Commonwealth Ombudsman
Report under section 35A

Investigation

into a Complaint about

the Department of Primary Industries and Energy's

administration of the National Landcare Program

in relation to a grant to a Community Landcare Group

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1. OVERVIEW

This is a report of an investigation by the Office of the Commonwealth Ombudsman into a complaint received about the handling of a complaint to the Department of Primary Industry and Energy (DPIE) concerning an alleged misuse of National Landcare Program funds. In line with the Ombudsman's office normal practice, this complaint has been anonymised for the purpose of this public report.

The complaint and subsequent investigation raised a number of issues which have broader significance in the management of grant programs funded by the Commonwealth through DPIE and delivered by the States, particularly where government employees are involved in preparing submissions and where individuals or the community group may be in a position to directly benefit from the decisions made.

Because the administration of the National Landcare Program is by state government instrumentalities, aspects of the complaint concerned the role of the former Department of Conservation and Land Management (CALM) in New South Wales and its officers. This resulted in a parallel investigation being conducted by the NSW Ombudsman into the State issues. This report was recently completed.

Both investigations identified systemic concerns in regard to the way in which the program is being administered. In relation to DPIE, this investigation has concluded there is a need for:

- the application form used by Landcare groups to apply for grants under the program needed to be redesigned to provide a clear statement about group approval of the application;

- greater awareness of the problems caused by real or potential conflicts of interest

- co-ordinated measures with the States to improve the maintenance of records kept by Landcare groups, particularly regarding decisions to apply for grants, group decisions to make a financial contribution in respect of an application for funding, and the keeping of financial statements recording details of any group contribution made and, details of receipt and expenditure of monies in relation to any project;

- improved monitoring of the funding agreement between the States and the Commonwealth;

- clarification of the role of DPIE and state officers in relation to their official status with respect to membership of Landcare groups; and

- DPIE and the States to require staff to report any suspected irregularities in funding applications or project management by Landcare groups that might adversely impact on the National Landcare Program.

2. THE CONTEXT

2.1 The Complaint

On 4 October 1994, a complaint was made to the Commonwealth Ombudsman about DPIE's handling of some allegations raised earlier by the complainant. These allegations related to the assessment and approval of an application by a particular Community Landcare Group (referred to below as "the Group") for a grant under the National Landcare Program.

The essence of the complaint was that DPIE's investigation of these allegations was inadequate and that the conclusions DPIE reached were incorrect. The complainants specific allegations about DPIE were:

- that DPIE was wrong in reaching a conclusion that the Chairman of the Group had the Group's approval to make the application under the National Landcare Program;

- that the making of the application constituted a breach of sections 29A and 29C of the *Crimes Act 1914*, section 178BB of the *Crimes Act 1901 (NSW)* and that DPIE should have referred the matter to the Australian Federal Police for investigation;

- that the failure of CALM to report the allegations raised by the complainant to DPIE amounted to a breach of clause 10(c) of the agreement between the Commonwealth and the States covering the National Landcare Program;

- that a DPIE officer, Mr B, who was on leave to work with Landcare groups was alleged to have had knowledge of the circumstances

relating to the application but failed to take any action to ensure the Department's guidelines were upheld; and

- that the statement of intent referred to in the DPIE letter of 2 September 1994 (see section 3.4) would be a financial obligation for the Group and should have been included in the financial statement for the Annual General Meeting of the 6 May 1992, as well as the annual report. Mr B was therefore alleged to be in breach of section 70(2) of the *Associations Incorporation Act 1984 (NSW).*

2.2 The Legislative Setting

Grants for 1992-93 projects relating to soil conservation were made under the *Soil Conservation (Financial Assistance) Act 1985*, through the National Soil Conservation Program. Under section 4 of that Act, conditions under which financial assistance was provided to a State were set out in agreements between the Commonwealth and the State. An agreement was entered into between the Commonwealth and the State of New South Wales on 21 July 1987 for this purpose.

However, section 24(b) of the *Natural Resources Management (Financial Assistance) Act 1992* repealed the 1985 Act on 24 December 1992, and the National Soil Conservation Program(NSCP) was subsumed into the National Landcare Program from that time.

Sub-section 25(2) of the repealing 1992 Act provides that subject to any new agreement entered into under the *Natural Resources Management (Financial Assistance) Act*, every agreement made under section 4 of the *Soil Conservation (Financial Assistance) Act* has effect as if that Act had not been repealed. A new agreement was not concluded until 8 July 1994 and therefore, the 1987 agreement applied to the application for a grant under the National Landcare Program, which was the subject of the complaint.

Section 7 of the *Soil Conservation (Financial Assistance) Act* imports into the agreement the provision that the State, as payee, repay the Commonwealth grant moneys for failure to fulfil a condition, and the requirements for auditing and furnishing of financial statements.

2.3 The Commonwealth/State Agreements

The 1987 Agreement

The 1987 agreement, among other things, provides:

a) in clause 4, that where a State intends to seek financial assistance from the Commonwealth it shall *"furnish to the Commonwealth a detailed budget"* giving particulars of the project, estimates of expenditure to be incurred and details of amounts of financial assistance being sought;

(b) in clause 10, that grants are made subject to conditions set out in sections 7(2) and (3) of the *Soil Conservation (Financial Assistance) Act*, and in addition, *"upon condition that the State will":*

(i) provide progress reports on the project - [cl 10(d)] ;

(ii) *"report promptly in writing"* to the Commonwealth on *"any significant development"* in a project and any substantial delay in a project, giving reasons for the delay [cl 10(c)];

(iii) maintain separate records in relation to each project of: receipts and expenditure and financial assistance; receipts from other sources; any income generated by the project itself; and expenditure other than financial assistance - [cl 10(f)];

(iv) ensure that approved projects *"are undertaken efficiently and in conformity with sound engineering, agronomic, environmental and financial practices"* - [cl 10(i)]; and

(v) ensure that where projects are undertaken other than by State Government agencies the same terms and conditions as apply in respect of Commonwealth assistance to the State for that project apply - [cl 10(k)].

The 1994 Agreement

The 1994 agreement under the *Natural Resources Management (Financial Assistance) Act* imposes similar obligations on a State to those contained in the 1987 agreement. Clause 6(1) of the 1994 agreement requires the

State to monitor project implementation and submit to the Commonwealth by 1 May, in each year for which financial assistance is provided, an annual report for each project.

Clause 6(2) requires that this report must include a statement of receipt of Commonwealth funds and any project expenditure by the State or local government, the community, or any other body. Provision is also made in clause 6(1)(a) that the State must:

> *"evaluate financial, social technical and environmental impacts of projects in accordance with accepted project evaluation methods".*

Clause 8(5) provides that where a person other than the State is to undertake a project the State shall ensure that the other person:

> *"(a) is able to manage and monitor expenditure in accordance with State financial accounting requirements and in conformity with sound financial practices;*
>
> *(b) meets conditions set out in this agreement and any other conditions which may be applied from time to time".*

2.4 The Conditions for a Grant

The '1992-93 Guidelines for Community Group Applications to the National Landcare Program' issued by DPIE to prospective applicants, provides for the National Landcare Program to comprise four Commonwealth programs aimed at encouraging *"communities and community based groups to responsibly manage and conserve land, water and living resources in which their members have an interest".* The National Soil Conservation Program is one of the four programs.

The Guidelines include the following criteria which should be addressed in funding applications:

> *"Submissions should:*
>
> - *have specific overall objectives with annual targets for measuring the progress and success of the project*
> - *have significant community involvement and support (financial and/or in-kind)*

- *demonstrate that the applicant/community group has sufficient expertise and resources to achieve the project's objectives*
- *clearly explain why the budget items listed are necessary and show that costs are being kept as low as possible".*

In regard to who was eligible to carry out the projects, the Guidelines further stated on page 2, that:

> "*projects are usually initiated and undertaken by community groups with support from the appropriate agencies and technical specialists. In some cases, individual rural landholders may receive funding where there is community involvement in the project".*

Under the heading "How much can a project receive?", on page 2, the Guidelines state that a Community Group is expected to provide, either in cash or in kind, a matching contribution to the extent required in the individual programs.

The Guidelines provide that the following activities *"are not funded"*, (see page 3):

> *"Projects developed only by individuals will not be funded from 1992-93. Projects must be developed by, or have the endorsement of, a community group.*
>
> *As a general rule, soil conservation works on individual properties will only be funded for demonstration purposes ...".*

The conditions under which the State provides the funds received from the Commonwealth to the Landcare groups are contained in a funding agreement, entered into between the relevant State body and the Landcare group.

3. THE INVESTIGATION BY DPIE

3.1 The Events Underlying the Complaint

The complainant had been a member of the Group until May 1993. In his letter of 4 October 1994 to my Office, the complainant stated that:

> "*In March 1992 at the monthly committee meeting, the CALM District Manager mentioned briefly a proposal to apply for funds for a major salt action demonstration on the property of the Chairman* [Mr A]. *Salt Action is a State funded program controlled by CALM and we were all aware that CALM had established demonstration sites on properties of individuals. I was there and clearly recall that the Committee were not asked and did not endorse the proposal as a group project nor did they discuss the matter. The Chairman did not stand down from the meeting. The minutes ... show only a mention by the District Manager and no discussion or motion by the committee to support ...".*
>
> *Fifteen days later the Chairman signed and sent in an application, prepared by [the District Manager] for a $20,000 grant for his property under the National Landcare Program ... . The committee were never told of the funding program details at the time.*
>
> *What we did not know is that the name of the group had been used to get around the funding criteria which said: "projects developed by individuals would not be funded". The first we became aware that the name of the Group had been used was when we received a cheque for nearly $20,000 from CALM ...".*

In addition, the complainant referred to the following:

- At a Group committee meeting in April 1992, the committee was asked to endorse a proposal from another Group member for a small demonstration site on his property. The CALM District Manager and the Chairman were present when the committee decided not to support demonstration sites on the property of an individual. Neither of them commented on the fact that they had just prepared, signed and sent in a proposal for a demonstration site on the property of the Chairman in the name of the Group.

- At the Group's Annual General Meeting on 6 May 1992, the Chairman submitted a written report to the Group on the activities for the year and made no mention of the application for his property. The CALM

District Manager and Mr B (a DPIE officer on leave) were present and did not comment on the omission.

- In June 1992, the Group's newsletter covered a field day at the Chairman's property. The newsletter mentioned a funding application but did not state it was by or in the name of the Group, that it had been submitted or that it involved a commitment of $29,600 in the name of the Group.

3.2 The Complaint to CALM

Prior to raising the complaint with DPIE, the complainant raised this matter with CALM on a number of occasions, the first being on 20 January 1993. Full details of contact with CALM and of its investigation into the complaint are contained in the report of the NSW Ombudsman.

CALM's view following its investigations was that the complaint related to the internal operations of the Group.

3.3 The Complaint to DPIE

On 4 October 1993, the complainant sent a facsimile letter to the office of the Commonwealth Minister for Primary Industries and Energy alleging irregularities in the CALM investigation.

In a reply dated 20 October 1993, DPIE advised that it *"has responsibility to ensure that the DPIE component of NLP funds are spent in accordance with Commonwealth requirements. Consequently we are investigating the allegations you have made"*.

In a letter to DPIE dated 28 October 1993, the complainant and the group's former treasurer, related a similar description of events as that raised in the letter to my Office, referred to in section 3.1. The complainant, in a further letter to the Minister's office dated 7 December 1993, raised concerns about the costing of the application and the Group contribution.

In a letter to DPIE dated 18 February 1994, the complainant expressed the view that the funding project for which the Chairman, Mr A, applied, was *"without the specific endorsement of the Committee or the Group, this was a project developed by individuals"*.

Material supplied to my Office by DPIE relating to its investigation of the complaint indicates the Department arranged for a DPIE officer to inspect the project on Mr A's property. The officer confirmed that the project appeared to be in order. Further, DPIE obtained audited statements and a project report and passed on to CALM for checking the claims of overbudgeting. In addition, on 18 October 1993 DPIE wrote to Mr A, as Chairman of the Group requesting certain of the Group's records, including a copy of the Minutes of all meetings of the Group since 1 January 1992, a copy of documents presented to the Annual General Meetings held in May 1992 and May 1993, financial records of the Group relating to the project, and "*evidence that the Group supported the project application*".

DPIE advised the complainant in a letter date 30 June 1994, that:

> "*Officers of this Department have investigated the allegations and concluded that there is no direct evidence to support your allegations and that on the documentary evidence currently available, the National Landcare Program was administered in accordance with the overall requirements set down by the Commonwealth under an agreement with NSW at the time ...*".

In a response on 13 July 1994, the complainant wrote to DPIE requesting a re-examination of the investigation, providing details relevant to the Group's constitution, details of relevant provisions of the *Association Incorporation Act 1984 (NSW)* under which the Group had been incorporated, copies of the minutes of the Group committee meeting on 4 March 1992, and a copy of the Chairman's Annual Report to the Annual General Meeting on 6 May 1992.

The complainant further stated that the Chamber Magistrate at Cowra had advised him that the signed letters and other documents providing information on matters where he had personal knowledge constituted direct evidence. He also referred to Mr B, (a DPIE officer) who was on leave without pay and working for the Group, as being present at the Committee Meeting on 4 March 1992 and present at the Annual General Meeting on 6 May 1992 and speaking on behalf of the Chairman on the project at the field day on the Chairman's property on 15 May 1992.

3.4 DPIE's Reply to the Complaint

In a letter to the complainant dated 2 September 1994, DPIE advised that:

"The NLP allocates funds to community Landcare groups under the conditions set out in formal agreements between the Commonwealth and each State under the ***Soil Conservation (Financial Assistance) Act 1985*** *and the* ***National Resources Management (Financial Assistance) Act 1992****. The Agreement between the Commonwealth and NSW was signed 1 July 1987, and the State undertook to:*

> *'ensure that approved projects are undertaken efficiently and in conformity with sound engineering, agronomic, environmental and financial practices'.*

Under this Agreement the State is primarily responsible for the administration of the NLP and for project assessment according to guidelines and instructions issued by the Commonwealth. From a Commonwealth view point the primary considerations are whether the application for NLP funding was assessed and approved in accordance with these guidelines and instructions, and whether the actual project, in this case a demonstration of techniques to solve problems of salinity, has been undertaken as proposed and approved. On the evidence of audited statements of expenditure and independent examinations of the site, we concluded that these considerations have been met.

Your concerns relate more to the internal functioning of the Group. You claim that the project did not have the endorsement or co-operation of the entire group, and that the group was being committed to expenditures without its consent and beyond its capacity to pay. You have also raised allegations concerning the conduct of certain people in the group.

From the Guidelines issued for the 1992-93 round of applications the following points are relevant:

- *a community group is expected to provide, either in cash or in kind, a matching contribution to that requested from the NLP; and*
- *as a general rule, soil conservation works on individual properties will only be funded for demonstration purposes.*

The project proposal entitled 'Catchment Control of Salinity' was approved for funding as it was considered to meet these requirements. The Commonwealth has no requirement that group funds exist prior to project approval; rather the

project proposal is considered to be an undertaking or a statement of intent from the group that resources, financial or otherwise, will be expended on the project.

The Chairman's Report to the Annual General Meeting of April 1992 presents an account of the previous year's activities and was written before the project had been considered for funding by the State Assessment Panel. As such, we do not consider the omission of information on this project to be a matter for this Department's investigation. Similarly, we do not consider that the lack of reference to the group's commitment to the project in statements by the Treasurer of the group is relevant to this Department's investigation as the group commitment may be in cash or in kind, and the funds may be raised from various sources during the life of the project.

In investigating your allegations as to the lack of approval of the project by other committee members, we were provided with statements of committee members which contradicted your claims. Indeed, members state that the proposal was discussed during committee meetings during 1992, there were no objections raised and the project was fully supported ...".

In a response dated 9 November 1994 to inquiries from my Office, DPIE forwarded a copy of the report of the investigation dated 15 July 1994. The report included a copy of the report of Mr C, CALM Program Co-ordinator Conservation, dated 11 February 1993 and a copy of statements from some members of the Group. These statements had been supplied by Mr A in response to the request from DPIE to Mr A dated 18 October 1993 for "*evidence that the Group supported the project application",* as mentioned in section 3.3.

In addition, DPIE further stated that "*(the) allegations centre on decisions taken within the Group where the problem appears to lie with some apparent inadequate record-keeping associated with approval by the group of the project funding application. All the requirements of funding under the National Landcare Program (NLP) appeared to have been met and investigations have indicated the project was undertaken as planned. Evidence showed that the funding has been spent as originally proposed and the project is serving as a demonstration site as originally intended".*

DPIE further stated that:

- the project application appeared to meet established criteria, was signed by a member of the Landcare group signifying group support and it was approved through the normal process of assessment by the regional and State Assessment Panels. An audit statement and

receipts plus field inspections indicated that the money had been spent according to the original proposal;

- the investigation found that the process for funding of an NLP project had been followed and the money had been spent according to the schedule in the approved project. Section 29C of the *Crimes Act 1914* relates to the making of untrue statements in connection with or in support of an application for any grant, payment or allowance. Given the conflicting opinions expressed in the statements obtained, it was determined that it was unlikely that further investigation or criminal proceedings would conclude differently to the Departmental investigation;

- CALM did investigate the matter as required under their agreement with the Commonwealth. The investigation concluded that the processing of the application *"was in the Group's name, it had been supported by the Catchment Management Committee, it was supported by the State review committee, and then it had been subsequently approved by NSCP"* and found that it *"was difficult to believe that the Group were unaware of the NSCP application for the demonstration on Mr A's property."*

- the matters relating to Mr B were referred to DPIE's Business Ethics, Security and Investigations Unit. Its assessment of the situation was that there was no indication of improper behaviour on the part of Mr B and there were no grounds for intervention into a matter that is the responsibility of the NSW Department.

4. THE INVESTIGATION BY THE COMMONWEALTH OMBUDSMAN

In considering the adequacy of DPIE's handling of the complaint, the Ombudsman's office has reviewed all relevant documents related to the case. The principal parties have not been interviewed again as the Ombudsman is investigating DPIE's administrative handling of this matter not the actions of group members. The issues raised by the complainant have been carefully assessed as part of determining whether DPIE and its officers have acted reasonably in this matter. The key facts are set out below, as determined by this office.

4.1 The Making of the Application

The application for funding, which was the subject of the complaint, was dated 19 March 1992 and was entitled "National Landcare Program Community Group Application Form". The application was made in the name of the Group and in that part of the form requiring the "Signature of Group representative (position)", the form had been signed by Mr A in the position of *"Chairman"*.

The application states that the Group sought the amount of $19,780 in funding and that the Group would also contribute the amount of $29,600 to the project in cash and kind.

On its surface, the application appeared to be a valid one which was assessed on the basis of its content and found by the appropriate Committees to be worthy of funding and given a priority that resulted in a grant being given to the Group. Nothing in the assessment process revealed the lack of formal group endorsement and it appears no questions were raised that the grant was for a property owned by the sole signatory to the application.

In my view it was a serious weaknesses in the assessment process that this conflict of interest did not come to light.

4.2 The Group's Constitution

The DPIE investigation report and the reply to the complainant dated 2 September 1994 indicate that the conclusion that the *"application for NLP funding was assessed and approved in accordance with [the] guidelines and instructions ..."*, was largely based on the statements obtained from some committee members of the Group and the investigation report of the CALM officer, Mr C. It appears the investigation gave little account to the Group meeting records or the requirements of the Group's constitution.

DPIE did not consider the procedural issues as it was of the view that any concerns about whether the group had followed its correct constitutional requirements for committee approval related to the internal affairs of the Group and were not appropriate for DPIE to investigate.

The Group was incorporated under the *Associations Incorporation Act 1984 (NSW)* and adopted as its constitution the Model Rules prescribed by that Act. Part III of the Model Rules provides for the committee of the Association to, amongst other things, control and manage the affairs of the Association. Under the rules no member of the committee can undertake any management function without the approval of the committee. Rule 15 of the Model Rules also required that the secretary *"keep minutes of all proceedings at committee meetings and general meetings"*.

In commenting on my Draft report, Mr A stated that at the time of its formation, the founding members only had limited committee administration experience. Members of the original committee were not skilled in the proper procedure for meetings, nor in the recording of those proceedings. Consequently the minutes of meetings were not as precise as they could have been. There was often discussion and broad agreement on issues but not always formally moved motions. The one salient feature arising from all of these circumstances, is that records of the Group are now kept meticulously.

An examination of the minutes of the Group meetings by my Office concluded that they indicate that other group applications were discussed formally and fully with the progress of funding applications being discussed openly. This was also a conclusion of the DPIE investigation.

As stated previously at section 2.4, the 'Guidelines for Community Group Applications to the National Landcare Program' stated that projects developed only by individuals would not be funded and that *"Projects must be developed by or have the endorsement of, a community group"*. Therefore, to accord with the Group's constitution, any application for a Landcare grant needed the approval of the committee. Further, any such decisions should have been recorded in the Minutes.

In my view, these two deficiencies should have been considered as significant by DPIE. They were evidence that the Group had not developed or endorsed the project as required and, therefore, a basis for upholding the original complaint that the application was not properly made. Accordingly, the project should not have been approved as it did not comply with the relevant guidelines and instructions.

4.3 The Group's prior awareness of the Application

The Minutes relating to the committee meeting on 4 March 1992 make reference to Mr E (CALM District Manager) speaking of "*a proposal to Salt Action for funding of work at* [Mr A's property] *including work on cropping rotations, agroforestry ...*". DPIE has confirmed that Salt Action is a State funded program administered directly by the state body CALM. No reference is made to the National Landcare Program in the Minutes. These Minutes were adopted at the committee meeting of 1 April 1992.

On page 3 of the DPIE investigation report it is stated that *"Minutes of previous group meetings record that other group applications were discussed formally and fully with progress of funding applications discussed openly"*. This is at variance with DPIE's comments in a letter dated 29 November 1995 that the Group's record keeping practices appeared to be informal. In my view, the records indicate that generally the Group maintained formal records and that these indicate that other funding applications were discussed openly.

In my opinion, these factors must raise serious questions as to why there are no such records in the case of the Chairman's (Mr A) application. In addition, there is no reference to the application being made in the Minutes of the Annual General Meeting held on 6 May 1992.

The making of such an application could reasonably have been expected to have been disclosed to the Annual General Meeting, if only because of the financial and in kind obligations that would need to be met by the Group if the grant was received.

The DPIE investigation report refers to the fact that mention was made in the June 1992 Group newsletter that there was a farm walk/field day at Mr A's property on 15 May 1992 including a reference that the "*area ...* [being] *the subject of a funding application to serve as a demonstration site for the Group ...*".

I do not consider that this reference indicates either that the NLP application was common knowledge amongst the Group or that it had previously approved it. I note that the article does not state that the application was made by the Group or for what sort of funding.

In my view DPIE erred in equating an "awareness" of the other Group members that some form of application had been made for the property with the Group having formally endorsed an application for NLP funding.

4.4 Supporting Statements by Group Members

DPIE placed considerable weight on the statements from some other committee members in arriving at its conclusion. These statements were obtained by Mr A and forwarded to DPIE in response to DPIE's letter of 18 October 1993 requesting *"... evidence that the Group supported the project application"*.

One statement by Mr D of 4 November 1993, refers to the "*Salt Action Project Demonstration Site* [being] *discussed in great length with overwhelming support ..."* and that *"it was only recently brought to* [his] *knowledge that 'no official motion' was moved towards the approval of the project"*. The Minutes relating to the committee meeting on 4 March 1992 do accord with Mr D insofar as reference is made in the Minutes to Mr E speaking of a *"proposal to Salt Action for funding of work at* [Mr A's property] *including work on, cropping ..."*. As mentioned previously, however, Salt Action is a state funded program.

Ms H in her statement of 4 November 1993, states that the Group's *"demonstration project ... was discussed and planned at great length by the*

committee at its monthly meetings during 1992". This is not borne out by the Minutes.

Further, there is no indication as to the context in which the discussion took place. This raises the question of whether Ms H is also referring to the state funded Salt Action application. No clarification was sought from Ms H by DPIE.

Ms G, in her undated statement headed 'Proposal for a NLP application for the development of a demonstration site', indicates that *"she fully supported the above proposal when it was raised in detail by Mr E ... in our Monthly Committee Meeting, 4th March 1992"*. This adds weight to the view that a discussion did take place but it does not clarify for which program and the support indicated was not recorded in the Minutes.

Mr E in his statement varies from the Minutes of the meeting, which refer to his speaking in the context of the state funded Salt Action program on 4 March 1992. Mr E in his statement refers to the catchment treatment concept including cropping rotation and agroforestry using cores of soil to locate the salt. No clarification or explanation was sought by DPIE from Mr E.

Mr F states in his statement of 4 November 1993 that the committee "*discussed this project in 1992"*. The project he refers to in the statement is the *"reclamation of a salt and water logged site "*. The statement does not clarify the context or extent of this discussion. It is noted that Mr F does not state whether this discussion occurred prior to May 1992 or whether it extended to an approval of an application to NSCP. DPIE did not seek clarification from Mr F.

Mr B, in his statement as to his recollection of the meeting of 4 March 1992 states that he has a *"vague recollection that an outline of a proposed agroforestry project was discussed at the meeting, and that there was general agreement to proceed with the proposal. I do not recall any dissension from any members of the Group to the project either at the meeting on 4/3/92, or in the months following the meeting "*. His recollection is qualified as being "vague" but it does extend to a claim that there was agreement to proceed - something not claimed by the other participants.

I do not consider that a proper analysis of these statements could have resulted in the conclusion, as DPIE advised the complainant in its letter of 2 September 1994 (see section 3.4), that the "... *members state that the*

proposal was discussed during committee meetings during 1992, there were no objections raised and the project was fully supported".

In my opinion, the weight given to these statements by DPIE was inappropriate as the statements did not demonstrate that the group had given prior endorsement to the NSCP application.

At best they demonstrate that there had been some discussion of the project in the context of Salt Action and, although there may not have been dissent expressed, there was no evidence that a proposal to apply to NSCP was discussed or approved.

It is also of concern that the statements were supplied through Mr A, who was the subject of the complaint. It would have been preferable for DPIE to have acted at arms length and sought statements directly from the committee members or at least through another party who was not involved in the complaint.

4.5 The Report by Mr C of CALM dated 11 February 1993

The DPIE investigation report in commenting on Mr C's report stated that *"CALM investigated the allegations in the first instance, as required under the agreement, and advised DPIE that there were no irregularities with the program's administration".*

In his report, Mr C, indicates that this finding was based on his *"having sighted minutes from the group's meeting in March 1992 (prior to 19/3/92). Discussion of the proposed demonstration were recorded. In the Group's Newsletter No 6 (June 1992) point 4 on page 2 (attached as annexure A) sets out the proposal. This inspection was undertaken on 15/5/92 by Group members at field day/farm walk on".*

In preparing his report Mr C relied on the same two pieces of information discussed in the preceding sections. Whilst I do not seek to comment on Mr C's conclusions, it should have been clear to DPIE that the fact that Mr C concluded the group was aware of the project in question was distinct from the subject of the complaint, that is, whether the NLP application had prior endorsement by the group.

4.6 Adequacy of DPIE's Investigation

A response to my office from DPIE dated 29 November 1995, stated that, at the start of the investigation, DPIE officials asked the Landcare group for its records relating to the relevant period. An analysis of this material and the personal statements led DPIE to believe that no conclusion could be drawn from the conflicting assertions of the various parties, other than that the record keeping practices of the group appeared to be informal.

DPIE officials did consider at one stage whether to obtain statutory declarations from all of the Group members to clarify the situation. However, this course of action was not followed as NSW agency investigations were being pursued at that time in accordance with formal responsibilities regarding the operation of incorporated bodies established under legislation in that State. DPIE further stated that with hindsight DPIE may have been better advised to have sought sworn statements.

The statements of the committee members were made some 18 months after the relevant committee meeting of 4 March 1992. All personal statements provided to DPIE during this investigation, including those of the complainant and other committee members, were provided voluntarily and were not actively sought by Departmental officers.

This investigation did not amount to a proper investigation of the issues being put to the Department and as a consequence the deficiencies in the application and the point being made by the complainant was not understood or acted on.

In my opinion, the investigation conducted by DPIE was inadequate in that on a full and proper analysis of the available evidence, DPIE should not have reached the conclusion that the application for funding under the National Landcare Program had the necessary prior endorsement and hence the application should not have been approved because it did not meet the Guidelines.

4.7 Should there have been a referral to the Federal Police?

The complainant contended that DPIE should have referred the matter to the Australian Federal Police (AFP) as, in his view, the available evidence indicated a breach of sections 29A and 29C of the *Crimes Act 1914 (C'wealth)* and 178BB of the *Crimes Act 1901 (NSW)*. These contentions were contained in various letters to my Office. In essence these are:

- that the Chairman signed the application in the name of the Group and wrote the word *"Chairman"* after his name;

- that the Chairman had knowledge that the application could not be made by an individual, as the complainant remembers the Chairman telling the Group committee in February or March 1992 that government grants were no longer available to individuals, and in future only groups could apply. In April 1992, a request for endorsement from an individual was made, but the committee declined the endorsement on the basis that the demonstration site would be on an individual's property;

- DPIE is required under the 'Fraud Control Policy of the Commonwealth' issued by the Commonwealth Law Enforcement Board to refer the matter to the AFP at the earliest opportunity to permit a proper investigation.

In fact, paragraph 72 of the Interim Ministerial Direction on Fraud Control which is incorporated into the 'Fraud Control Policy of the Commonwealth' requires Commonwealth agencies to report information on a case to the AFP

> *"where, following a preliminary assessment/investigation, an agency believes that a **prima facie** case of **fraud** exists".*

The definition of fraud is set out at paragraph 15 of the same document. The parts of this definition which are relevant to this case include "... action by **deceit** ... the making of **false statements** ... with the object of obtaining money or other **benefit** ... ".

In seeking the grant, the Chairman of the Group signed the application. Section 178BB of the *Crimes Act 1901 (NSW)* makes reference to the making of false or misleading statements, while s29C of the *Crimes Act 1914 (C'wealth*) makes reference to the making of an untrue statements.

The relevant application did not require Mr A to make a declaration or a statement that the Group had endorsed the application. Therefore, this Office considers that his signature on the application form did not constitute a false statement.

However, if the Chairman was aware that an application for his own property would not be acceptable in his name as an individual and if he signed the application in the name of group for the purpose of avoiding this condition, his actions could well be considered to be a deceit.

In commenting on my draft report, Mr A advised that at the time he completed the application, he believed that the Group had given its approval as a result of a series of discussions held with Committee members, both at, and outside of, meetings. With hindsight, he agreed that it would have been preferable to have distanced himself more from the application, considering that the project was to be conducted on his property. However, his background has been in farming and not in Committee administration and it did not occur to him at that time, that he was doing any more than implementing the Group's decision in good faith.

Mr A claimed that, at the time of completing the application, he did not believe that the Group was being committed to $29,600 group contribution, as he was aware that the Group had no funds at this time and that it had been resolved that the work was to be carried out on his property. Mr A stated that he always believed that such funds would be paid by himself as they, in fact, were.

There is also some difficulty with assessing the extent of benefit which the Chairman received. It is uncontested that the Group was paid money and, as a consequence, works were carried out on the Chairman's property which no doubt were improvements. On the other hand, entering into a Landcare type project involves commitments on the part of the landowner to maintain the works, take time to allow others to inspect them and to encourage nearby landowners to take similar actions.

Mr A, in making comments on my draft report, stated that the project is and was a burden to his property, in that:

- it required thousands of hours of ongoing management by him since its inception and continues to require ongoing management;

- the project has prevented him from stocking cattle on that area and, therefore, there has been a loss of income;

- there has been additional expenses to him in addition to the moneys referred to as group contribution; and

- there has been no cash benefit to him as a result of the project, although at best it may be argued that at some future date it may enhance the value of the property as a result of the planting of the trees.

The link between such environmental improvements and an increase in the capital value of the property is somewhat indirect and may only occur in the long term. Throughout its existence Landcare has involved grants to private landowners and it seems to be accepted by the community that there is nothing untoward in the landowner gaining an indirect benefit. The fact that Landcare grants are made to improve private property is to some extent an acknowledgment by the community that such works improve the whole catchment environment and not just the specific landowner's land.

The key issue, therefore, is whether the Chairman's actions enabled him to get a grant for his property that would not have been endorsed by his group or in some way enabled him to get a higher priority against applications from other groups.

Whilst nationally there are always more projects submitted for funding than available funds it does not appear that there were other projects being promoted by Group members for that round of funding which were ignored in favour of Mr A's. The Group had agreed not to give much time to this particular round of funding and were concentrating on the Salt Action funds at that point in time judging by the Minutes and lack of resolutions on this or other projects.

Another factor in assessing the reasonableness of DPIE's decision not to refer the matter to the Federal Police is the nature of the information available to them. DPIE took the view that the available evidence was based on recollections of past events, would be difficult to test objectively and was not of the nature that would be required for police investigation or court proceedings.

Taking all these factors into account I do not believe that the criteria for fraud are met. Although Mr A received a benefit in that certain works were funded on his property, I am uncertain about how much significance should be placed on this benefit. Whilst deceit may have been involved in filling out the application, there are more likely explanations of Mr A's erroneous actions. At this distance in time, it is not possible to ascertain the intent of the Chairman. The additional elements relating to Mr A's actions and intentions that would need to be present under the Fraud Control Policy or s29A of the *Crimes Act 1914 (C'wealth)* were either not present or were debatable.

I, therefore, believe that it was within DPIE's discretion to make a judgement that a *prima facie* case of fraud did not exist to warrant the matter being reported to the AFP.

It would seem, however, that the ethical problem of applying for a grant on his own land should have been apparent to the Chairman who might reasonably have taken appropriate steps to ensure that the application was discussed and clearly supported by the group.

The lack of training for people running community groups and administering significant sums of public funds is of concern. Whilst the DPIE may have had sufficient cause to be reluctant to involve the police, they should have been far more alert to the conflict of interest issues raised by this case.

4.8 Other Matters Relating to the Commonwealth/State Agreement

As mentioned above, clause 10(c) of the 1987 Commonwealth / State agreement applicable to the application for funding required the State to *"report promptly in writing"* to the Commonwealth on *"any significant development"*.

It was put to DPIE that the receipt by CALM of these serious allegations and CALM's investigation of them would constitute a *"significant development"* and that, as a result, CALM was required to *"report promptly in writing"* these developments to the Commonwealth.

After discussion, DPIE accepted that this was the case and that the State should have reported the matter promptly to the Commonwealth in accordance with the terms of clause 10(c) of the Agreement.

The Ombudsman in New South Wales has reached certain conclusions on the failure by CALM to administer the NLP as required by the agreement between the Commonwealth and the state.

In view of this, I am of the opinion that DPIE should give consideration to whether the Department of Conservation and Land Management (NSW) administered the National Landcare Program in accordance with conditions contained in the 1987 agreement between the State of New South Wales and the Commonwealth. If not, DPIE should decide whether any breaches are of a nature to warrant using the repayment conditions inserted into the agreement by section 7 of the *Soil Conservation (Financial Assistance) Act* *1985.*

DPIE have recently advised me that they still see no basis for seeking a repayment of the grant but that my recommendation will be considered along with others from both this and the NSW Ombudsman's report.

4.9 The Actions of Mr B, a DPIE Officer on Leave Without Pay

The complainant alleged that Mr B appeared to have had knowledge of the circumstances relating to the application. It was argued that the statement of intent referred to in the DPIE letter of 2 September 1994 (see section 3.4) would be a financial obligation for the Group and should have been included in the financial statement for the Annual General Meeting of 6 May 1992, as well as the Annual Report.

Mr B was therefore alleged to be in breach of section 70(2) of the *Associations Incorporation Act 1984 (NSW)*.

In a letter to the Secretary of DPIE dated 7 August 1995, the complainant referred to the passage quoted from the statement of Mr B in section 4.4. The complainant pointed out that the Minutes did not record any discussion, and that it is recorded that only Mr E spoke. Further, the Minutes do not record any resolution by the Committee relating to the project, although a resolution on another trivial matter was recorded.

The complainant argued that the investigation by DPIE did not address the fact that Mr B was present at the Annual General Meeting of the Group on 6 May 1992, when the report of the Chairman was submitted and adopted by resolution and that:

> *"Under the definitions of the Associations Incorporation Act 1984, B is recognised as an officer of the Association. As such, he had clear obligations to his employer, the Association as well as under the Act. The report to the AGM is required under the constitution which is recognised in the Act (s 11). In his statement [Mr B] admits to knowledge of the application but failed to disclose to the AGM the fact of the making of the application in the name of the Group. As such I believe there are clear implications under s 70(2) of the Act. By his own admission, he is knowingly concerned with the misleading of the AGM on 8.5.92.*
>
> *I submit that B's prime responsibilities were to the association, his employer at the time and to his Department as an officer on LWOP, not to, at the very best, a minority of committee persons acting in breach of a fiduciary trust. B also failed to disclose in his statement a phone conversation with me less than a month after the AGM in which he acknowledged a clear 'conflict of interest' regarding the NLP application (Refer to CALM officer [C's] report of 11.2.93).*
>
> *At that time he did not reveal the fact of making of the application in the name of the Group. [Mr B] also failed to disclose at the time or later in his statement that work on the project actually started prior to 15.5.92, contrary to the NLP guidelines. He was present at the field day on 15.5.92 and assisted the applicant giving a presentation about the NLP project".*

The relevant passage in Mr C's report of 11 February 1993, states:

> *"[The complainant] made a number of complaints about the operations of this Group and Mr E's involvement with the Group. These were outlined in his letter to the Director-General. Issues which he raised again were:*
>
> > *on 4/6/92 [the Complainant] had been advised by the Salt Action Co-ordinator that he [Mr B] could see that there may be a potential conflict of interest if a demonstration was proposed on Mr A's property. The Complainant stressed that the future tense was used in this conversation".*

In commenting on these allegations in a response to my Office dated 29 November 1995, DPIE stated that Mr B was, during 1992-93, an officer employed by CALM whilst on Leave Without Pay from DPIE. An official investigation into Mr B's employment status concluded that Mr B had no responsibilities to DPIE at the time.

As a result of this and other DPIE investigations into the matter and an examination of NSW records, no substantive evidence has been found to support the allegations of impropriety on the part of Mr B. In regard to the commencement of the project prior to 15 May 1992, DPIE advised in a letter dated 23 May 1996, that the reference in guidelines that new projects should commence before 1 September is only a guide for budgeting purposes since Commonwealth funds for a newly approved project would generally not be available prior to that date.

A Landcare group is quite free to commence a project before 1 September utilising its own funds, although there is the risk that the application may not be subsequently approved and Commonwealth funding is not available.

The complainant, in commenting on these points argued that DPIE's statement that Mr B was employed by NSW CALM is not correct. According to the complainant, Mr B was employed by the Group while on Leave Without Pay. In addition, the complainant stated he had contacted the Public Service Commission, which had advised that section 63J of the *Public Service Act* provides for disciplinary provisions to still apply to officers on Leave Without Pay. Further, that Public Service Commission guidelines for official conduct state that suspected fraud should be reported to senior management in the department.

In essence, the complainant is contending that DPIE should have recommended that action be taken against Mr B under the disciplinary provisions of the *Public Service Act*. I am of the view, however, that this

would only become a consideration if there was cogent evidence that Mr B was aware of the application of 19 March 1992 having been made without the sanction of the committee of the Group.

The Complainant points to the statement made by Mr B, referred to in section 4.4 and the fact that in a telephone conversation with him, Mr B referred to a conflict of interest in respect of the field day on 15 May 1992 at Mr A's property.

I am of the view that this statement of Mr B's does not indicate that he had knowledge of the making of the application without the sanction of the Group's committee. Mr B uses the term *"vague recollection"* and appears to be, like some of the other committee members, unable to distinguish in retrospect whether "*the outline of proposed agroforestry project"* was raised in the context of the State Salt Action Program or the National Landcare Program.

As to the conversation in which reference to a *"conflict of interest"* was mentioned, I do not consider that this provides evidence that Mr B had knowledge of the making of the application without the approval of the Group. However, as an experienced public servant Mr B could have been more active on the conflict of interest question, raised the matter directly with Mr A and sought to clarify the issue at a group meeting.

I am of the opinion, that there is no persuasive evidence that Mr B had knowledge of the making of the application without the Group committee's approval and, therefore, that there is no basis on which DPIE should have recommended disciplinary action against Mr B.

However, I am of the view that DPIE should have in place guidelines which require staff on secondment or Leave Without Pay for the purposes of employment with a Landcare group to promote adherence to correct procedures and ethical conduct and to report any suspected irregularities in funding applications or project management by Landcare groups.

5. OTHER ISSUES RAISED DURING THE INVESTIGATION

During the course of the Ombudsman's investigation the complainant raised further allegations which are considered in the following sections.

5.1 Matching of funds

In the original application the $19,780 expenditure was to be "matched" by $29,600 expenditure by the group in cash or in kind. The complainant's original understanding was that "matching" meant at least equal funding and that the more funds shown as group contributions the more likely the project was to be funded. His concern was essentially that the application had inflated this component to make the project more attractive.

The Department's response on this point advised:

> *"... NLP funds are required to be matched by at least one third of total project costs by group contributions in cash* ***or in kind****. Community Landcare group contributions to NLP projects are typically in the form of group members' labour, provision of machinery and materials or individual financial contributions necessary to successfully complete the project.*

This is confirmed by the 1992-1993 'Guidelines for Community Group Applications to the National Landcare Program" (pg.2), where it is specified that *"a community group is expected to provide, either in cash or in kind, a matching contribution to the extent required in the individual programs*".

The 1992-93 National Soil Conservation Program (NSCP) Instructions for State Assessment Panels specify on page 9 that *"... the group should be contributing one third of the total of the (NSCP + group) contribution".*

DPIE were asked to comment on whether an application for a National Landcare Program grant showing a high level of group contribution value, would make that application more attractive to an assessment panel, in that it would create an impression of a high level of group support for the project. DPIE stated that:

> *"The current NLP guide to Community Group Applications specifies on page 1 that the Community Component of the NLP funds community*

groups to carry out resource management and conservation projects with one or more of a number of features. One of the listed features is 'strong community support and contribution'. In the absence of other factors, it follows that an application with a high level of community support and contribution could be more attractive to an assessment panel than one without such a high level of support and contribution."

In my opinion there is some weight in the complainant's argument and a need for group contributions to be assessed and enforced as actual commitments which will be met. Allowing in kind contributions is in keeping with the community nature of Landcare, but DPIE should have procedures to ensure contributions are real and that they are not inflated to make a submission look more attractive.

5.2 Recording of Group Contributions

It was further alleged that the Commonwealth / State agreement required groups to maintain separate records of group contributions and it was separately argued that such obligations should be shown in the accounts to comply with the Associations Act requirements.

DPIE was asked to comment on whether group contributions fell within clauses 10(f)(ii) and (iv) of the 1987 agreement under the *Soil Conservation (Financial Assistance) Act* and they replied:

"... DPIE agrees that, under the 1987 agreement, a case can be made that group contributions should be recorded separately by both the Landcare group and the State".

This issue again raised the role of state officers involved in assisting groups to prepare submissions. The allegations made in this case included a state officer being involved in the making of an application for a grant which contained inflated figures. It is not accepted that this knowingly happened in this case even at the level of "turning a blind eye" but it highlights the need for clarification of the role of state officers and to their official status with respect to membership of Landcare groups.

In my view Departmental staff (State and Federal) should be required to report any suspected irregularities in funding applications or project management by Landcare groups including inflated applications. DPIE

has accepted this suggestion and will be writing to the States on this and other relevant matters arising from this case**.**

5.3 Accuracy of Costings

A similar allegation related to the accuracy of costings contained in the application dated 19 March 1992. In a letter dated 3 July 1995, the complainant stated:

> *"In December, 1993, I provided to DPIE information about the costing of the project. You will recall in the project information it was detailed that it was a sub-catchment, so therefore inputs and results were easy to record. The costing included $4000 of Commonwealth funds and $12,000 of group contribution for weed control/fertiliser and $2880 for pH adjustment (lime). I attach a copy of a costing prepared by NSW Dept of Ag economists on pasture establishment (more expensive than cropping). A quick call to the local NSW agronomist revealed that the recommended rate for lime application was not less than 2 ton and not more than 2.5 ton to the hectare.*
>
> *Lime cost about $60.00 per ton delivered and spread in 1993. My wife and I were present at the field day on 15.5.92 when it was described how the area of the project was to be limed and subject to crop rotation. Based on the lime, the area of the project for cropping/pasture is around 24 Ha. We have been to the site and this would appear to be correct.*
>
> *The cost of weed control per Ha is $63. The cost of fertiliser for the first year is $21.40, a total of $84.40 per Ha. Even if you allow an error and add to the figure the cost of seed of $28.94 per Ha, the cost comes to $112.40 per Ha. Divide into $16,000 and you end up with an area of 142 Ha approximately. No wonder someone recommended removing the $4000 of Cwth funds from the project. The information is readily available and free of charge and took approximately one hour to obtain."*

Almost identical comments were made in a letter by the complainant to DPIE dated 19 June 1995. DPIE's response on these points advised:

> *The budget for the Group project included estimates for 'Weed control and Fertiliser' and 'pH adjustment'. From our national experience, it is a DPIE view that the amount of $6,800 sought from NLP for these items would be reasonable to cover purchases of materials for a project area of around 24 hectares.*

Audited group financial statements verify that funds were expended for these purposes. The amount of $12,000 shown as a group contribution against this item represents landholder and group contributions to provide the necessary additional resources, in cash or kind, to effectively complete these activities.

Even if the amount shown against group contributions for these items represented Mr A's personal expenditure on materials for his private benefit, the remaining group contributions are sufficient to meet NLP program funding requirements of group contributions of one dollar in cash or in kind for every two dollars contributed by the Commonwealth.

In subsequent clarification obtained about the costing of the project, DPIE advised that even if the group contribution of $12,000 had been removed from the budget, the reduced group contribution of $17,600 would still have been sufficient to meet the 1 for 2 funding requirement. A group contribution as low as $9,890 would have sufficed to qualify for a National Landcare Program grant of $19,780.

In addition, DPIE had knowledge of the decision of the Natural Resources Programs Co-ordinating Committee to reduce the budget figure in the application by $6,880 from the amount sought for weed control and fertiliser, and the subsequent overturning of that decision by the State Assessment Panel. This knowledge was as result of the attendance of a DPIE observer at meetings of both bodies and is supported by notes and correspondence of the observer.

An explanation was sought about whether DPIE disputed the calculations on which the complainant based his assertion of inflated costing. DPIE replied on 23 May 1996 that:

"As a general rule, costs for activities covered by individual program grant applications will vary region by region (and even by locality) across Australia. The Commonwealth does not have the resources (nor an easily called Commonwealth expertise) to check all these in detail and relies on local expertise usually present in State agencies or present in the membership of relevant community dominated NLP panels.

On the matter of different views on costings amongst the Complainant and the regional and State assessment panels, DPIE accepted the view of the State Assessment Panel which is the overall State advisory body for the NLP assessment process ...".

Further, comment was sought about the fact that there was no provision in the 1992-93 application form for the specification of the area involved in the project and no itemisation of the group contribution, which would appear to make assessment of costing difficult. DPIE advised that:

> *Although there was no provision for specification of the project area in the 1992-93 application form, there was provision for itemisation of group contributions. As generally pointed out above, DPIE is of the view that the assessment or particular costings is best done at the level of most relevant expertise.*
>
> *The current application form and guidelines do make provision for specification of the project area involved. In this regard, the NLP guide to Community Group Applications for 1996-97 specifies on page 10 that, for each activity listed at question 8 of the application form, the application needs to, inter alia, describe the activity (including the site size in hectares if applicable).*
>
> *After completion of each NLP (and the predecessor NSCP) funding round, the application process is reviewed in consultation with the States and the State Assessment Panels. The adequacy of the application form is addressed in these reviews and the current application forms and procedures reflect this review process".*

5.4 Guidelines for Assessment of Costings and Group Contributions

Advice was sought as to whether DPIE had issued national Guidelines or monitored whether New South Wales had applied any guidelines for the state assessment bodies to assess the costing of applications for grants at the time of the subject 1992 National Landcare Program application. Further, my office queried whether any guidelines had subsequently been issued by DPIE or the states for use of state bodies in assessing and certifying costs in applications. Moreover, we asked whether guidelines for community groups seeking Landcare grants provide advice on how to assess costs of the project, including group contributions. DPIE advised:

> *"... at the time of the 1992 application, DPIE instructions to State Assessment Panels in 1992-93 do provide some criteria for assessing costing. DPIE updates these instructions annually. In addition, and as outlined above, the assessment of costings has been deliberately left at levels where relevant expertise can be most effectively brought to bear.*

> *With regard to whether any guidelines were subsequently issued by DPIE or other States for the use of State bodies in assessing and certifying costs in applications, DPIE has updated its instructions to State Assessment Panels on an annual basis. DPIE understands that States also issue guidelines for assessment and that these would provide guidance, in varying degrees, for assessing costing. DPIE will review Commonwealth and State guidelines to ensure that they provide details for the use of State Bodies in assessing costs in applications.*
>
> *With regard to whether guidelines for community groups seeking Landcare grants will provide advice on the assessing of the costs of the project, including group contributions, DPIE will review current guidelines on the basis of any relevant recommendations from the reports of the NSW and Commonwealth Ombudsmen regarding [this] case."*

Advice was also sought from DPIE as to whether there had been any guidelines issued for state bodies on how to evaluate the "*financial ... impacts of projects*", in accordance with clause 6(1)(a) of the agreement dated 8 July 1994 between the Commonwealth and New South Wales under *Natural Resources Management (Financial Assistance) Act* (see section 2.3). DPIE responded that:

> *"... DPIE has not issued specific guidelines in this regard. However, DPIE will review and/or introduce Commonwealth guidelines as appropriate on the basis of any relevant recommendations from the reports of the NSW and Commonwealth Ombudsmen regarding [this] case".*

The DPIE response of 23 May 1996 (see section 5.3) indicates, that DPIE is largely reliant on the state Natural Resources Programs Co-ordinating Committee and the State Assessment Panel to assess whether the costing of projects is not inflated. It considers that the expertise as to costings lies with these bodies, and accepts their approval of an application following an assessment, as indicating that no irregularities were present in the costing of the project.

In this case, the decision of the Natural Resources Programs Co-ordinating Committee was to reduce the costing figure in the application by $6,880 being the amount sought for weed control and fertiliser. This decision was subsequently overturned by the State Assessment Panel, but DPIE does not have any details for the decision. DPIE is in essence unable to verify, in the light of the complainant's allegations of over costing, whether the State Assessment Panel was correct in restoring the cost for weed control and fertiliser. It is noted that the application form

at the time did not make provision for specifying project area, which would appear to be necessary for adequate calculation of costing.

The NSW Ombudsman has advised that CALM had not provided any details as to how the amounts claimed were checked by the two assessment bodies. CALM has advised the NSW Ombudsman that costing and valuing would have been done using the panel members' knowledge of the industry. On this basis, if the amounts claimed seemed reasonable to those members then the values were certified.

As to group contributions, DPIE has acknowledged that as one of the features of the National Landcare Program is 'strong community support and contribution', an inflated group contribution in an application, in the absence of other factors, would make the application more attractive to an assessment panel than one without that high level of support and contribution. Moreover, after initially advising on 29 November 1995 that "*group contributions are in kind and commitments of this nature would not be expected to be shown in group financial records*" , DPIE has acknowledged that under clauses 10(f)(ii) and (iv) of the 1987 agreement group contributions should be recorded separately by both the Landcare group and the State.

The NSW Ombudsman after an examination of guidelines used by State Assessment Panels for 1992/93, 1993/94, 1994/95 and 1995/96 expressed the view that it is still not clear in the guidelines as to how panels verify the costing of a project as well as the group contribution to the project.

It is also noted that DPIE has not issued any specific guidelines on the evaluation of the "financial ... impacts of projects" for the purposes of clause 6(1)(a) of the 1994 agreement.

Legal advice obtained by DPIE from the Office of General Counsel, Attorney-General's Department in regard to the National Landcare Program, was that DPIE is responsible for ensuring that the Commonwealth Minister approves projects in accordance with the Commonwealth's eligibility criteria. Once a project is approved, the State is, under the agreement, primarily responsible for administering the grant(s) in respect of the project. DPIE, however, retains a residual responsibility for ensuring that the State carries out its functions under the Agreement and for implementing the Commonwealth's remedies (such as requiring repayment of grant moneys) for failure by the State to comply with conditions of the grant(s).

I am of the view, that DPIE can only ensure that the State carries out its functions in accordance with the agreement if adequate guidelines to accord with the expectations under the agreement have been issued. This case illuminates the absence of adequate costing guidelines for the proper assessment and verification of the amounts claimed in applications as the cost for projects and for group contributions. As a result, there is a potential for abuse of the system for making grants to Landcare groups.

In my opinion, DPIE failed to take reasonable action to ensure that adequate guidelines, for the proper assessment and verification of the amounts claimed in applications as to the cost of projects and group contributions, had been issued for the use of state bodies assessing applications for grants under the National Landcare Program.

5.5 The Application Form for Landcare Grants

DPIE advised in its letter of 29 November 1995, that one of the main objectives of the National Landcare Program is to encourage effective participation by community Landcare groups in natural resource management at the local level. This is achieved by making grants available to groups for approved projects. Much of the assessment of projects is based upon the group application form. It is essential, therefore, that on the face of the application form there be sufficient information to satisfy an assessment body that the application is by the group and has proper group endorsement.

The application form used in 1992 merely provided for the *"signature of Group representative (position)"* at the end of the form. No certification was required to the effect that the project had been developed by or had the endorsement of the Group. This was an eligibility criterion specified in the 1992 guidelines (see section 2.4).

DPIE has since revised the application form to require two signatures, one being from an office bearer of the group. It is also noted that the current application form requires the signatories to *"declare that the information I have given on this form is complete and correct and that the group is supportive of the project"*. It is further noted, that the application form makes provision for the specification of the project area, which would be relevant for verification of costing.

In my opinion, DPIE has taken reasonable steps to remedy defects in the 1992/93 application form, however, further changes are necessary to ensure that there is sufficient information on the face of the application to indicate that it has group endorsement (see section 6, recommendation 8) and identifies the source of matching funds.

5.6 Other issues

Clarification of other aspects were raised with DPIE. For ease of reference, the relevant DPIE response has been placed in the italicised portion under the inquiry of DPIE by my Office:

- that this case indicated the desirability of the formality of incorporation of groups, and at the very least formality in record keeping and communication between members in conducting the business of the group, particularly applications for grants for funding.

  "... DPIE recognises that an overly formal approach may inhibit certain types of Australians in the community from actively participating in the group processes which are a feature of the Landcare initiative. As Landcare is, from the Commonwealth's viewpoint, basically about trying to foster change in attitudes and behaviour amongst the full range of natural resource managers, the above policy approach is important.

  DPIE accepts that this case would indicate the desirability for greater formality in a group's administrative procedures. DPIE will review current guidelines on the basis of recommendations from the reports of the NSW and Commonwealth Ombudsmen regarding this case. However, in the context of the [above], it is important for a group to be able to operate fully effectively in addressing the need to accept and adopt change. DPIE would be reluctant to introduce an overly formal (bureaucratic) requirements that may potentially prejudice the change agenda".

This is a significant argument and I accept the importance of Landcare remaining a very broad based community movement. However this need not conflict with promoting good practice and ethical conduct which is not synonymous with being overly formal or bureaucratic.

- the desirability of applications for Landcare grants being signed by two executive members of an organisation. In addition, that further

details be provided of how the group support for the project was obtained. Where the group has been incorporated and there is a requirement for a common seal, the seal be affixed to the application in accordance with requirements in the constitution for affixing the seal.

DPIE has already revised the application form to require two signatures, one being from an office bearer of the group. DPIE ... will review current guidelines and application forms on the basis of any relevant recommendations from the reports of the NSW and Commonwealth Ombudsmen ...".

6. RECOMMENDATIONS

Following on from my opinion that DPIE's investigation of the complaint was inadequate (see section 4.6), it is recommended that DPIE write to the complainants:

- re-confirming the DPIE view that the allegations raised issues of public interest concerning the proper administration of the National Landcare Program;

- expressing appreciation for bringing these issues to its attention;

- advising that, as a result, some changes to the administration of the National Landcare Program have already been implemented; and

- DPIE will consider any recommendations arising from the Commonwealth and NSW Ombudsman's investigations which are relevant to its responsibilities in the administration of the National Landcare Program.

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DPIE states that in the administration of Landcare community grants since 1989, it has had to "tread a line" between imposing detailed accountability requirements for individual projects versus focusing on the generality of the outcomes sought by it. There has been an increase in Landcare community group numbers across Australia from some 400 in 1989 to an estimated 3000 now. In DPIE's view this is evidence of significant changes emerging in attitude and behaviour regarding sustainable natural resource management and support amongst Australia's farming community. This trend is likely to continue with the prospect of substantial new funds being foreshadowed through a National Heritage Trust.

While these factors point to the success of the National Landcare Program, the complaint highlighted a number of systemic problems in the administration of the National Landcare Program. These were the need for:

- procedures and policies to avoid conflicts of interest involving land owners and Government officials directly assisting Landcare groups;
- redesign of the application form used by Landcare groups to apply for grants;

- the adequacy of mechanisms for verification of eligibility criteria;
- the need to co-ordinate with states measures to improve the maintenance of records kept by Landcare groups; and
- improved monitoring of the funding agreement between the States and the Commonwealth, particularly in regard to the verification and assessment of amounts claimed as project costings and group contributions.

I therefore make the following recommendations to the Secretary of DPIE. (The Secretary's responses to my earlier draft recommendations are in italics):

1) DPIE should include in its 'Guide to Community Group Applications', advice about good practice in administration including:

   - recording of group and management committee decisions and financial matters;

   - recording of decisions to apply for funds, including any commitments to make a contribution in cash or kind and how it is envisaged that commitment will be met;

   - maintaining financial records of any group contribution made and details of receipt and expenditure of monies in relation to any project generally; and

   - training on due process and ethics.

In addition, that DPIE provide training for groups on correct procedures in the obtaining of and the administration of Landcare grants.

2) DPIE should liaise with relevant state authorities to ensure that project funding agreements for National Landcare Program grants between the state and the Landcare group clearly articulate the level and detail of financial accountability, reporting and evaluation standards required under the relevant Commonwealth / State agreement. The funding agreements should require the financial statements to be submitted to the state body in accordance with the funding agreement include the group's annual financial statement which should record details of any group contribution. Further, where the group has been incorporated and there is a requirement

for a common seal, the seal be affixed to the funding agreement in accordance with requirements in the constitution for affixing the seal;

3) DPIE issue to the State authorities costing guidelines to allow assessment panels to adequately assess and verify the amounts claimed in applications as the cost of projects and as group contributions;

4) DPIE liaise with the relevant state authorities to ensure that there are in place quality assurance mechanisms that enable the state authority to verify information provided to it from Landcare groups. This may include a requirement that groups provide such information as required by the state authority for the purposes of assessment and monitoring. Moreover, in appropriate cases the mechanisms should provide for the state authority to conduct site inspections to verify information provided by the Landcare group;

5) Wherever possible, in circumstances where DPIE requires the provision of documentary or other information concerning an incorporated Landcare group's affairs, it formally communicate through the secretary or other nominated public officer of the group;

Recommendations 6.1, 6.2, 6.3, 6.4 and 6.5 all relate to proposals to clarify or amend aspects of the application/assessment/administration processes for the NLP. The Coalition Government has made a policy commitment to the streamlining of access arrangements for Landcare grants. From a community group viewpoint, your recommendations may not appear consistent with the new Government's policy approach. All I am able to do therefore at this stage is state that we will take the comments your Office has made already and any you make in the future into account in developing new landcare funding arrangements for the Government to consider.

6) DPIE clarify the role of Departmental officers in relation to their official status and responsibilities to DPIE when they are members of Landcare groups receiving grants from the Commonwealth;

The 'Guidelines on Official Conduct of Commonwealth Public Servants' as issued by the Public Service Commission establish the framework for the behaviour of departmental officers in all situations. I have recently

advised all staff in my Department by minute that the Guidelines have been adopted as the Department's Code of Conduct.

7) DPIE require its staff to report, and liaise with the relevant state authorities to require their staff to report, any suspected irregularities in funding applications or project management by Landcare groups that might have an adverse effect on the National Landcare Program.

I support the recommendation. It is an integral part of the project assessment process. In addition the Department has committed to address the matter with the States (in conjunction with other relevant matters arising from your investigation).

8) DPIE redesign the form for applications for Landcare grants so that it requires the signature of two executive members of an organisation, where practical. If it is not practical to obtain the second executive member's signature, the form should make provision for an explanation to be given as to why that signature could not be obtained. In addition, further details should be provided to specify how the group endorsement of the project was obtained.

The same comments made in respect of recommendations 6.1, 6.2,6.3, 6.4 and 6.5 above are relevant.

9) DPIE should work with state agencies to provide training for groups on correct grant procedures under the National Landcare Program; including ethical standards, avoidance of conflicts of interest and administration of funds provided.

As part of the normal NLP funding processes, extensive support is made available to groups to help those groups prepare project proposals and to manage projects. Included is the provision of an extensive network of facilitators and co-ordinators. We will continue to work with the States in this area of activity.

10) That DPIE give consideration to whether the Department of Conservation and Land Management (NSW) administered the National Landcare Program, in accordance with conditions contained in the 1987 agreement between the State of New South Wales and the Commonwealth. If not, DPIE should decide whether any breaches are of a nature to warrant using the repayment

> conditions inserted into the agreement by section 7 of the *Soil Conservation (Financial Assistance) Act 1985.*

Arising from this case there are some important issues about conflict of interest involving grants made to individuals for improvement of private land that must be tackled and importantly, clarification of the role and duties of public servants acting in various capacities for community groups.

I endorse the broad based community nature of Landcare and agree with the argument that it should not be weighed down with overly formal or bureaucratic procedures. There is no reason why this should be the outcome of ensuring the grants process is transparent, fair and accountable. Landcare have grown dramatically since its early days and is widely accepted and supported.

The foreshowed review of funding arrangements will provide an excellent opportunity to reinforce the integrity of the process and thereby retain Landcare's strong public support.