess of $336 million in SEESA payments to almost 13 000 former Ansett employees. [*Source: page 14, para 33.]*	*Note: The reference is now paragraph 32 of the report.*
2 The DEWR response clarifies many aspects of the ANAO's account of the establishment and management of SEESA. DEWR is concerned that many areas of the ANAO report do not present their findings in an appropriate context. The report consistently neglects the fact that SEESA was managed against the threat of longer-term risks and within the broader policy framework provided by the Government.	*The detailed account of the inception of the Scheme (Chapter 2 of the report) and the risks faced (Chapter 3, paragraph 3.12. et seq.) provide both context to the Scheme and acknowledgement of the risks faced.*

3 The ANAO do not adequately take into account the challenges of rapidly implementing a new scheme to address one of the most significant corporate insolvencies in Australian history.	*The ANAO does provide an account of the challenges faced by DEWR in implementing the Scheme, including, for example, at paragraph 15 in the Summary and the section on identification and management of risks in Chapter 3 (paragraph 3.12 et seq.)*
4 The ANAO found that the Scheme has effectively delivered assistance to the former Ansett employees and that the majority of the issues raised have had only a minor impact on the Scheme's administration.	*The ANAO concluded that SEESA had been effective in providing payments to former Ansett Employees. However, the report raises important accountability, efficiency and risk management issues as lessons for the future.*
Overview	
5 The ANAO's recognises the successful implementation of SEESA in line with Government policy and within very tight timeframes.	*No comment.*
6 However, the ANAO fails to accurately assess the principal achievements of the Scheme by focusing much of its report on minor contract management issues, offering advice on risks that had been successfully mitigated, and drawing unfounded inferences on policy and administrative matters.	*The major achievements of SEESA are identified in the report and highlighted in paragraphs 38 and 39 of the Summary. The report appropriately focuses on administrative matters—such as contract and risk management— that could be improved The report makes no comment on policy matters.*

7 A key objective of the Scheme was to provide former Ansett employees with timely access to the defined employee entitlements payments. The department is firmly of the view that this objective was achieved, as is clearly reflected in the ANAO's findings. 8 The ANAO acknowledges that through the efforts of the inter-departmental Senior Officers Taskforce, the department and the private sector contractor (SEES Pty Ltd), in excess of $336 million in SEESA payments have been made to almost 13,000 former Ansett employees. 9 In addition, the ANAO acknowledges that SEESA payments have been made far more promptly and with greater certainty than if the employees had to wait for payment through the normal insolvency processes. 10 The Government's decision to implement a Special Employee Entitlements Scheme for Ansett group employees, and the department's expeditious implementation of this initiative, ensured that the scale of the economic and social hardships that would otherwise have been experienced by these employees have been dramatically reduced. 11 Without the SEESA arrangements, the former Ansett employees would not, until very recently, have received any of their entitlements from the Ansett administrators – over two years following the collapse of Ansett.	*No comment.*
12 The impact of the costs of the Scheme were minimised through the introduction of a levy. The *Air Passenger Ticket Levy (Collection) Act 2001* and *Air Passenger Ticket Levy (Imposition) Act 2001* were passed in September 2001, introduced in October 2001, and subsequently ceased in June 2003. 13 The department's position is detailed in the sections below.	*No comment.*

Chapter 1 – Introduction	
14 DEWR agrees with the ANAO's assessment that *"public debate on SEESA has been based on apparent misunderstandings of how the Scheme operates"* (paragraph 1.20).	*No comment.*
15 SEESA is a safety net scheme implemented solely to provide a defined level of assistance to former employees of the Ansett group of companies, quite distinct from the administration and insolvency processes.	*No comment.*
16 Considerable effort was expended by the Government to keep the SEESA safety net arrangements and the ongoing administration of the Ansett group of companies separate. This was to ensure that former Ansett employees were able to clearly distinguish between the responsibilities of the Government, and those of their former employer, via the administrators, for the payment of any unmet entitlements. The SEESA Key Questions section of the ANAO report assists this process.	*No comment.*
17 The Government's commitment to Ansett employees was made clear in September 2001 when the terms of the SEESA Scheme were publicly announced. The Government has delivered in full on that commitment for all terminated Ansett employees. ANAO references throughout the report to unpaid employee entitlements relate to payments that are due from the administrators in excess of the payments already made under SEESA.	*The few remaining instances of the term 'unpaid employee entitlements' have now been removed from the report.*

Chapter 2—Inception of the Scheme	
[*Note: DEWR's response has no para. 18.*] 19. DEWR is concerned that the ANAO's presentation of the policy issues that underpin SEESA does not accurately reflect the Government's policy intent or position. 20. The ANAO report incorrectly lists the priorities and key policy drivers underpinning SEESA, as outlined in numerous public statements made by the Government the priorities have always been: a to ensure former Ansett employees receive their defined employee entitlements payments in a timely way, and b that funds advanced under SEESA receive the standard repayment priority provided to employee entitlements under the Corporations Act.	*These two objectives are set out in the report at paragraph 2.15.* *The report also identifies a subsidiary objective (para. 2.16) based on evidence provided by the Department of the Prime Minister and Cabinet. This is also consistent with the views of the departments of the Treasury and Finance and Administration, provided in response to the draft of the report. An amended draft was provided to DEWR prior to their final comments included here.*
Chapter 3—Risk Management during implementation	
21. DEWR strongly disagrees with the ANAO's presentation and findings on the success of the department's risk management processes. Effective controls for identifying and managing risks where [*sic*] in place throughout the Scheme's administration. 22. The department's approach was consistent with the ANAO's *Contract Management Better Practice Guide February 2001* which states: "*A comprehensive approach to risk management considers risk treatments both* ***actively*** *(designing and implementing controls to prevent the risk events occurring) and* ***re-actively*** *(to mitigate the consequences should the risk events actually occur). Risk management, through structured decision-making and a comprehensive analysis of business processes, provides opportunities for innovation and enhanced outcomes. Importantly, it is an on-going process*."	*The ANAO has raised the issue of risk management at every stage of the audit. The department provided no evidence of controls over risk being documented, put in place, or their effectiveness evaluated. If they had been, the risks that crystallised could have been better managed.* *In the particular instances identified by the report, the risks were known to DEWR or drawn to its attention at an early stage; for example, the incidence of tax, identified by SEES Pty Ltd in October 2001 (see paras 3.25 et seq. and para. 3.103). Reactive risk management should not have been necessary.*

23. The ANAO's presentation does not adequately convey the fact that the implementation of SEESA involved the creation of a comprehensive legal framework. This framework served as the primary vehicle through which controls to mitigate foreseeable risks were established. Considerable care and effort went into the creation of such a framework.	*The ANAO acknowledges that DEWR managed the administration of the Scheme through a contract. However, the ANAO's point is that this did not encompass all of the risks (such as those relating to management of the appropriation and the interactions between SEESA and other Commonwealth payment programs).*
24. As noted by the ANAO, the Taskforce and Government considered the risks associated with a number of implementation options. The two principal risks considered by Government were the costs of administering the Scheme through a private sector provider and the potential delays in implementing the necessary arrangements. The report notes at paragraph 3.13: "*The Task Force advised that this approach would bring increased costs associated with fees, interest and administrative costs (then estimated to 'possibly exceed' $25 - $30 million) as compared with a model of operation based on the Commonwealth providing the finance directly. Also, it would increase the risk of delayed implementation while contractual arrangements were being settled.* ***However, the Government accepted the associated costs and risks, and this became its policy position for implementation of SEESA***." [Emphasis added]	*The ANAO has acknowledged that certain risks were identified and put to the Government by the Task Force.* *However, the risks that were not adequately addressed were those that arose as DEWR was preparing to implement or was implementing the Scheme. These included:* • *the incidence of tax;* • *repayment of the loan; and* • *interactions between SEESA and other Commonwealth payment programs.*
Unintended Tax Consequences	
25. The department took all reasonable steps necessary to consider and mitigate the potential taxation risks associated with SEESA. 26. When considering the possible taxation implications, the risk of potential cost to the Commonwealth was thoroughly assessed against the imperative to implement SEESA swiftly and provide timely assistance to the former Ansett employees.	*DEWR managed the risk that a tax burden would fall on SEES Pty Ltd by accepting a taxation risk for the Commonwealth.* *No evidence has been provided by DEWR to the ANAO of any such thorough assessment by DEWR of the potential cost of that taxation risk or any mitigation strategy. The evidence indicates that DEWR addressed that risk only when it crystallised. (See paragraph 3.70 et seq.)*

27. The ANAO do not, in their analysis of this issue, adequately recognise the human dimension associated with the implementation of SEESA. To delay implementation, as suggested by the ANAO, would have had a significant social and economic impact on the Ansett employees already without employment or alternative sources of finance. This in itself would have constituted a major risk, which the Commonwealth took into account during its risk assessment.	*The report does not suggest that delay would have been appropriate. To the contrary, recognising the Government's desire for prompt payment, the report suggests that the appropriate course was to advise Ministers to facilitate an informed decision on the risks (as DEWR acknowledges in its next paragraph, 28).*
28. On this issue the ANAO report notes at paragraph 3.75: *"…a better approach would have been for DEWR to have advised ministers of the tax risk before the execution of the contract. That would have enable ministers to balance the priority they attributed to making initial SEESA payments before Christmas 2001 with the then known tax risk, or even whether they wished to reconsider broader options for implementation."* The potential taxation risk was assessed as being low, based on the available evidence including advice from senior counsel at the AGS and discussion with the ATO. The need to ensure the payments flowed to Ansett employees prior to Christmas was an imperative. As a consequence, the department's actions in not delaying the payments to Ansett employees were both appropriate and within identified risk tolerances. The Minister was only advised once the risk was realised.	*The AGS advised DEWR to settle the tax issue and not accept the risk of an unfavourable ruling (see para. 3.27). As well, DEWR could produce no record of a discussion with the ATO.* *DEWR has provided no evidence that it ever specified any 'identified risk tolerances'. The only evidence DEWR provided of the Minister being advised was through an informal email to his office staff.*
29. As noted by the ANAO, the likely real increase in cost due to the realisation of the tax risk is small. This vindicates DEWR's assessment and management of that risk.	*In this case the estimated cost of the tax risk is small. The lesson learned is picked up in the ANAO's recommendation that the tax implications of such transactions should be resolved before commencement.*

Management of the Appropriation	
30. The thrust of the ANAO's analysis of this issue is not supported. The department had to balance a number of risks associated with the appropriation for SEESA. The most significant of these was the potential to breach the legislative $500 million appropriation cap. As noted by the ANAO, SEESA expenditure is not expected to exceed the cap. DEWR therefore maintains that management of the appropriation has been prudent, appropriate and financially responsible.	*The ANAO's key observation is that DEWR could have undertaken the necessary financial analysis early in 2002, which would have enabled it to manage better the funds available (see para. 3.99).* *In addition, DEWR had received legal advice early in the Scheme that the payments it made to SEES to meet tax liabilities could be funded from another appropriation (see para. 3.54 and 3.74).*
31. In our opinion, the ANAO has not given proper weight to these mitigating factors, and especially the then potential tax consequences of increasing the monthly repayments, in the revised report. We are concerned that this omission could be conducive of inaccurate and unfounded conclusions when the report is released.	*This was not previously raised with the ANAO. The wording in paragraph 3.95 has now been clarified to deal with this consideration.*
32. It is noted that the ANAO has, at paragraph 3.96 of the report, suggested that the department has incurred unnecessary additional costs of $3.59 million due to its decision not to increase monthly repayment instalments and thereby reduce its interest-bearing debt. This figure is grossly overstated as it does not have regard to interest earned on the funds retained in Consolidated Revenue through the Commonwealth investments strategies.	*The ANAO's point was only that the department has incurred additional costs of $3.59 million that must be paid from its appropriation.*
Social Security Payments	
33. DEWR accepts that during the rapid development and implementation of the complex SEESA arrangements the need to notify Centrelink of payments made to Ansett employees was overlooked. The ANAO report suggests that DEWR were unaware of, and therefore inactive, for 3 months in respect of this issue. The evidence does not support this finding. DEWR commenced to address this issue in early January 2002 – only a few working days from when the contract was signed in mid-December 2001.	*The only evidence that DEWR provided to the ANAO shows that the department was aware of the issue in January 2002 but first took action in March 2002.*

Chapter 4—Outsourcing	
34. DEWR welcomes the ANAO's assessment that the selection of the private sector entity, SEES Pty Ltd, was conducted effectively and properly. The department also appreciates the ANAO's acknowledgement that the department's risk management activities minimised the possibility for delays in making payments for terminated workers.	*No comment.*
35. However, DEWR disagrees with a significant number of the ANAO's findings in this chapter. The extent of the issues subject to disagreement, in DEWR's opinion, demonstrates the ANAO's lack of understanding of the arrangements that underpin the SEESA administration.	*The ANAO agrees that the arrangements are complex. In the absence of any clear, written explanation of the arrangement, the ANAO has mapped these in the interests of transparency (see Appendix 2 in particular). This mapping has not been disputed by DEWR.*
36. The department is disappointed with the ANAO's suggestion that the selection of the private sector loan facility provider by SEES Pty Ltd was not conducted properly. The ANAO has implied, without evidence, that the successful financier may have received an advantage in this process through an unsolicited approach to the Government. It should be noted that three finance providers proactively offered their services in relation to SEESA in similar approaches. All were dealt with in the same fair and open manner.	*As indicated to DEWR prior to its final response, there is no such suggestion in the report. The ANAO's observations are only about lack of evidence concerning decision-making in the selection of the Scheme's financier.* *The ANAO has included in full the Commonwealth Bank of Australia's statement of its position on this matter.*
37. The ANAO has quoted Schedule 1A "… entry into a loan facility approved by the Commonwealth adequate for the scheme" [emphasis added] [*sic*]. The department believes that the ANAO continues to make an interpretation that suits its own conclusion. The interpretation of Schedule 1A by the parties to the contract is that the Commonwealth approval related to the adequacy of the facility for the scheme and not the selection of the financier. The process for selecting the financier was in accordance with Clauses 4.1, 4.2, and 4.3 of the SEES contract. The final selection of CBA was made by SEES and included consideration of comments by DEWR.	*The ANAO has received legal advice that the department's approval was required in the selection of the Scheme's financier. (See paragraph 4.26.) Moreover, evidence provided by SEES shows that it believed that it required such approval from the department. (See paragraph 4.42.)*

38. It is rejected that the terms of SEES Pty Ltd engagement were not clearly understood by both parties. When considering the tasks to be performed, SEES Pty Ltd and the department needed to make provision for the unknown quality, accessibility and quantity of material to be provided by the Ansett Administrators. Consequently the contract specified the terms of engagement would need to be jointly developed and agreed. The agreed terms represented best value for money, balancing price and risk. The success of the program, both in terms of the employees paid and the relatively small cost of administration, is testimony to the validity of the agreed terms.	*When the ANAO asked DEWR about the meaning of the terms of engagement it responded only after consulting SEES (See para. 4.70). SEES's explanation of certain aspects was substantially modified in its response to the ANAO on the draft of this report.* *The parties presented inconsistent views. DEWR comments here that the terms of engagement reflected the 'unknown quality' and so on of the material to be presented in claims by Ansett Administrators. SEES, on the other hand, in response to the ANAO's draft report, explains the terms of engagement as being based on a 'strong preliminary assessment of the controls' including the 'extent of the Administrator's internal audit process, quality of the computer modelling, extent of legal advice'.*
39. SEES Pty Ltd advised the ANAO on 8 October 2003 that: *"The section appears to be somewhat contrived in an attempt to demonstrate that DEWR failed to understand the nature of the verification process of the contracted services and that SEES failed to ensure that it did. (Paragraph's 4.77 and 4.79) An allegation which, in our opinion …is incorrect. It is our opinion that neither assertion is supported by available evidence. We consider that the interpretation of the information examined the selective references from the available information and the failure to make further inquiries undermines the credibility of conclusions drawn."*	*As discussed above, DEWR was not able to explain the nature of the verification process without reference to SEES. This occurred towards the end of the ANAO's fieldwork (see para. 4.70).* *The section referred to was included because it emphasises the importance of the issues discussed for future contract management.*
40. The department rejects the ANAO's findings that there was no systematic monitoring of SEES's performance. The contract requires a comprehensive reporting regime, which SEES Pty Ltd has met in full. DEWR has successfully monitored and managed the performance of SEES Pty Ltd. The ANAO has had access to all relevant program material including evidence of DEWR's monitoring of all required contract reports and related materials. DEWR can only conclude that the ANAO has misinterpreted the requirements clearly set out in the contract.	*The report acknowledges that SEES provided regular reports on most of the matters required under the contract (para. 4.107). The point made by the ANAO is that there is no evidence of analysis by DEWR that demonstrates monitoring of outcomes such as trends in costs over time and quality of performance. This is essential to good management of the contract.*

41. The department also rejects the ANAO's criticism of the SEESA timeliness standard. The standard, announced by Minister Abbott, required the provision of SEESA funds to the Ansett Administrators within 5 working days of the receipt of verified data from the Administrators. This standard was met for 99.5 per cent (12 929 employees) of the terminated Ansett employees. SEESA funds were advanced for the remaining 0.5 per cent (65 employees) within 12 working days. The timeliness standard set, and achieved is consistent with the scheme's objectives. The ANAO suggested a standard which included the administrator's timeliness over which the department had no control.	*The ANAO's only point here is that, once a standard had been set, DEWR did not incorporate that in the contract with SEES, whose work was essential to maintaining that standard (para. 4.103).*
42. DEWR believes that the presentation of the costing analysis contained in Figure 4.1 of the report, indicating costs of between $400 and $1300 per claim verified, to be incorrect and grossly misleading. It is the department's view that the ANAO figures have used many other types of work undertaken by SEES Pty Ltd, for example, the active creditor role, financing role, not incurred either to the same extent, or at all, in the typical GEERS assignment.	*The report does not indicate or imply that Figure 4.1 represents the average verification cost for all claims in each tranche. Rather, the purpose of the analysis is to illustrate a way in which DEWR could have adequately monitored the costs of SEES's actual testing of samples for each tranche.*
43. The department rejects the claim paragraph 4.116 that the department took no action to mitigate the possibility that the administrators might invest SEESA funds on the short-term money market. As SEES Pty Ltd advised the ANAO on 8 October 2003, the administrators confirmed that that all funds would remain in the Special Account and undertook that no further such transactions would occur. Interest earned on the funds invested on the short-term money market was returned to SEES Pty Ltd. The department questions, given this undertaking, what other action was it expected to perform to mitigate a now non-existent risk.	*There is no evidence that the department took any action to ensure that such an event would not occur in the future. Moreover, DEWR still has not provided evidence of any undertaking by the Administrators on this matter.*
Chapter 5—SEESA Performance	
44. The ANAO found that SEESA provided in excess of $336 million to almost 13 000 former Ansett employees much more quickly then would have occurred if those employees had to await the distribution of funds from the assets of the Ansett group.	*No comment.*

45. As noted by the ANAO, the administration of SEESA has been reported to Parliament through the tabling of two annual reports made under section 24 of the *Air Passenger Ticket Levy (Collection) Act 2001*. In addition, the administration of SEESA is subject to scrutiny through the normal parliamentary processes.	*No comment.*
46. DEWR rejects the ANAO's criticism of the Scheme's timeliness measure. As noted in the section above, the Scheme's timeliness standard was met for 99.5% of all payments for terminated employees. While it is open for the ANAO to suggest alternative measures, DEWR has implemented the Scheme including the existing timeliness measure in line with government standards. The timeliness standard set, which was achieved, was consistent with the scheme's objectives. The ANAO suggested a standard which included the administrator's timeliness over which the department had no control.	*The essential point is that, given that the Government's objective was 'to ensure former Ansett employees receive their defined employee entitlements payments in a timely way', as emphasised in DEWR's paragraph 20 above, this was not adequately measured by DEWR.* *Payment involved two stages:* • *payment from SEES Pty Ltd to the Administrators; and* • *payment from the Administrators to the retrenched Ansett workers.* *Although DEWR considered timeliness measures for the first stage (that is, five days), it could also reasonably have included an undertaking about timeliness in its deed with the Ansett Administrators, or at least sought to measure the second stage. When the ANAO first raised with DEWR the point that the deed with the Administrators included no timeliness provision the department stated that, 'unfortunately, no such timeframes were established'. The Administrators readily provided data on this aspect to the ANAO (see Table 5.3).* *In practice, DEWR did have influence over the Administrators' timeliness (as is shown in the report at para 5.24 et seq.).*

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