

**PUBLIC ACCOUNTS  
COMMITTEE**



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**PUBLIC ACCOUNTS COMMITTEE**

**REPORT ON THE PURCHASE, OPERATION  
AND SALE OF DALWAY PTY LTD**

**REPORT NUMBER 19**

**FEBRUARY 1993**

Presented and  
Ordered to be  
printed by the  
Legislative Assembly  
on 2 March 1993



## REPORT ON THE PURCHASE, OPERATION AND SALE OF DALWAY PTY LTD

### CORRIGENDUM

#### APPENDIX 2 - LIST OF WITNESSES

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Please add the following:

|         |                |  |
|---------|----------------|--|
| 19/2/93 | Mr Geoff James | Legal Practitioner/Director of Dalway                    |
| 19/2/93 | Mr George Cook | Former Dalway employee                                   |
| 19/3/93 | Mr David Hunt  | Business Analyst, Department of Industries & Development |
| 19/2/93 | Mr Warren Day  | Ex Department of Law                                     |

Dated: 1 March 1993



**Legislative Assembly of the Northern Territory**

**PUBLIC ACCOUNTS COMMITTEE**

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Member for Karama. First elected 1983.

*Other Committees:* Environment (Chairman); House; Subordinate Legislation and Tabled Papers; Use and Abuse of Alcohol by the Community.

Country Liberal Party

### MR JOHN BAILEY, MLA

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Deputy Leader of the Opposition

Shadow Minister for Health and Community Services, Ethnic Affairs, Liquor, Work Health Authority.

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SUSANNE LEE BA (ACCOUNTING) CPA : Secretary to the Committee

JUDITH HERRING : Administrative Assistant to the Secretary



# **PUBLIC ACCOUNTS COMMITTEE**

## **REPORT ON THE PURCHASE, OPERATION AND SALE OF DALWAY PTY LTD**

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## CHAIRMAN'S FOREWORD

This report represents a significant milestone in the short history of the Public Accounts Committee.

It is the first occasion that a report of this Committee has been made to the Parliament based on evidence adduced in public hearings. It is also the first occasion where proceedings of the Committee and the evidence taken has attracted other than cursory interest from the public and media.

At all stages the performance of the Committee has been subject to intense public scrutiny and although on occasion some criticism was probably warranted, in general, the Committee worked harmoniously in pursuit of common objectives. That harmony is reflected in the presentation of this unanimous report.

The inquiry into Dalway was the most complex and detailed yet undertaken by the Committee. The search for detail and truth was somewhat complicated by the nature of the Committee and the fact that, notwithstanding some attempts at orchestration, Members largely followed their own agendas. That does not imply criticism of the Members but rather the system under which they operate.

It is my considered and strong view that when in future embarking upon an inquiry of this complexity the Committee appoint legal counsel to assist it in its deliberations and examination of witnesses. That in itself would have expedited the inquiry and subsequent deliberations and obviated the need to critically re-examine all aspects of the inquiry prior to the completion of the report.

It is not the role of this Committee to evaluate Government policy. It is however the role of this Committee to critically evaluate the efficiency and effectiveness with which policy is implemented. Whilst that evaluation process may involve cost, both in terms of time and money, it is important that the mistakes of the past are not repeated; mistakes can be avoided by putting into place appropriate procedures or guidelines. No organisation however is perfect. Mistakes will be made.

I extend my thanks to Committee Members for their efforts in this Inquiry and the positive approach taken by them. I also publicly record the Committees' thanks to the Committee's Secretary, Sue Lee, and her assistant Judy Herring, for their assistance in the conduct of the Inquiry and preparation of this report.

I recommend this report to the Assembly.



## CHAIRMAN'S FOREWORD

This report represents a significant contribution to the study of the public  
Account Commission

It is the first document that a report of the Commission has been made to the  
Parliament based on evidence adduced in public hearings. It is also the first document  
which provides the Commission and the public with the opportunity to see the  
evidence which has been put before them.

At all stages the performance of the Commission has been subject to intense public  
scrutiny and although on occasion some criticism was perhaps warranted, in general  
the Commission worked hard to ensure that its work was of the highest quality  
and reflected in the presentation of this annual report.

The inquiry into the Commission was the most complete and detailed yet conducted by the  
Commission. The search for detail and truth was somewhat complicated by the nature  
of the Commission and the fact that notwithstanding some progress in understanding  
members largely followed their own agendas. The fact that the inquiry was not  
independent but rather the product of the Commission itself was a disadvantage.

It is my conviction and strong view that when it comes to understanding the nature of  
the Commission the Commission itself is the best source of information and  
evidence of what is going on. That is why I have asked the inquiry and  
subsequent discussions and opened the door to criticism in order to ensure that the  
the inquiry prior to the completion of the report.

It is not the role of the Commission to conduct Government policy. It is however the  
role of the Commission to critically evaluate the efficiency and effectiveness with  
which policy is implemented. While that evaluation process may involve some use of  
time and money, it is essential that the results of the inquiry be put  
into the public domain so that the public can see the results of the inquiry and  
decide for themselves whether or not the Commission is doing its job. The results  
will be made available to the public.

I extend my thanks to Commission Members for their efforts in the inquiry and the  
positive approach taken by them. I also greatly value the Commission's efforts in the  
Commission's Secretary, Sue Lee, and her assistant, Judy Harding, for their assistance in  
the conduct of the inquiry and preparation of this report.

I recommend this report to the Assembly.



# CHAPTER 1 - THE NORTHERN TERRITORY PUBLIC ACCOUNTS COMMITTEE

## 1.1 ROLE OF PARLIAMENTARY COMMITTEES

In general terms the principal role of parliamentary committees is to perform those functions which Parliament is not, due to time and other constraints, well suited to perform. For instance, parliamentary committees are often utilised as fact-finding bodies which are called upon to examine witnesses and evidence in complex matters and to report their findings and conclusions to Parliament. This is the function this Committee has sought to perform in the present Inquiry.

Of necessity, the procedures governing the activities of committees are flexible and open to variation.

This flexibility enables committees to sit as regularly or irregularly as required, organise public and private hearings, convene its hearings at the most advantageous locations and to carry out visits and inspections as required.

Committees also act as a conduit for information to Parliament.

## 1.2 STATUS OF PUBLIC ACCOUNTS COMMITTEE

The Northern Territory Public Accounts Committee was established by temporary Standing Order 21A of the Legislative Assembly on 16 August 1986.

The Committee's status was altered, by way of a motion of the Chief Minister on 23 August 1988, from a Sessional Committee on a trial basis to a Standing Committee of the Parliament.

As a Committee of the Legislative Assembly, its authority is derived from the *Northern Territory (Self Government) Act* (of the Commonwealth) and the *Legislative Assembly (Powers and Privileges) Act* (of the Northern Territory).

The Committee is comprised of five (5) members, presently three (3) Government and two (2) Opposition members.

The duties of the Committee under Standing Orders are:

- (a) to examine the accounts of the receipts and expenditure of the Northern Territory and each statement and report transmitted to the Legislative Assembly by the Auditor-General, pursuant to the *Financial Administration and Audit Act*;



- (b) to report to the Legislative Assembly with such comments as it thinks fit, any items or matters in or arising in connection with those accounts, statements or reports, or in connection with the receipt or disbursement of the moneys to which they relate, to which the Committee is of the opinion that the attention of Parliament should be drawn;
- (c) to report to the Legislative Assembly any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them or in the method of receipt, control, issue or payment of public moneys;
- (d) to inquire into and report to the Legislative Assembly on any question in connection with the public accounts of the Territory -
  - (i) which is referred to it by a resolution of the Assembly; or
  - (ii) which is referred to it by the Administrator or a Minister; and
- (e) to examine the reports of the Auditor-General laid before the Legislative Assembly with the accounts of a Public Authority of the Northern Territory (including any documents annexed or appended to those reports).



# CHAPTER 2 - HISTORICAL BACKGROUND LEADING TO INQUIRY

In 1971 Mr John Pastrokos and a number of his family established a joinery business in Darwin. The joinery used the traditional jobbing production method which produced high quality joinery products but was very labour intensive.

Between December 1988 and May 1989 a new factory was built at Winnellie, Darwin, by the Pastrokos Family which revolved around computer aided design and manufacturing equipment. This system was designed to facilitate high volume production methods and thus greatly enhance production efficiencies. The new factory commenced operations in May 1989 and a new company, Darwin Joinery & Furniture Manufacturing Pty Ltd ('DJFM'), was incorporated.

DJFM borrowed heavily to fund the construction and set up of the factory to an amount of some \$5.2 million. Lenders at the time were: Territory Insurance Office ('TIO'), \$2.5 million; ANZ Banking Group, \$1.5 million and Esanda Finance, \$1.2 million.

Major problems were experienced by DJFM in setting up its production facility and CAD/CAM systems<sup>1</sup>. Unexpected construction, setup and commissioning costs and delays placed severe pressure on the liquidity of the company. The company approached the Department of Industries & Development ('DID') in September 1989 seeking financial assistance to get it over its initial problems and to enable the company to meet its debt commitments. A total package of assistance was thereafter put together with the aid of consultants which included:

|  | \$M         |
|--|-------------|
| (i) Government loan  | 0.20        |
| (ii) Further TIO loan  | 0.30        |
| (iii) Increased overdraft facility   | 0.10        |
| (iv) Moratorium of loan and lease repayments to ANZ Banking Group and Esanda Finance | <u>0.28</u> |
|  | <u>0.88</u> |

In January 1990 DJFM was again suffering liquidity problems and approached the Government for further funding of \$1.5 million. Reasons given for its problems were that a delay in the commencement of the State Square Project had occurred (it was to have been completed by December 1989) and certain other potential contracts had not been obtained.

<sup>1</sup> Computer Aided Design/Computer Aided Manufacture



A review of DJFM's financial projections was undertaken by DID and a decision was ultimately taken to not simply make a further loan of \$1.5 million to DJFM but rather to set up a loans and equity package.

In essence, the package which was put in place was to purchase the assets and business of DJFM and to take over the Government related loans via a shelf company which was 100% owned by the Government. On 15 March 1990 the assets of DJFM were purchased for \$2.0 million by the Government via Dalloway Pty Ltd ('Dalloway'), later to change its name to Dalway Pty Ltd ('Dalway'). In addition, a working capital loan of \$1.5 million was provided to Dalway to meet its operating requirements.

The package did not address the fundamental issue arising from the previous review of DJFM, being that it was almost entirely debt financed (which resulted in high interest costs being expensed in the profit and loss statement, and prevented the company from repaying borrowings). The main advantage of the purchase arrangement appeared to be that the liabilities of the company were effectively capped.

A Board of Directors was appointed by the Government on 15 March 1990 and the company continued operations under the Board's stewardship until the shares in Dalway were sold on 25 May 1992.

The financial results of the business continued to be poor after the acquisition by Dalway of the assets of DJFM, with an apparent net loss of \$0.286 million for the three and a half months ended 30 June 1990.

Upon receipt of the 1991 financial statements and after advice from the Board, the Minister for Industries & Development, the Hon. Steve Hatton, assessed that the company would not be able to meet its financial commitments beyond 30 June 1992 without a further injection of Government funds. As a result the Minister recommended to Cabinet that the business be sold.

In November 1991 consultants were appointed to sell the business. On 25 May 1992 the company was sold on a walk-in walk-out basis for \$1.75 million to a consortium of businessmen including Mr John Pastrokos.



## CHAPTER 3 - TERMS OF REFERENCE

The Chief Minister, the Hon. Marshall Perron, following extensive debate concerning the Government's involvement in Dalway, referred the following Terms of Reference to the Public Accounts Committee on 30 June 1992:

*To inquire into and report on:*

1. *The trading operations of Dalway Pty Ltd and specifically*
  - (a) *the reasons for its continuing losses during the period of Government ownership;*
  - (b) *the write down of the value of the assets from the time of purchase to the time of sale.*
2. *Whether the sale of Dalway Pty Ltd was conducted in an appropriate manner and in a manner which ensured the maximum amount of money was returned to the public account.*

It was the view of this Committee that to properly discharge its obligations under the Terms of Reference it was necessary for the Committee to look at the circumstances leading to the decision by the Government to purchase the assets of DJFM as those circumstances are critical to any reasoning as to why the diminution in the value of the assets of Dalway occurred from the time of purchase by the Government.







## CHAPTER 4 - BACKGROUND TO INQUIRY

### 4.1 INTRODUCTION TO THE INQUIRY

#### 4.1.1 Historical Development of Accountability

The Westminster system of Government divides the functions of Government into three discrete arms; the Legislature, the Executive and the Judiciary. From this division springs the doctrine of the separation of powers which is intended to ensure adequate accountability and control in the operation of Government bureaucracies and the exercise of Executive power.

The central notion of the doctrine is '... the separation of powers according to which the legislative, executive and judicial powers are each entrusted to separate persons or groups of persons who may not encroach on each other's authority.'<sup>2</sup>

An essential concept of the doctrine of the separation of powers is the principle of 'responsible government'. The separation of powers goes to the need to ensure that the power of government is constrained, whilst responsible government is more directly concerned with accountability.

The Westminster model rests on three fundamental conventions:

- (i) the Crown can only act on the advice of responsible Ministers;
- (ii) the Executive is collectively responsible to Parliament; and
- (iii) individual Ministers are individually responsible to Parliament for the administration of their portfolios.

Although there appears to have been some blurring of these conventions in the six original Australian States, especially those which are unicameral, the Commonwealth, has tended towards maintaining the distinction between roles and has put into place important means which ensure public scrutiny of executive action. These means are more generally referred to collectively as the 'new administrative law' and comprise the elements of:

- . *Administrative Decisions (Judicial Review) Act* - which appointed the Federal Court to review the legality of government actions.



The establishment of the Administrative Appeals Tribunal to review decisions on their merits.

The Freedom of Information Act to ensure reasonable access to information held by Government.

The *Ombudsman Act* which allows for independent inquiry into Government action.

In the Northern Territory only the latter of these provisions has a specific legislative base. This tends to emphasise the importance of the committee system.

#### 4.1.2 Ministerial Responsibility

Of prime concern is the changing role of the Minister, who, before the days of the 'information explosion' was held personally responsible through the Parliament for any and all actions which flowed from executive action or decisions under his control. It has however been realised of recent times that no longer is a Minister effectively involved in the minutiae of day to day decision making within his sphere of responsibility and that delegation of power is necessary to allow bureaucracy to function.

The ultimate responsibility of a Minister is to present a full and accurate account of all matters pertinent to his (her) portfolio to the Parliament through a reliance on the integrity, competence and efficiency of his (her) appointed delegates.

*In recent times the vitality of some of the traditional conceptions of ministerial responsibility have been called into question and there is little evidence that a minister's responsibility is now seen as requiring him (her) to bear the blame for all the faults and shortcomings of his (her) public service subordinates.<sup>3</sup>*

#### 4.1.3 Unicameralism

The absence of an upper house of review in the Northern Territory arguably means that there is no mechanism for the review of decisions of the Legislative Assembly and in particular of its Executive Members. Under such circumstances the Committee System can perform a not dissimilar function.

#### 4.1.4 Membership of Parliamentary Committees

The growth in the scale of Government activity and the increasing complexity of policy-making has led to a diminution of control and accountability. The traditional generalist skills of Members of Parliament have become inadequate for the exacting

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<sup>3</sup>

Royal Commission on Australian Government Administration, 1976.



tasks of specialist scrutiny and it can be argued that the activities of parliamentary committees provide a means for Members to become better informed and better able to review the decision-making process, thus making the Executive more accountable.

#### **4.1.5 Functions of Committees**

The Fitzgerald Inquiry drew attention to a range of functions by which committees could improve their ability to review legislative activity and public administration; Fitzgerald referred to them as the research arm and as an independent source of information to aid Parliamentary debate.<sup>4</sup> Those functions were as follows:

- a) Monitor the executive
- b) Shift the balance of power away from the executive and back to the Parliament
- c) Focus investigations
- d) Encourage wider public debate
- e) Conduct detailed investigations
- f) Provide access to expert advice
- g) Enable effective use of the skills of backbenchers
- h) Enhance the skills of backbenchers
- i) Provide a bi-partisan approach to Parliamentary scrutiny.

#### **4.1.6 Public Accounts Committee**

The proper discharge of the duties of the Public Accounts Committee of the Northern Territory should result in increased public accountability to the Legislative Assembly and the public of the Northern Territory.

In discharging its duties, the Committee can pursue the following objectives against which its own performance might be assessed:

- . to increase the efficiency and effectiveness with which government policy is implemented.

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<sup>4</sup> Commission of Inquiry into Possible Illegal Activity and Associated Police Misconduct, G.E. Fitzgerald, 1989, p. 124



to increase the public sector's awareness of the need to be efficient, effective and accountable for its operations; and

to increase the awareness and understanding of parliamentarians and members of the public of the financial and related operations of government.<sup>5</sup>

## 4.2 METHODOLOGY

### 4.2.1 Public Hearings

Difficulty was experienced initially by the Committee in determining whether any necessary hearings should be held in camera. The Committee resolved, in the light of the public interest and the apparent magnitude of the loss of taxpayer's money, to conduct its hearings in public except where, in the opinion of the Committee, sensitivity of information overrode the public interest or where particular witnesses requested confidentiality.

In the event, in camera evidence was taken on only three occasions.<sup>6</sup>

### 4.2.2 Resources

Given the limited resources of the Committee and the highly technical issues to be canvassed (financial and design and manufacturing packages new to the Northern Territory), the Committee decided, in accordance with accepted practice, to seek expert advice where necessary through the employment of relevant consultants. To this end, Coopers & Lybrand, Chartered Accountants, were engaged to assist the Committee.

The Committee also sought legal assistance and advice from Cridlands, Barristers & Solicitors, and Mr Colin McDonald, a Darwin Barrister, in the preparation of this report.

To the extent that those consultants notified the Committee of likely or perceived conflicts of interest, their retainers were accordingly restricted.

To assist in the initial analysis of evidence and the initial compilation of this report, the Committee approved the temporary employment of a 4th year Economics/Law student, Mr John Ingram.

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<sup>5</sup> Public Accounts Committee (NT), Annual Report, 1991.

<sup>6</sup> See p.17



It was also necessary for the Committee to seek an additional financial allocation to fund the inquiry since its total operational budget (excluding personnel costs) for 1992-93 is only \$66,000.

The Committee does not normally budget for consultant's fees. These appropriations are sought on a needs basis and will vary significantly from time to time.

#### 4.2.3 Advertising for Information

A media release by the Committee on 22 July 1992 announced this Inquiry and called for written submissions from interested persons.<sup>7</sup>

The advertisement was restricted to the NT News as it was felt that this Inquiry and the matters likely to be addressed were essentially Darwin issues.

Public response was disappointing, with only one written submission being made. However, in response to the advertisement<sup>8</sup> several oral communications were received by the Secretary and individual members of the Committee.

#### 4.2.4 Conduct of the Inquiry and Procedural Fairness

Advice was sought and received from the Department of Law and the Office of the Clerk of the Legislative Assembly of the Northern Territory on the issue of affording persons involved with the inquiry procedural fairness (natural justice).

The Department of Law advised that the Committee was:

*... not bound by the rules of natural justice ... The remedy for failing to accord natural justice to witnesses is political. It may bring the Committee into public disrepute or may lead to action by Parliament.<sup>9</sup>*

This view was supported by the Clerk of the Legislative Assembly, although he went on to say:

*I believe it to be practical and politic for a Committee to have regard to Natural Justice when dealing with witnesses.<sup>10</sup>*

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<sup>7</sup> Appendix 3.1

<sup>8</sup> Appendix 3.2

<sup>9</sup> Appendix 3.3

<sup>10</sup> Letter of advice to the Public Accounts Committee from the Clerk of the Legislative Assembly dated 18 August 1992



The requirements of procedural fairness, stated shortly, oblige a tribunal of fact to:

- (a) accord all persons involved or affected by the issues at hand a fair hearing; and
- (b) remain impartial (the rule against bias).

The obligation to accord a fair hearing requires that those concerned with the hearing be provided with an outline of the questions or issues to be considered and be given an opportunity to comment on the question or issues at the hearing:

*It is a fundamental rule of the common law doctrine of natural justice expressed in traditional terms that, generally speaking, when an order is to be made which will deprive a person of some right or interest or the legitimate expectation of a benefit, he is entitled to know the case sought to be made against him and to be given an opportunity of replying to it (citations omitted) ... The reference to 'right or interest' in this formulation must be understood as relating to personal liberty, status, preservation of livelihood and reputation, as well as to proprietary rights and interests: Kioa v Minister for Immigration and Ethnic Affairs (1985) 62 ALR 321, 345 per Mason J.)*

#### **4.2.5 Is the Committee bound by Procedural Fairness?**

The Committee, as a Standing Committee of the Assembly, is charged to inquire into certain matters and report its findings and conclusions to the Legislative Assembly.

The Committee is, in essence, a fact finding committee. It is not empowered to enforce its findings and accordingly its reports do not alter existing rights. Even if findings are made which may result in an appropriate body initiating its own inquiries, it is not the report of this Committee per se which creates or alters legal rights, but the subsequent actions of others. Accordingly, it is the view of the Committee that is not necessarily obliged to accord procedural fairness at its hearings.

However, the Committee is aware that, notwithstanding its actions do not alter legal rights, its activities or reports may expose persons to the risk of having certain aspects of their private and/or commercial dealings uncovered and to the risk of having unsubstantiated allegations made against them. Hence it was necessary from time to time to either suppress the publication of certain evidence or to close the hearing to the public as was the case in the evidence given by the Police Commissioner.

The Committee is also mindful that the very requirement to appear before it may cause distress and result in injured reputations.

Accordingly, Guidelines were drafted and passed by the Legislative Assembly on 20 August 1992 to safeguard, as far as was practical, the interests of those appearing before committees of the Legislative Assembly, including the Public Accounts



Committee. Copies of these Guidelines were made available beforehand to those appearing before this Committee.

Of particular note is paragraph (3) of the Guidelines which provides that:

*A witness shall be given reasonable notice of a meeting at which the witness is to appear, and shall be supplied with a copy of the Committee's terms of reference, a statement of the matters expected to be dealt with during the witness' appearance, and a copy of these [Guidelines]. Where appropriate, a witness may be supplied with a transcript of relevant evidence already taken;*

Paragraph (15) of the Guidelines further provides that:

*Where evidence is given which reflects adversely on a person ..., the Committee shall provide reasonable opportunity for that person to have access to that evidence and to respond to that evidence by written submission and appearance before the Committee.*

The Committee, whilst recognising that it is not required to accord procedural fairness, considers that the Guidelines adequately balance the need to protect the rights of those appearing before it and its duty to discharge its obligations to the Assembly in the most effective and expeditious manner. To the extent that the Committee did not conduct itself as though it were a court of law it has accordingly tempered its views in this report, and refrained from inappropriate speculation.

#### **4.2.6 Privilege**

All evidence and documents presented to this Committee at its hearings and this report attracts, and are thereby protected by, parliamentary privilege.

The evidence given by witnesses to the Public Accounts Committee is of the same status as speeches made by Members of the Assembly within the precincts of the Assembly and cannot be tendered or admitted into evidence before a Court or Tribunal for any purpose.

#### **4.2.7 The Hearing**

##### **a) Witnesses**

Due to the lack of response to advertising, the Committee examined the company records of DJFM, Dalway, Departmental files and employed local general knowledge to determine an initial list of witnesses. As the hearings progressed, this list was expanded in the light of evidence adduced.



Witnesses were required to attend hearings personally, however, having regard to cost, a number of witnesses were interviewed by conference phone and their evidence recorded and transcribed.

b) Scope of Inquiry

The Committee focussed its investigation on the events beginning with the initial TIO loan to DJFM, through to the sale by the Government of its shares in Dalway and its aftermath.

In so doing the Committee was obliged to examine both relevant and irrelevant material and to call witnesses whose evidence added nothing to what was already known. This included questioning a number of Ministers when it was thought that they may be in a position to assist the Committee in its deliberations.

c) Right to Legal Representation

The Committee permitted witnesses legal representation at the hearings in an advisory capacity to witnesses but such representatives were not permitted to play an active part in the questioning process.

d) Standard of Proof

To properly discharge its functions, it is appropriate for the Committee to inquire and report whether there had been any corruption, illegal conduct, improper conduct or incompetence on the part of any party in respect of the matters addressed. The Committee could also report whether any matters should be referred to an appropriate authority with a view to the institution of proceedings. It follows that because of the potential for the Committee to make findings which might bring about litigation or cause damage to reputations, it was important that an appropriate standard of proof be applied in reaching those findings. The standard of proof applied by this Committee was as in a civil action, being proof on a balance of probability, mindful however of the gravity of the allegation being considered.

e) Hearsay Evidence

The Committee was required to conduct as thorough an investigation as it could into the various matters referred to it. It was not adversarial in the sense that there were no opposing parties to the Inquiry. This created problems, particularly when dealing with hearsay evidence. The Committee could not, and did not, conduct itself as if it were a court of law. In some hearings hearsay evidence was permitted, not as evidence going to establish the truth of what was being asserted, but to enable further investigation to be



undertaken. This was particularly so in expanding the list of witnesses summoned as the dearth of submissions was an initial handicap to the inquiry.

f) In Camera Hearings

Problems of confidentiality and the reluctance of people to provide voluntary statements prompted the Committee to use in camera hearings in three instances. These involved the police evidence which, if given in public, might have compromised an on-going investigation, and at their request the evidence of Mr Mannion and part of the evidence of Mr Caldwell.

Upon completion of such hearings, the evidence adduced was examined by the Committee to determine whether it was of sufficient materiality to be used in further hearings. Aspects of Mr Mannion's evidence were later used in this fashion.

g) Passage of Time Since Events

It follows inevitably that, with the passage of time, recollections of events fade. Furthermore, a matter which now appears to be material may not have seemed important to a participant at the time who consequently may not have seen any reason to specifically note it or remember it. Some events happened up to five years ago and human memories of events that long ago tend to be unreliable, particularly in relation to details, dates, time sequences and the like. The Committee, however, did express some concern during the hearings at the number of times witnesses resorted to 'I don't remember' or 'I cannot recall'. It was not always possible to distinguish between a genuine instance of forgetting and one of intentional dissemblance.

h) Relevance of Evidence

An inquiry is, by its nature, different to an investigation of facts by a court of law in civil or criminal proceedings where relevance is determined by the issues defined by the parties.

An inquiry could be described as a 'fishing expedition', digging and probing to find a clue or a lead to assist it. Thus, if any concept of relevance is applicable to this Inquiry, it is a different concept from that which is applicable in an ordinary civil action.







## CHAPTER 5 - CHRONOLOGY OF EVENTS

In order to gain an overview of the sequence of events which led to the purchase, operation and subsequent sale of Dalway, it is useful to tabulate the course of the more significant events based on the evidence available to the Committee commencing with the initial decision by the Pastrokos family to expand what in 1987 was a small family joinery business.

| DATE         | EVENT   |
|--------------|---|
| October 1987 | Darwin Joinery (precursor to DJFM) unsuccessful in tendering for work for Commonwealth Government. Reasons: The factory was seen to be too small to cope with the work. This led to the decision to seek funds in order to undertake expansion. |
| 17 Oct 1987  | Letter from Mr John Pastrokos ('Pastrokos') to Territory Insurance Office ('TIO') with regard to possible equity partnership.   |
| 30 Nov 1987  | Request from TIO for proposed business plan.  |
| 24 Dec 1987  | Second request from TIO for business plan.  |
| 8 Jan 1987   | Submission from Pastrokos to Minister for Industry & Development, the Hon. Marshall Perron, requesting assistance with expansion.   |
| 11 Jan 1988  | Visit to Darwin Joinery by Ms Christine Flaherty, DID.  |
| 13 Jan 1988  | Acknowledgment of receipt of submission from the Office of the Minister for Industries & Development.   |
| 2 Feb 1988   | Submission for assistance from Pastrokos to Mr Col Fuller, Secretary, DID.  |
| 4 Feb 1988   | Reply to letter 8/1/88 received by Pastrokos from Minister for Industries & Development.  |
| 22 Feb 1988  | Pastrokos received third letter from TIO re business plan.  |
| 25 Feb 1988  | Letter from Secretary, DID, that a recommendation would be made to Government that the proposal was worthy of support.  |
| 3 Mar 1988   | Meeting between Pastrokos and TIO re equity partnership.<br><br>Business plan presented to TIO.   |



| DATE         | EVENT   |
|--------------|---|
| 22 Mar 1988  | Financial analysis of DJFM forwarded to TIO from Ernst & Whinney.   |
| 29 Mar 1988  | Request to Pastrikos from TIO for further information.  |
| 6 Apr 1988   | TIO requested further information from Pastrikos.   |
| 15 Apr 1988  | DID produced assessment of DJFM's application for financial assistance.   |
| 20 Apr 1988  | Grant by DID of \$3 750 to Jaguar Joinery Pty Ltd ('Jaguar Joinery') for production of Advertising material.  |
| 26 Apr 1988  | Meeting between TIO, DJFM and Ernst & Whinney to further discuss the proposal for a new factory.  |
| 9 May 1988   | McGregor Marketing Pty Ltd: Darwin Joinery Research Report for Ernst & Whinney on behalf of TIO ('McGregor Report').                                  |
| 16 May 1988  | TIO rejects DJFM plans based on marketing report.   |
| 17 May 1988  | Letter from DJFM to TIO justifying sales projections contradicted by McGregor Report.   |
|              | Request from TIO to DJFM to conduct new market survey based on criteria supplied by TIO.  |
| 1 June 1988  | Letter to TIO from DJFM detailing alternative funding proposals.  |
| 2 June 1988  | Response by TIO to proposals.   |
|              | Touche Ross commissioned by Pastrikos to conduct market survey for timber based furniture production.   |
| 15 June 1988 | DJFM informed DID that TIO accepted commissioning of Touche Ross.   |
| 16 June 1988 | Memo from Chief Minister, the Hon. Marshall Perron, to Treasurer, the Hon. Barry Coulter, supporting DJFM project.                                    |
|              | Memo from Chairman of TIO, Mr Phil Temple to Treasurer, the Hon. Barry Coulter re TIO investments of \$2.5M by way of fully secured convertible loan. |
| 30 June 1988 | Letter from Touche Ross to TIO re market survey.  |



| DATE            | EVENT  |
|-----------------|--|
| 1 July 1988     | TIO Board Meeting: agreed to proceed with investment of \$2.5M in Darwin Joinery Manufacturing Unit Trust subject to suitable Heads of Agreement being drawn up.   |
| 13 July 1988    | Letter to TIO from Pannell Kerr Forster re appropriateness of the proposed operating structure of DJFM.  |
| 14 July 1988    | Letter to DJFM from DID re encouragement for further assistance.   |
| 16 July 1988    | Letter from DJFM to Chief Minister, the Hon. Marshall Perron, re confidence in project despite Hungerford collapse.  |
| 28/29 July 1988 | TIO Board Meeting confirmed decision to support DJFM expansion. N.B: The then TIO Deputy General Manager, Mr Michael Nyunt, voiced concern at this support.  |
| 3 Aug 1988      | Letter from DJFM to Chief Minister, the Hon. Marshall Perron, re TIO difficulties.   |
| 4 Aug 1988      | TIO rescind 1st July decision to proceed with investment in Darwin Joinery Manufacturing Unit Trust and revert to June resolution to invest \$2.5M by way of convertible notes.  |
| 8 Aug 1988      | Letter from TIO to Chief Minister and Treasurer, the Hon. Marshall Perron, seeking approval for investment of \$2.5M in DJFM. Secured by first mortgage over land on corner Hook and Coonawarra Roads, Winnellie.  |
| 19 Aug 1988     | Letter from TIO to DJFM setting out terms and conditions for mortgage loan of \$240,000 to be used to repay ANZ (loan for original property) and \$70,000 to acquire additional land from Government. N.B: This is to be deducted from loan of \$2.5M approved by Treasurer. |
| November 1988   | Construction begins on new factory.  |
| 8 Nov 1988      | Loan agreement between TIO and DJFM for \$2.5M signed.   |
| 6 Dec 1988      | Breakfast launch for factory construction.   |



| DATE         | EVENT  |
|--------------|--|
| 23 May 1989  | DJFM commenced operations in new factory with state of the art computer integrated manufacturing system.   |
|              | DJFM almost totally debt-funded:   |
|              | TIO \$2.5M   |
|              | ANZ \$1.5M   |
|              | DID \$0.36M - Interest Subsidy   |
|              | ESANDA \$1.2M  |
|              | Stock and equipment transferred from Pastrokos family business to DJFM - \$0.8M.   |
| 23 May 1989  | Darwin Land Service valuation completed.   |
| 28 June 1989 | DID assistance, including interest on the interest subsidy from DID, calculated at \$405,000   |
| 30 July 1989 | DID Interest Subsidy drawn down and deposited with ANZ Bank.   |
| August 1989  | DJFM face serious liquidity problems.  |
| 31 Aug 1989  | Period May to August 1989 operating loss of \$1.2M includes:-  |
|              | \$400,000 cost overrun on construction   |
|              | \$73,000 relocation/establishment costs  |
|              | \$102,000 difficulties in commissioning computer equipment   |
|              | \$122,000 additional material costs/production inefficiencies.   |
|              | \$472,000 payments to subcontractors to complete work in progress on hand  |
| 22 Sept 1989 | First meeting of Steering Committee of DJFM as result of concerns expressed by ANZ. As a result Touche Ross were requested to conduct an investigation into DJFM and report on its financial position. |
| 25 Sept 1989 | Report on Computer Integrated Manufacturing ('CIM') requested by DID. Consists of two reports:   |
|              | 1) Computer Aided Design/Computer Aided Manufacturing facility   |
|              | 2) MRPII System  |
| 25 Sept 1989 | Letter from DID to Touche Ross outlining issues of interest to DID which were required to be addressed in first report.  |



| DATE            | EVENT  |
|-----------------|--|
| 28 Sept 1989    | First Touche Ross Report, commissioned by Pastrokos, presented to DID. Forecast need for an additional \$700,000 for working capital.  |
| 28/29 Sept 1989 | TIO Board Meeting at which concern re future viability of DJFM was expressed.  |
| 29 Sept 1989    | DID negotiated assistance package of \$0.88M <ul style="list-style-type: none"> <li>\$200,000 Government loan</li> <li>\$300,000 TIO</li> <li>\$280,000 Moratorium on lease and loan payments</li> <li>\$100,000 increase in overdraft facility.</li> </ul>  |
| Oct 1989        | South Australian Centre for Manufacturing presented a report on the MRPII system which consisted of an 'Empire' Accounting package.  |
| 16 Oct 1989     | F.J. Mullin & Associates Report presented on CAD/CAM system.   |
| 12 Dec 1989     | DJFM again suffering liquidity problems - Government loan drawn down.  |
| 15 Dec 1989     | Advice from Capel Court to DID re ways of enhancing financial structure of DJFM to provide an opportunity for further equity and debt raising.   |
| 19 Dec 1990     | Capel Court report to DID stating that sales projections from First Touche Ross Report would lead to requirement for an increase in working capital.   |
| 19/20 Jan 1990  | <p>'Second Touche Ross Report' sent by Pastrokos to TIO and Chief Minister, the Hon. Marshall Perron, with the object of seeking a further \$1.5M to meet creditor payments and provide for projected working capital requirements.</p> <p>Payment of creditors, partial discharge of ANZ and Esanda loans and the provision of working capital brought total required to \$3.5M.</p> <p>Pastrokos family to be personally liable for remaining debt due to ANZ &amp; Esanda.</p> <p>Fradkin Report received by TIO.</p> |



| DATE        | EVENT  |
|-------------|--|
| 24 Jan 1990 | DID prepared briefing paper in relation to DJFM and sent it under cover of a memorandum dated 24 Jan 1990 to the Hon. Barry Coulter, Minister for Industries & Development for noting and to be passed to the Chief Minister, the Hon. Marshall Perron.  |
| 29 Jan 1990 | Further memorandum prepared by DID for the Hon. Barry Coulter, Minister for Industries & Development. Mr Coulter prepared memorandum to Chief Minister, the Hon. Marshall Perron.  |
| 30 Jan 1990 | Cabinet approved \$2M loan to remove all commercial financiers other than TIO - Cabinet Decision ('CD') 6338. Thereafter officials of DID continue to analyse information available including 'Second Touche Ross Report'. Legal advice was also sought from Mr Geoff James of Mildrens regarding the proposed arrangements. |
| 1 Feb 1990  | ANZ & ESANDA agree to accept 33c and 66c respectively in the dollar to discharge existing securities.  |
| 2 Feb 1990  | Meeting between Pastrokos and Chief Minister, the Hon. Marshall Perron - arrangements and conditions given to Pastrokos of proposed purchase by the Northern Territory Government.   |
| 7 Feb 1990  | Letter from Mildrens to Directors of Dalloway Pty Ltd (shelf company later renamed Dalway Pty Ltd) re proposed rescue package.   |
| 9 Feb 1990  | Memorandum and brief from Secretary of DID, Mr Otto Alder, to Minister for Industries & Development, the Hon. Barry Coulter outlining current position with DJFM and reasons for \$3.5M funding requirements.  |
| 9 Feb 1990  | Memorandum and brief from Secretary of DID, Mr Otto Alder to Minister for Industries & Development, the Hon. Barry Coulter, documenting reasons for increased funding requirement.<br><br>Brief forwarded to Chief Minister, the Hon. Marshall Perron, from Minister for Industries & Development, the Hon. Barry Coulter.   |
| 14 Feb 1990 | TIO refuses to provide performance guarantees.   |



| DATE             | EVENT  |
|------------------|--|
| 14 Feb 1990      | Memo from Acting Secretary, DID, Mr S R Cavanagh to Minister for Industries & Development, the Hon. Barry Coulter, providing additional information in relation to \$3.5M funding requirements and also stating that a reasonable proportion of State Square Joinery work could still stay in Territory if DJFM were to stop trading.  |
| 16 Feb 1990      | Cabinet approved revised rescue package of \$3.5M by rescinding CD 6338 and substituting CD 6359.  |
| 22 Feb 1990      | Letter from Mr Otto Alder, Secretary of DID to Chairman of TIO, Mr Phil Temple, stating the marginality of the business despite the rescue package.  |
| 23 Feb 1990      | TIO resolved to extricate itself from DJFM.<br><br>Meeting between Chief Minister, the Hon. Marshall Perron, Deputy Chief Minister, the Hon. Barry Coulter, General Manager/TIO, Mr Phil Temple, and Secretary of the Chief Minister's Department, Mr Alan Morris re TIO's decision to withdraw.<br><br>TIO Board contacted by phone by General Manager/Chairman - resolved 3-1 to continue involvement. |
| 15 March 1990    | Government acquired assets of DJFM using Dalloway, name subsequently changed to Dalway Pty Ltd.<br><br>Balance of interest subsidy (\$113,408.95) appropriated by ANZ as part of settlement.<br><br>Dalway assumed liability for pre-existing TIO loans totalling \$2,887,992.50. The total debts of Dalway now stands at \$6,706,497.34.  |
| 21 March 1990    | First Dalway Board meeting.  |
| 22 March 1990    | Minister for Industries & Development, the Hon. Barry Coulter, signs \$3.5M loan agreement.  |
| 29 March 1990    | Extraordinary General Meeting of members resolved that DJFM be wound up. Total cost to Government of recompensing unsecured creditors \$909,095 instead of initially suggested figure of \$500,000.  |
| 29-30 March 1990 | TIO Board meeting rescinds previous decision of 23/2/90 and replaces with an agreement to transfer its loan.   |



| DATE          | EVENT   |
|---------------|---|
| 13 April 1990 | Letter from Pastrikos to Mr P Caldwell, Assistant Secretary, Industry & Economic Policy, DID, re visit to Mr Ian Kneale's factory situated on the Gold Coast.       |
| 18 April 1990 | Mr Caldwell sends copy of abovementioned letter to Mr J Bell and Mr S Margetic but not to Mr I Kneale or Mr B Fradkin (Directors of Dalway).                        |
| 27 Apr 1990   | Mr Dennis Edwards' employment terminated.   |
| 15 May 1990   | Mr Kneale resigns as Director of Dalway.  |
| 16 May 1990   | Mr Edwards initiates legal proceedings for unfair dismissal.  |
| 24 May 1990   | Letter from Pastrikos to DID re repurchase agreement.   |
| 30 May 1990   | Letter to Pastrikos from DID re Comfort Letter  |
| 30 June 1990  | Operating loss financial year 15/3/90 to 30/6/90 stands at \$285,904.   |
| October 1990  | First draft of option agreement sent to DID by Pastrikos.   |
| November 1990 | Mr Tony Pastrikos dismissed as company accountant.  |
| 2 Jan 1991    | Mr John Yeudall commenced as new General Manager of Dalway.   |
| 1 Feb 1991    | Mr Tony Cahill commences as new accountant Dalway there having been no accountant for some 10 weeks.  |
| 4 Feb 1991    | Letter to DID from Pastrikos re option agreement sent in October 1990.  |
| 24 Apr 1991   | Confidential letter from Pastrikos to Mr Graham Lucas, Ministerial Adviser to the Hon. Steve Hatton, Minister for Industries & Development, re survival of company. |
| 30 June 1991  | Operating loss of Dalway from 1/7/90 to 30/6/91 stands at \$1,294,548.  |
| 16 July 1991  | Letter from Mildrens to Pastrikos re option agreement.  |
| 30 July 1991  | Dalway Board Meeting sacks several middle managers.   |
| 31 July 1991  | Mr Yeudall sacked as General Manager.   |
| 8 Aug 1991    | Letter of awareness provided by DID to TIO re state of the company.   |



| DATE           | EVENT  |
|----------------|--|
| 19 Aug 1991    | Letter from Pastrokos to Mildrens rejecting their draft of the option agreement.   |
| 28/29 Aug 1991 | TIO Board Meeting makes proposal to Government re future strategies concerning Dalway.   |
| 9 Sept 1991    | Mildrens on instructions from DID requests Pastrokos to resign as Director.  |
| 10 Sept 1991   | Cabinet decided Dalway to be sold and approved appointment of independent consultants in this regard.                                      |
| 11 Sept 1991   | Letter to Mildrens from Pastrokos regarding continuation as Director.  |
| 11 Sept 1991   | Media release re sale of Dalway.   |
| 13 Sept 1991   | Letter of comfort from DID to Dalway Directors re TIO loan.  |
| 14 Sept 1991   | Advertisement placed for consultants re sale of Dalway.  |
| 17 Sept 1991   | Caveat lodged over Dalway land on corner of Hook and Coonawarra Roads by Nictarios (sic) Pastrokos.  |
| 20 Sept 1991   | Preliminary proposal from Pastrokos to buy back at a commitment of \$4.5M over 10 year period - interest-free .                            |
| 24 Sept 1991   | Pastrokos removed from the Board of Dalway.  |
| 25 Sept 1991   | Pastrokos receives reply from Minister of Industries & Development rejecting buy-back proposal.  |
| 20 Nov 1991    | Joint consultancy of Desliens Business Consultants and ANZ Capel Court appointed to effect sale of Dalway.                                 |
| 30 Nov 1991    | DID received valuation of Dalway from Australian Valuation Office advising that land, plant & equipment and buildings were worth \$2.365M. |
| 10 Dec 1991    | Deed of Indemnity granted to each Director.  |
| 17 Dec 1991    | Minister for Industries & Development, the Hon. Steve Hatton, reconsiders liquidating Dalway - Directors refuse to sign accounts.          |
|                | Consultants instructed to sell company as a going concern.   |



| DATE           | EVENT  |
|----------------|--|
| 18 Dec 1991    | Mr Nectrarios (sic) Pastrokos issues Supreme Court proceedings against the Northern Territory of Australia and Dalway seeking, inter alia, an interim injunction to restrain the sale of Dalway's assets and an extension of the caveat previously lodged. |
| 19 Dec 1991    | Supreme Court Order inter alia extending operation of caveat until further Order.  |
| 19 Dec 1991    | Further letter of comfort from DID to Directors re future commitments.   |
| 25 Feb 1992    | Information memorandum published and sale of Dalway advertised internationally, nationally and locally.  |
| April 1992     | Fifteen expressions of interest received and negotiations ensued.  |
| 21 April 1992  | Pastrokos submits buy-back proposal.   |
| 14 May 1992    | Summons issued by Dalway in Supreme Court seeking orders that the original writ issued by Mr Nectrarios Pastrokos did not disclose a cause of action against Dalway and that the caveat be discharged.   |
| 15 May 1992    | Two firm written offers to purchase the shares in Dalway received from parties associated with Pastrokos ('the Pastrokos Consortium') on the one hand and Mr Jeff Blake on the other.  |
| 15-20 May 1992 | Negotiations between consultants and both interested parties.  |
| 22 May 1992    | Consultants recommend that Dalway be sold to Pastrokos Consortium for \$1.75M on walk-in walk-out basis.<br><br>Approved by Cabinet - Pastrokos Consortium advised of decision.  |
| 23-24 May 1992 | Contract negotiations completed.   |
| 25 May 1992    | Dalway sold to Pastrokos Consortium - contract of sale executed and sale announced. Mr Blake advised.<br><br>Supreme Court proceedings discontinued.   |
| 29 May 1992    | Settlement effected - TIO paid \$2.8M and agreed to forgo interest on outstanding loans.   |



| DATE        | EVENT   |
|-------------|---|
| 1 July 1992 | Accrued interest to 30/6/92 was to be brought to account and full capitalised debt would have become due. |
| 12 Aug 1992 | Statement by Australian Securities Commission that there was no breach of Corporations Law.               |







## **CHAPTER 6 - PURCHASE**

### **6.1 ECONOMIC BACKGROUND**

It is recognised that the Northern Territory economy lacks a sound manufacturing base and that this limits growth of our economy. Whilst service industries have developed on a small scale as the population of the Territory has grown, the economy is historically based upon the grazing, mining and public sector with tourism playing an increasingly important role. Attempts have been made to diversify activity, e.g. the Trade Development Zone, but such ventures have had limited success.

The Government at the relevant time was also faced with a situation where cattle herd numbers had been significantly reduced by the BTEC program and traditional beef markets for Territory cattle had imposed quotas on imports thus reducing industry income. At the same time, there was a general economic downturn in the Northern Territory.

Growth in the Public Sector had slowed as a result of stabilisation of Government employment after some ten years of self-government and the Commonwealth Government had reduced its redistribution of tax revenue to the States and Territories.

It was against this background the Government pursued policies to support the establishment of industry in the Northern Territory as a means of creating lasting employment opportunities, especially for young Territorians, and to stem the outflow of population to the south.

During the same period there was a national reduction in investment which lead to a downturn in private construction which flowed through to what was said to be the 40 joineries then operating in the NT. The only bright spots on the horizon for the local construction industry were the State Square and the Waler Barracks projects.

### **6.2 INTRODUCTION**

An approach was made to the Government by Mr Pastrokos early in 1988 for financial support in relation to the planned expansion of his operations in Darwin. It was recommended that he seek investment from the TIO as an equity partner. What occurred as a result of the subsequent approach to TIO is dealt with in detail at 6.3.

Although Mr Pastrokos had been referred to the TIO, it was decided that DID could offer a subsidy on the interest payable on funds borrowed. This was approved by the Minister, the Hon. Marshall Perron, on a recommendation made by Mr C J Fuller, the then Secretary of DID. The initial subsidy of \$360,000 on the loan from TIO ultimately, however, amounted to \$405,000 including interest which accrued between the grant and eventual drawdown.



The grant by DID was made on the basis of the TIO's involvement as prime lender and was apparently regarded as an opportunity to create lasting employment and training for Territorians. It does not appear however that DID made an independent assessment of the venture in any real way, but relied upon the information supplied by Mr Pastrokos and the TIO.

A series of events then occurred which are dealt with in other parts of this report culminating in Mr John Pastrokos writing to the Chief Minister, the Hon. Marshall Perron, MLA, on 20th January 1990.<sup>11</sup>

Enclosed with that letter was a report on the financial position of DJFM, its achievements and future prospects. During the course of the public hearings this became known as the 'Second Touche Ross Report' because of the involvement of Touche Ross in its preparation.

The letter stated in part:

*You will note from this Report that unless immediate cash funding is made available to the extent of \$1.5 million, this business is unable to carry on.*

The letter sought support and assistance in obtaining an injection of funds and suggested three alternative sources:

- . Deferred interest payment loan for an amount of \$1.5M until an equity investor was found.
- . Other appropriate forms of assistance for the same amount until an equity investor was found.
- . Equity investment by TIO of \$1.5 million.

A copy of the report was also sent to TIO, and directly to the Secretary, DID.

Mr Perron forwarded the report to DID via the Hon. Barry Coulter (then Minister for Industries and Development) requesting a briefing paper on the application to enable him to speak to the then Chairman of TIO, Mr P F Temple.



## 6.3 TERRITORY INSURANCE OFFICE ROLE

### 6.3.1 The Territory Insurance Office

The role of the Territory Insurance Office looms large in this Inquiry. Before analysing the role of the TIO, it is helpful to understand its status, functions and powers.

The TIO was established as a body corporate in 1979 by Section 4 of the *Territory Insurance Office Act* (No. 59 of 1979) ('the Act').

The functions of the TIO are set out in Section 5 of the Act. They are:

- (a) to act as the insurer in respect of the assets and prospective liabilities of the Territory and statutory corporations;
- (b) to transact workers compensation insurance in respect of persons required by the *Workers' Compensation Act*, or any Act replacing that Act, to insure;
- (c) to administer any motor accident compensation scheme established by or under an Act;
- (d) to carry out such functions in relation to the management and control of moneys and other assets of the Territory and statutory corporations, and on such terms and conditions, as the Minister in writing directs;
- (da) to provide such financial services as are approved by the Minister;
- (e) to transact such general business of insurance as the Minister directs;
- (f) to promote and participate in the promotion of road and industrial safety; and
- (g) such other functions as are, from time to time, imposed upon it by or under any other Act.

It is apparent from a review of the statutory functions of the TIO Act, the TIO is subject to Ministerial direction from the Minister responsible for TIO matters.

The powers of the TIO are conferred by Section 6 of the Act (which include the power for the purpose of carrying out its functions to 'accept deposits, make loans and investments ...' and 'to invest its money in any investment available to the Public Trustee under the *Public Trustee Act* and in investments or investments of a class of investments approved by the Minister': sub-section 6(2)(ma) and (n) of the Act).



The Act stipulates that the affairs of the TIO are to be conducted by the Board of the TIO (Section 9). The Board of the TIO consists of five members all appointed by the responsible Minister (Section 10(1) of the Act). The accountability of the TIO to the Minister is clearly set out in the Act. By Section 7 of the Act, the TIO in the performance of its functions and the exercising of its powers, is subject to the written directions of the Minister. Thus, the Act expressly empowers the Minister to direct the TIO in the performance of its functions or the exercise of its powers, and contemplates such directions being part of life for the TIO.

The Act, as currently in force, provides that the TIO is very much subject to the overriding direction of the responsible Minister.

In carrying out its functions the TIO was subject to a Ministerial direction, which appears to be still current, namely, that in providing a financial service the TIO is to follow sound commercial and business principles and adopt sound commercial and business practices.<sup>12</sup>

### 6.3.2 Introduction

Darwin Joinery was a well established, successful jobbing joinery which was, in 1986, the largest such venture in town. It boasted a staff of thirty five and was training eight apprentices. From 1986 to 1988 the company grew in size and employed an increasing number of people which was approximately 70 in 1988-1989. The company was owned and run by the Pastrokos Family, who were well-known in the local building industry, and had established a good reputation for quality carpentry joinery work.

In response to a failure to attain a contract with the Commonwealth Government, Mr Pastrokos identified the need for larger premises in order that company growth could ensue. Plans were developed by Mr Pastrokos and Mr T Williams to build a complex at Winnellie consisting of a workshop, employing 'state of the art' computer technology which could be programmed in all aspects of manufacture and control of furniture production, and a considerable amount of showroom and retail sales space.

Mr Pastrokos approached the TIO by letter of 17 November 1987 with a view to its involvement in the project on the basis of a 47% equity participation in the venture.

Discussion in respect of the proposal subsequently ensued on 19 November 1987 between Mr John Pastrokos, on behalf of DJFM, Mr Phil Temple and Mr Viv Hawke on behalf of the TIO, and Mr P Ranson from DID. The then General Manager of the TIO, Mr Hawke, wrote to Mr Pastrokos after this meeting on 30 November 1987 and said:

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See Hansard 22-24 September 1992, pp 1120-1121



*In order for TIO to consider your proposal, it will be necessary for you or your accountants to provide us with current financial data of your organisation plus a feasibility study of your proposals suitable for examination by equity participants.*

By letter dated 8 January 1988, Mr Pastrokos wrote to the then Minister for Industries & Development, Hon. Marshall Perron, giving the Minister an outline of the achievement, work and the bright future of the company. The letter sought assistance from the Government in respect of establishing a new industry of furniture manufacturing. In response, by letter dated 4 February 1988, Mr Perron wrote to Mr Pastrokos noting the company's achievements and proposals for the future. Mr Perron expressed himself to be 'impressed' with the information conveyed. He stated that despite budgetary constraints the Government 'is ever keen to assist worthwhile enterprises to the maximum extent possible'. Mr Perron referred Mr Pastrokos to officers of his Department for 'whatever Government assistance may be possible to your company'.

The approach to the TIO from Mr Pastrokos raised squarely the prospect and possibility of equity participation by the TIO. The TIO's response was to consider equity investment at its next Board meeting in the broader context of local investment policy.

### **6.3.3 Local Investment Policy**

A discussion paper dated 25-26 February 1988 was presented to and subsequently approved by the Board of TIO which set out the rationale for and the guidelines governing equity investment in local projects. It was recognised that such investment bore higher risks than simple lending situations and the paper put forward minimum requirements in order to afford the best protection of the shareholder's interests. The key factors were the achievement of a balance between a foreseeable need for liquidity, in the event of a cyclone, and profit considerations in an area where returns were less speedy than through simple loans. This was addressed by imposing conditions to ensure:

- . Maximum investment of \$1M in any particular equity venture, (special exceptions permissible)
- . Maximum interest of less than 51% of the total shares
- . Representation of TIO on the Board of the borrower
- . Return commensurate to risk
- . Gearing ratios in line with industry standards
- . Suitable and qualified management of the venture



- . Provision of an independent business plan and forward projections based on statistical data
- . Audited accounts
- . Financial results for the previous three years
- . Satisfactory supply of labour and other resources
- . The applicant companies must be genuine Northern Territory based and controlled organisations.

A special Board meeting of the TIO was held on 7 April 1988 which considered the local investment policy and made resolutions as summarised above and set out in full in Appendix 3.4.

It is the Committee's understanding that similar guidelines are used when the Board considers loaning money as opposed to injecting equity into a business. It is therefore surprising that TIO proceeded with the loan, given that so many of the conditions listed above were only partly, and in some instances not, complied with.

#### **6.3.4 Feasibility Studies**

In respect of the Pastrikos submission, on 7 March 1988, TIO instructed Ernst & Whinney to carry out the following brief:

- . analysis of the project
- . verification of the financial figures
- . tax implications
- . recommendations in regard to TIO's participation

In their response of 22 March 1988 the following comments were made by Ernst & Whinney:

- a) The accounting systems and information are unsophisticated and lack a formal costing system. (However, Ernst & Whinney were impressed by clear and concise manual records maintained and believed that Mr J Pastrikos maintained good control over the business and its financial affairs.)
- b) Profit projections prepared by Darwin Joinery suffered from a lack of detail to support future turnover and market penetration predictions. The projected gross profit margin was optimistic in the initial years, far exceeding the historically achieved percentages.



- c) Doubt was cast upon the valuation of plant and equipment and goodwill which was effectively all that Mr Pastrokos was bringing to the deal.
- d) Additionally, some doubt was cast upon the value of land and buildings and the projected statement of assets and liabilities as at the date of sale from Darwin Joinery to DJFM.

Amongst other recommendations, Ernst & Whinney advised that:

- The proposed capital expansion programs be limited initially in size and the planned building program be conducted over two or three stages.
- A satisfactory system of costing and financial control be installed as a matter of high priority.
- The TIO's investment be based on figures for net assets plus agreed goodwill established at an agreed date and such figures be subject to audit by a firm appointed by the TIO.

A contrary view to a) was later expressed by Mr Dewsbury of Touche Ross, the company which was commissioned to conduct an audit which was a condition to the later loan approval by TIO.<sup>13</sup>

These and other concerns, such as staged development, were communicated to Mr Pastrokos on 6 April 1988.

*If the project were staged, it would allow the company to earn a more attractive return in the early years without tying up capital unnecessarily. As demand grew, and the company's sales forecasts were confirmed, it would be possible for the shareholders to inject more funds for the factory to be extended at a later date.<sup>14</sup>*

In correspondence dated 19 April 1988, these concerns were refuted by Pastrokos' accountants, Mal Sciacca & Associates.

*Whilst the directors agree that a staged proposal would provide for increased rate of return in the first two years, they believe that the additional cost of increasing the size of the project at a later date, and the disruption caused, will be detrimental to the development of the overall concept.*

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<sup>13</sup> File note of 10 October 1988 by Mr Cook, Manager of Financial Services, TIO.

<sup>14</sup> Letter from TIO to Mr J Pastrokos dated 6/4/88



In the light of the conjecture surrounding the projected sales and gross profit margins, TIO commissioned a verification by way of market survey, to be conducted through Ernst & Whinney, known as the McGregor Report. This report into the wood based furniture market in the Northern Territory reached conclusions and estimates which were half those put forward by Mr Williams. On 16 May TIO rejected the proposal.<sup>15</sup>

It appears that TIO at no stage undertook any market or other research into the achievability or otherwise of the turnover and market penetration predictions prepared by Darwin Joinery in respect of the joinery market (as distinct from the wood based furniture market which is all that the McGregor Report attempted to analyse). This research was warranted. Had the TIO conducted such research, the joinery turnover projections as prepared by Mr Williams might well have been shown to have been optimistic.

In 1987, Darwin Joinery's joinery turnover was \$2.3M. The figures submitted by it, in support of its application for TIO involvement, projected an annual joinery turnover of \$3.985M, an increase of 73% over the 1987 result.

Given the prevailing commercial circumstances and the reasonably anticipated size of the Darwin market, the annual turnover growth of the magnitude assumed by the projections was suspect, particularly over a sustained period. The commercial climate and prevailing commercial circumstances should have been known to the TIO.

The Ernst & Whinney report of 22 March 1988 certainly highlighted doubts about future joinery turnover in general terms. It suggested that some overseas and interstate markets would need to be captured if the projected results were to be achieved.

It appears that at no stage did the TIO ever attempt to analyse whether export markets could realistically be captured (given Darwin's relatively high labour and transportation costs), how this could be achieved, in what time-frame and at what cost. All were crucial questions to the viability of Darwin Joinery's expansion plans.

Moreover, while TIO appears to have recognised at an early stage the fact that neither the Pastrokos family nor any of the Darwin Joinery employees had any real experience either in furniture making or large scale automated manufacturing, it failed to ask the obvious questions arising from that recognition, i.e. would they be able to acquire the necessary expertise, and at what cost? Given his relative inexperience, was Mr Pastrokos purchasing the correct plant and equipment for an enterprise of the type he was proposing? Evidence before the Committee suggests that the answer to both these questions, had they been asked, would have been 'no'.



### 6.3.5 Loan to DJFM

On 1 June 1988, Darwin Joinery Pty Ltd submitted a proposal to TIO requesting a loan of \$2.5M in lieu of the previously declined equity participation plan. This loan was intended to be co-dependent or conditional upon a loan from ANZ Banking Group of \$1.5M, giving the \$4M required to put the project on-stream. The security for the TIO loan was a fully-secured first mortgage on the land and buildings. The ANZ loan was to be secured by Pastrokos Family Trust property.

TIO's response of 2 June 1988 was encouraging but further market analysis of the sales projections was sought. At a meeting between Darwin Joinery and TIO on 6 June 1988 it was agreed that DJFM commission Touche Ross to conduct such survey.

It was at around this time that support for the project was expressed in a note sent by the Hon. Marshall Perron as Minister for Industries & Development to the Hon. Barry Coulter, Treasurer and Minister for TIO:

*With buildings like TIO/Courthouse/Parliament there's a great opportunity for us to employ dozens of people including (I think 40) apprentices.<sup>16</sup>*

Much of the information collected in support of the equity proposal was utilised in assessing the loan application. It was, according to the evidence of Mr Temple, a far less risky investment with a known rate of return and clearly defined the liability of the borrower.

*After further negotiation with Mr Pastrokos, a loan arrangement was entered into, with an option to convert to equity. That loan was for \$2.5M, interest rate of 12.5% ... The interest was to be capitalised after three years.<sup>17</sup>*

At 30th June 1992, when the interest was due to be capitalised, the combination of the loan and capitalised interest would have been in excess of \$4M.

The Ernst & Whinney report of 22 March 1988 cautioned the TIO about the level of capital injection and that it would not be possible to construct the proposed \$4M factory.

Mr Temple's assertion in evidence that Darwin Joinery's revised loan proposal was not a 'far less risky investment' is difficult to understand. On ordinary lending principles, it was crucial for TIO to satisfy itself that the value of its securities would be adequate to support a loan of over \$4M, and that DJFM's cashflow would be able to service a debt of that magnitude.

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<sup>16</sup> Note from Hon M B Perron to Hon B Coulter

<sup>17</sup> Transcript of Mr P Temple, pp. 2-3 of 4 November 1992



Although Mr Temple stated in evidence that the loan proposal was properly assessed, there is little or no evidence of such an assessment on TIO's files. On its face, a \$4M loan secured only by a mortgage over real property worth little more than that amount on a 'cost to build' basis, appears to be well outside normal commercial lending practice.

Moreover, with the exception of the furniture turnover projections (which gained some support from findings of the Touche Ross Adelaide report), virtually none of the numerous doubts and concerns raised by the earlier Ernst & Whinney and McGregor Marketing studies (which together had caused TIO's Board to reject the previous equity investment proposal only about six weeks before), had even been further addressed.

These concerns were just as relevant to a loan application as to the earlier equity proposal.

Yet at its meeting of 1 July 1988, the TIO Board approved a \$2.5M loan to DJFM, with interest to be capitalised at 30 June 1992 (i.e. with no loan repayments until that time).

Moreover, the Touche Ross Adelaide report was received by TIO only a few days before this decision, on 27 June. It is difficult to believe that TIO officers could have had adequate time to analyse its findings, although Mr Temple did state in evidence that many of the Touche Ross findings were conveyed to TIO orally before the formal report was received.

The Touche Ross Adelaide report found that DJFM could hope to achieve a maximum annual furniture sales figure of around \$1.3M. While this was considerably more optimistic than the earlier McGregor Marketing study, it was a long way short of some of the extravagant projections that were later used to justify the various DJFM 'rescue' packages (see later).

Moreover, the Touche Ross Adelaide report was commissioned and paid for by DJFM rather than TIO (although TIO had some input into its terms of reference), and it appears that much of the data collection was undertaken by DJFM's consultant, Mr Williams. These facts should have caused the TIO to treat the report at least with some caution, particularly when its findings conflicted so clearly with the earlier McGregor Marketing research which was independent of the proponent.

It should be noted that the evident deficiencies in TIO's evaluation of the DJFM loan proposal, together with the apparent haste with which the Board effectively reversed its earlier rejection (albeit of a revised proposal), caused some Committee Members to question the possibility of political intervention or persuasion.

Certainly handwritten notes by Mr Perron, on an internal DID memorandum, are suggestive (as Mr Perron himself agreed in evidence) that he (Mr Perron) intended to



have a meeting with Mr Temple shortly before the TIO Board meeting of 1 July 1988.<sup>18</sup>

However, both Mr Perron and Mr Temple deny having any record or recollection that such a meeting in fact took place. There is no reliable evidence to say that such a meeting took place. In any event, Mr Temple strongly denied in evidence that there was any political intervention in the Board's decision of 1 July 1988.

The Committee has no reason to believe that there was any substantive political intervention in TIO's July 1988 decision to approve the initial loan to DJFM. But for whatever reason, the TIO's assessment of DJFM's 1988 loan application was seriously flawed.

### 6.3.6 The Building Contract

The contract to build the DJFM factory complex was awarded to KP Builders Pty Ltd, another company owned and run by the Pastrokos family.

Although there is nothing wrong with this commercially, it appears to have been a most unsatisfactory arrangement given the particular circumstances. With an entirely debt-funded project (much of it Government subsidised debt), neither the owner nor the builder had any particular incentive to keep building costs under control.

This fact was pointed out to the TIO in a file note dated 8 November 1988 from the Property Manager, TIO, to the Manager, Financial Services, TIO.

*The contract appears to be an agreement between two companies who have the same ownership and therefore is fairly well worthless as any breach of contract is not likely to be challenged as the owner would in effect be suing himself.*

*Mr Palmer: In relation to safeguards on rise and fall or rise and rise cost over runs, you were satisfied that the necessary safeguards were there, as one would expect to be in place with the builder ...*

*Mr Temple: Well it was a fixed price contract, so any cost over runs were a cost to Mr Pastrokos.*<sup>19</sup>

Although this was true, the cost over-runs which resulted contributed to the need for the first Government rescue package barely three months after the company commenced operations.

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<sup>18</sup> Tabled Document 56

<sup>19</sup> Transcript of Mr P Temple, p. 26 of 4 November 1992



Concern was expressed by TIO in regard to the necessity for close monitoring of the financial affairs of Darwin Joinery. At its Board meeting of 30/31 July 1989 it was stated that:

*... Financial control is the essence to successful development of the potential of DJFM ...*

During the period May to August 1989 the company incurred an operating loss of \$1.2M consisting of the following items:

\$400,000 cost overrun on construction

\$ 73,000 relocation/establishment costs

\$102,000 costs in commissioning computer equipment

\$122,000 additional material costs through production inefficiencies

\$472,000 payments to subcontractors to complete work in hand.

As a consequence of the loss, the 'first' Touche Ross Report was commissioned on 25 September 1989, to be completed by 28 September, and although this study was commissioned by Mr Pastrikos and ultimately paid for by DID through the NIES, it should be remembered that this report used figures supplied by Mr Williams of DJFM which subsequently proved to be optimistic. The Committee expresses concern that a report, which was completed in just three days and using figures supplied by DJFM, was relied upon by Government to the extent it was when the purpose of the report was to induce financial institutions to lend money to DJFM and not an objective assessment of DJFM's future.

### **6.3.7 First Rescue Package**

Both DID and TIO wrote to Touche Ross setting out issues they felt needed to be addressed. In addition to cash flow and management, DID specifically requested they consider peak requirement for additional funding. TIO requested comment on the likelihood of success with regard to winning contracts for the construction of State Square Stage 1.

It is interesting to note, however, that on 26 September 1989, TIO instructed Ward Keller to prepare the necessary documentation for TIO to appoint a manager or receiver and manager to DJFM. It was stressed that this was one of several options being considered at this stage by existing lenders.

On 29 September 1989 a meeting was held between representatives of Touche Ross, DID, ANZ, DJFM and TIO. Touche Ross expressed the belief that the company had



a strong possibility of trading out of the current difficulties. Cash flow forecasts indicated a requirement for \$700,000 which was subsequently increased to \$0.88M.

The DID assistance package of \$0.88M comprised:

\$200,000 Government loan

\$300,000 TIO loan

\$280,000 moratorium on lease and loan payments

\$100,000 increased overdraft facility

### **6.3.8 Additional Consultancy Reports Commissioned**

#### **6.3.8.1 South Australian Centre for Manufacturing**

The South Australian Centre for Manufacturing was requested to prepare a report on the implementation of the computer information system called Empire MRPII, installed but not running effectively, at DJFM. The major problem was that DJFM was the first Australian buyer of this US product and there was virtually no local or national backup. In the summary of their report, which was received in October 1989, the consultants stated:

*... DJFM is an organisation that is very innovative with its people having plenty of drive and initiative. With these attributes, they can succeed with this MRPII implementation but need to allocate some additional resources and introduce effective project management techniques ...*

#### **6.3.8.2 Mullen Report**

The Mullen Report, which was also presented in October 1989, reviewed the overall operation of DJFM, especially the computerised manufacturing process. It concluded:

*... Darwin Joinery & Furniture Manufacturing Pty Ltd has begun its transition from a traditional joiner/fitout business into an integrated manufacturing organisation producing joinery, office and domestic furniture, and components. There have been problems in the transition, to a large extent resulting from under-estimation of the resources of people and the time required to implement the technology. As stated previously, the strategic planning for the organisation and the selection of technologies and techniques have been carried out in a most professional manner; the difficulties now being addressed are those associated with implementing these techniques and technologies in the organisation to enable the ultimate goal of integrated manufacturing to be achieved ...*



### 6.3.8.3 Specification for Position of General Manager

In addition to their original report, Touche Ross were employed in November 1989 to prepare a specification for the position of General Manager.

### 6.3.9 Events Subsequent to the First Rescue Package

Mr Pastrikos, on 6 October, wrote to TIO reaffirming his commitment to sell off commercial property owned by the Pastrikos Family Trust in an attempt to reduce debt loading. He also commissioned Touche Ross to prepare a financial submission which would be aimed at lenders prepared to take a long-term view of the operation.

At its Board meeting 28/29 October the Chairman of TIO, Mr Temple stated:

*... It is important that a top level manager is appointed as soon as possible to take full control of the operation ...*

In a note dated 21 November 1989, the General Manager TIO Finance, Mr Nayler, wrote to the Chairman stating that he had spoken to Mr Finch of Touche Ross (who had been retained by DJFM as advisers) on the deteriorating profit and loss position and specific areas of management. The note records Mr Finch's comments:

- . *He states that he can manipulate the company's cash flow to keep it trading until at least the end of January when State Square is on-stream.*
- . *He cannot yet identify why direct costs are so far out of kilter.*
- . *He admits that there is certainly room to cut staff but says that Pastrikos is reluctant to address the situation and that in full production for State Square, they would be again required.*

### 6.3.10 'Second Touche Ross Report'

On 20 January 1990 Mr Pastrikos forwarded a further report on the financial position of DJFM, purportedly prepared by Touche Ross<sup>20</sup>, which identified the need for the injection of a further \$1.5M in order that the company might continue trading. He requested that TIO consider an equity arrangement to the extent of 1,500,000 fully paid shares of \$1 each.

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This report was clearly labelled 'DJFM'. In a submission received by the Committee after the hearings from KPMG Peat Marwick (Incorporating Touche Ross), any alleged involvement with this report was vehemently denied by the company.



The report states:

- . *The financial position shows DJFM is too dependent on funds borrowed from its creditors. Without the support of the financiers, DJFM is unable to meet its debts as and when they become due. The accumulated losses to 31 December 1989 has almost extinguished the unit holders contribution.*
- . *If there are likely to be continuing losses, DJFM is unlikely to survive in the short term without continuing support from its financiers and/or additional funds being introduced by way of equity.*
- . *If no additional funding is provided to DJFM, it is unlikely the business can continue payments to meet employees wages obligations and the suppliers of goods and services which will cause the business to cease.*
- . *Further, the additional equity is required to be introduced during February 1990 (\$1M) and May 1990 (\$0.5M) in order that sufficient funds are available for DJFM to meet its obligations as and when they become due.*

Touche Ross denied preparing such a second report which in fact bears the name of DJFM <sup>21</sup>. It is suggested that this was in fact a revamping of the original report, which was based on figures by Mr Williams, with little further analysis or research. The sensitivity of Touche Ross' position and its potential for conflict of interest, is a matter to which all parties including the TIO should have been more alert.

In response to this report Mr Nayler, General Manager, Finance (TIO), instructed Mark Lewis of Capel Court to produce an options report. Mr Lewis was asked to brief Richard England of Ernst & Young<sup>22</sup> in the event that legal advice was required on management, since it was his opinion that:

*... Geoff Finch of Touche Ross is unable to act independently or decisively on our [TIO's] behalf.<sup>23</sup>*

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<sup>21</sup> Tabled Document 16

<sup>22</sup> Formerly Ernst & Whinney

<sup>23</sup> Memorandum from Mr Nayler to Mr Temple of 23 January 1990. Tabled Document 79.



However, the latter was '*never followed through*'.<sup>24</sup> That it was never followed through is a matter for concern. The issues involved and the public money involved warranted complete independence both in fact and in appearances. TIO management should have addressed this issue head on. They failed to do so.

It is unclear whether the concern expressed about Touche Ross' independence was ever communicated to DID, which apparently continued to regard the firm as the Department's consultant. The Committee is of the view that Touche Ross were by this stage (late January 1990) in a situation of at least potential conflict of interest, and should have declined to accept further instructions from either the Government or TIO, which involved assessing DJFM's circumstances.

Moreover, it is entirely unclear whether Mr Finch actually did any more work for DID or TIO following his preparation of the 'Second Touche Ross Report' for the Pastrokos family. Mr Tony Watson, a business analyst for DID, claims that Mr Finch did further in-depth analysis for DID. Mr Finch says he simply allowed Mr Watson to make use of his computer programme. Clearly if Mr Finch did no substantive work for TIO or DID, no question of conflict of interest can arise.

The Capel Court report outlined some options available to TIO to safeguard its interests in DJFM but seemed more aimed at selling itself to TIO as yet another management and financial consultant.

At about this time TIO became aware of an approach made to the Chief Minister by Mr Pastrokos seeking an injection of \$1.5M, however the Board resolved at its meeting on 25 January to:

*Monitor the Government's plans to ensure that the proposed arrangements do not involve any further commitment or reduction in security for TIO's current position with this firm.*

#### **6.3.11 Proposed Second Rescue Package**

Mildrens, Barristers and Solicitors, were retained by the directors of shelf company Dalloway.<sup>25</sup> On 7 February 1990, they proposed a number of options which would enable DJFM to retire certain significant debts and provide sufficient working capital for the enterprise to continue, at least for the short term.

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<sup>24</sup> Transcript of Mr Nayler, p. 63 of 5 November 1992

<sup>25</sup> Later to be renamed Dalway Pty Ltd



On 8 February 1990, Mr Watson sent a fax to TIO stating that the proposed rescue package of \$3.5M was going to Cabinet next Tuesday.<sup>26</sup> He indicated that Option 3, direct acquisition, was preferred and that TIO may have to assist with performance guarantees of \$150,000.

On 14 February 1990 TIO replied to DID stating that the Board had resolved on 25 January that the present level of exposure was the maximum to which TIO was able to go, and therefore performance guarantees would require special Board approval.<sup>27</sup>

Mr Otto Alder of DID wrote to Mr Temple on 22 February asking that the Board reconsider their position in regard to performance guarantees.

On 23 February TIO responded expressing concern that Mr Alder's letter put them on notice that even with the rescue package, the working capital of the company would be 'particularly tight.'<sup>28</sup>

Accordingly the Board of TIO instructed the Chairman to advise that TIO's current offer to participate in the rescue had lapsed and they now wished to make the following alternative offers:

- . that the TIO will cede its interest in the mortgage and mortgage debenture for a consideration of \$2.5M to be paid within twelve months.
- . alternatively the TIO would be prepared to assign the mortgage to the Northern Territory Government in consideration for \$3.2M, being regarded as a tax credit for 1989-90 and later years under s.28 *Territory Insurance Office Act* and/or as a credit against any directions under s.26.

Later the same day Mr Temple was requested to see the Chief Minister, the Hon. Marshall Perron. Also present at this meeting were Mr Nayler of TIO, the Deputy Chief Minister, the Hon. Barry Coulter and the Secretary, Department of the Chief Minister, Mr Allan Morris.<sup>29</sup>

According to Mr Temple's recollections, the Chief Minister advised him that Cabinet wished to save the company because of the potential loss of employment of 70

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<sup>26</sup> Tabled Document 81

<sup>27</sup> Tabled Document 82

<sup>28</sup> Tabled Document 85

<sup>29</sup> Tabled Document 86



workers. The Chief Minister apparently went on to say that neither of TIO's latest options were acceptable and that Cabinet was prepared to accept TIO's previous option which was to transfer the mortgage to the new company, Dalloway.<sup>30</sup>

Mr Temple apparently responded that the Board doubted that the project would be commercially viable even after the injection of more funds, and that TIO wanted to withdraw from the project completely. He told those present that if the Government wanted TIO to transfer the mortgage, it could issue a written direction under s.7 *Territory Insurance Office Act*.

As already referred to in 6.3.1 hereof, Section 7 of the Act provides:

*Except as provided by or under this or any other Act, the Office, in the performance of its functions and the exercising of its powers, is subject to the written directions of its Minister.*

Also, as already noted, the Act clearly puts the Minister in a position to direct the TIO in what it does.

According to Mr Temple, the Chief Minister said he would be prepared to employ this section if necessary. The Deputy Chief Minister said that he felt that this action was unnecessary and that Mr Temple should consult with the Board members again.<sup>31</sup>

Mr Temple rang the Board members from Mr Morris' office. It was agreed by the majority (3-1) of them that the TIO accede to the Chief Minister's request and transfer the mortgage thus reversing its previous decision. Curiously, Mr Temple voted in favour of transferring the loan. One member of the board, Mr Trimmer, could not be contacted but later refused to endorse the majority change of mind.

*Mr Parish: ...the Chief Minister asked you to tell all the board members that if they didn't make that decision, he would direct them anyway.*

*Mr Temple: No. I was asked to put to the board the conversation I had had with the Chief Minister and the Deputy, which obviously included those comments.*<sup>32</sup>

Mr Temple went on:

*It was clear that the government wanted to stay, you know keep, the company in operation ...*

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<sup>30</sup> Tabled Document 86

<sup>31</sup> Tabled Document 86

<sup>32</sup> Transcript of Mr Temple, p. 71 of 5 November 1992



*Their reasons for wanting that were stated clearly. They were to do with the loss of employment, and that was relayed to the board members.*<sup>33</sup>

At its Board meeting of 29/30 March 1990 members were asked to confirm the positions they took in relation to the transfer of the mortgage to the new company. Mr Bradley and Mr Trimmer dissented.

In a prepared statement to the Committee, regarding that meeting with Mr Temple, the Chief Minister said:

*... I made Cabinet's view known to Mr Temple. I have said that the TIO board did not have a substantive position ...*<sup>34</sup>

There was no board decision as to what action it would take if their offers were rejected. Implied however is TIO's withdrawal, forcing the company into insolvency and precipitating an asset fire sale. The jobs and technology would be lost for ever. The TIO would lose money and so would the Government.<sup>35</sup>

There appears to be a clear contradiction in that TIO had, at its board meeting, decided that they wanted out of any further involvement with DJFM, which would seem to be a fairly 'substantive' position.

The Deputy Chief Minister gave evidence of his recollections of the same meeting;

*Mr Coulter: Anyway, he (Mr Perron) was responsible for the passage of the legislation of the TIO through this Assembly and he did not have to be reminded by the Chairman of the TIO, but the Chairman just sort of was being flippant, I believe.*

*Mr Parish: Well, is not the whole point, Mr Coulter, because he was not reminding Mr Perron of what the Act said, or purporting to do so. What he was saying was: "you have got the power, we are not going to do it voluntarily, if you want us to do it, you will have to direct us".*

*Mr Coulter: Not at all. Not at all. Those words were never, ever mentioned by Mr Temple.*<sup>36</sup>

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<sup>33</sup> Transcript of Mr Temple, pp 71-2 of 5 November 1992

<sup>34</sup> Transcript of Hon M B Perron, p. 6 of 12 November 1992

<sup>35</sup> Transcript of Hon M B Perron, p.6 of 12 November 1992

<sup>36</sup> Transcript of Hon B Coulter, p. 87 of 13 November 1992



It is not possible to conclude confidently what was precisely said in this respect on the evidence.

### Conclusion

The documentary evidence of the TIO plainly evinces its intent to withdraw from any further participation in supporting DJFM. Logically, then, once Cabinet had rejected the options put forward in its letter of 23 February, the only action remaining to TIO was to seek liquidation of the joinery. However, such action did not eventuate because during a meeting with the Chief Minister and others, the majority of the Board, through telephone contact by the Chairman, reversed their decision.

The Committee concludes that the change of heart by the Board was, at least in part, the result of political persuasion.

The TIO has developed into more than simply an insurance company since it has expanded into housing finance and investment. It is therefore necessary, for the future well-being and growth of the institution, that public investors are assured that operations will be in line with normal, sound commercial practice and insulated from political direction.

This does not mean that the Committee does not see a role for the powers of the Minister under s.7 *Territory Insurance Office Act*. The sheer weight of evidence however in this instance indicated that this venture would never be a commercial success; that extraneous reasons for its continued existence, namely saving jobs and continued local involvement in State Square, were insufficient to justify its survival. DJFM should have been left to market forces which would have ensured its demise.

Other evidence received by the Committee points to job losses in rival joineries resulting directly from the Government's decision to purchase DJFM and shield it from commercial reality.<sup>37</sup>

Although it may have created administrative complexities, evidence indicates that local participation in the State Square project could have been maintained through the employment of other joineries in Darwin.

The Committee has concluded that the establishment of DJFM was an ambitious venture, especially into furniture manufacturing. The sales projections were based on export markets, into which little or no apparent research had been carried out, and on the lions share of the local furniture market.

It is noteworthy that as early as the March 1988 TIO Board meeting, one of the members, Mr Merv Elliott, required that the Minutes record his concern that the

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<sup>37</sup>

Transcript of Mr Mannion, pp 27-8 of 28 August 1992



Darwin Joinery proposal (as it then stood) did not comply with the above investment guidelines.

It should also be noted that the then TIO Deputy General Manager, Mr Michael Nyunt, also expressed concerns. Apparently these concerns were made known to the Board Meeting of July 1988 which approved the initial \$2.5M DJFM loan. Mr Nyunt had concerns about its wisdom, particularly that it did not comply with TIO's investment guidelines. Mr Nyunt later put these concerns in writing.<sup>38</sup>

Although it is understood that there may have been some emerging personality differences in TIO at this time on unrelated issues, it is difficult to understand how the Board could apparently have so lightly dismissed the concerns of some of its senior management.

The TIO failed in its responsibilities towards its shareholders in that it did not take sufficient cognisance of the various reports it commissioned into the furniture market. It apparently ignored the warnings contained in the reports of Ernst & Whinney, McGregor Marketing and Touche Ross, which resulted in it being swayed from sound commercial judgment.

The structure of the loan, from the very start, was unlikely to be viable. Whilst acknowledging the need to support local business, the Committee believes that more stringent independent lending policies should be developed to assist realistic and commercially viable ventures in the Northern Territory.

### **Recommendation**

That the power to direct the TIO under S.7 of the Act, where it may relate to investment or lending decisions of the Board, be limited to:

1. A veto of proposed investments or loans; and
2. General directions in relation to investment or loan policy.

Such directions should be reported along with reasons to Parliament within six sitting days of the exercise of the Ministerial power.

### **6.4 THE PURCHASE DECISION**

In response to receiving a copy of the 'Second Touche Ross Report', which accompanied Mr Pastrikos' letter of 20th January 1990 to the Chief Minister, DID prepared a briefing paper in relation to DJFM and sent it under cover of a



memorandum, dated 24 January 1990, to the Hon. Barry Coulter for noting and to be passed to the Chief Minister<sup>39</sup>.

Although the copy of the memorandum obtained from the DID files is not signed as 'noted' by Mr Coulter, it appears that the briefing paper was used by Mr Coulter to brief Mr Perron.

The memorandum in part stated:

*... DJFM has serious financial and related problems.*

*... From a purely commercial viewpoint, it would be difficult to agree to the funding request in light of the inherent risks.*

*... implications for local trade creditors and the Pastrokos family would be severe.*

*... delays in awarding the joinery component of the State Square project to DJFM has had a serious effect on the cash flow of the business.*

*... the blunt reality is that they require a sum of \$1m-\$1.5m, injected perhaps progressively over the next three months, but with an immediate injection of at least \$300,000, just to survive until cash flows improve.*

*... conditions will have to be accepted by DJFM which will promote viability. More time will be needed to determine these conditions.*

The briefing paper addressed the following issues:

- . Corporate direction
- . Sales and marketing
- . Gross margin
- . Management
- . Board involvement
- . Technology
- . Culture
- . Reputation
- . State Square project

The summary contained in the briefing paper has been included in Appendix 3.5.



The paper also contains details of what it calls 'Stakeholders'. These were:

- . Employees
- . Trade creditors
- . Secured creditors (TIO and ANZ Banking Group)
- . Lease and instalment purchase creditors
- . Pastrokos family
- . DID
- . Preferred creditors
- . Northern Territory Government
- . Smaller joinery businesses

Details have been included in Appendix 3.6.

A further memorandum dated 29 January 1990 was prepared by DID for the Hon. Barry Coulter and dated 29 January 1990.<sup>40</sup>

It included a commentary on possible approaches to the DJFM request for funds.

In part the commentary stated:

*... DJFM is unable to meet its current liabilities as and when these fall due.*

*... Creditors are already in a position to institute insolvency action.*

*... it will be several years before viability is restored.*

*... achievement of projections is highly dependent on new management methods.*

*... both ANZ Bank, providing an overdraft of \$600,000, and Esanda, with equipment leases of \$1.2m have immediate rights to terminate these facilities. ... Their formal co-operation with any package is vital.*

*... DJFM is a showcase pioneer of the introduction of integrated manufacturing technology in the Territory... Its demise will cast a pall over future attempts to proceed in this direction. ... Any justification for Governmental financial assistance rests on this broader consideration.*

*... Both ANZ and Esanda have little expectation that their funding will be returned.*



*... Consequently, each may be prepared to be taken out at a substantial discount.*

*... Thus there are two primary options if assistance is agreed. One is the injection of \$1.5m combined with retention of ANZ/Esanda. The other is the injection of \$2.0m (which will vary according to the discount achieved but known by the time the decision is required) combined with the removal of these internal financiers.*

Following on from the memorandum, Mr Coulter prepared a memorandum to Mr Perron which included:

- . Draft arrangements and conditions which might apply to any funding covering:
  - The Investment;
  - The Company;
  - The Pastrokos Family; and
  - The Board of Directors.
- . Issues regarding the Board.

The draft arrangements and conditions and the issues regarding the Board have been included in Appendix 3.7.

On 30 January 1990 Cabinet made a decision (Cabinet Decision 6338) in favour of the \$2.0 million option the result of which would be to pay out ANZ Banking Group and Esanda. The decision stated:

*... Cabinet authorised the Chief Minister and Minister for Industries and Development to finalise arrangements to assist the on-going operations of Darwin Joinery and Furniture Manufacturing Pty Ltd up to a maximum of \$2m, subject to the company accepting appropriate conditions.*

The Hon. Marshall Perron met with Mr John Pastrokos on 2 February 1990 in Mr Perron's office. No other person was present at the meeting.

Mr Perron recalls that meeting as follows:

*... I informed him that if the government as was (sic) going to continue to support the factory it would take over the company and that he and his family had lost everything. I believe I also told him to go off and talk*



*further with DID officers with a view to reaching an arrangement which may allow the family to buy back the company at some future stage.*<sup>41</sup>

Mr Pastrokos was ultimately given by Mr Perron an edited version of the Draft Arrangements and Conditions noted above. The edited version is included at Appendix 3.8. Omitted from that edited version were the following paragraphs of the draft arrangements and conditions previously referred to:

- . all of B. 'The company - DJFM'
- . paragraph 3 of C. 'Pastrokos Family'

Mr Pastrokos has alleged that the edited version of those Draft Arrangements and Conditions he received, along with oral representations made, constituted an agreement in relation to such things as a purchase option and a first right of refusal.

The question of the alleged option arrangement, inter alia, is dealt with in more detail at 6.7.

Following the Cabinet decision noted above, officials of DID, in particular Messrs Watson and Caldwell, continued to analyse the information available including the 'Second Touche Ross Report'. They had major concerns about possible unrecorded and unknown contingent liabilities of DJFM and the possible consequential dilution of the proposed Government funding.

One of the objectives was that the provider of the funds would have control over the operations of DJFM. As a result DID had sought legal advice from the Department of Law who suggested that DID contact an experienced commercial lawyer and insolvency accountant. The first legal firm contacted had a conflict of interest and this led DID to retain Mr Geoff James of the legal firm of Mildrens.

Mr James advised that the objective of providing a loan and obtaining effective control of the recipient and avoiding unknown liabilities could not be achieved under the normal lender/borrower arrangement.

It was therefore decided that the objective could best be achieved if the Government bought the business and assets of DJFM, via a shelf company (initially Dalloway then renamed Dalway), for an amount equal to that which was needed to pay amounts owing to unsecured and secured creditors.

It was determined that the funding requirement had increased from \$2.0 million to \$3.5 million, of which \$1.5 million was to be made available after 30 June 1990 for working capital purposes.

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<sup>41</sup> Transcript of Hon. Marshall Perron - p. 4 of 12 November 1992



From the evidence it appears that the issue of Dalway was further discussed by Cabinet at a meeting held on 7th February 1990 but no decision was recorded as having been made at that meeting.

In a memorandum and briefing dated 9 February 1990 DID documented their reasons for the increase in funding requirement. The major reason stated was a reduction in sales projections and more conservative timing of debtor collections. The reasons have been included in full at Appendix 3.9.

On 16 February 1990, and after consideration of advice from DID, Cabinet made a further decision (Cabinet Decision 6359) which stated:

*... Cabinet -*

- (a) Rescinded Cabinet Decision No. 6338 of 30 January 1990.*
- (b) Approved a package of restructuring the business operated by Darwin Joinery and Furniture Manufacturing Pty Ltd. This package is to include government nomination of the controlling majority of Directors on the Board; and*
- (c) Approved the injection of funds of:*
  - (i) \$2m in 1989/90, including an immediate injection of \$0.1m; and*
  - (ii) \$1.5m in 1990/91.*

Original reasons given for the decision were:<sup>42</sup>

- . The Company (DJFM) was insolvent and unable to continue to operate, or meet its commitments.
- . It was apparent that the previous management was unable to handle such a large sophisticated, technologically advanced and highly geared enterprise.
- . This placed loans of \$2.8 million from the TIO, and prior Government funding support of \$0.318 million at risk.
- . Territory based creditors faced losses totalling approximately \$0.5 million.



- . The jobs of seventy employees (including twelve apprentices) were at risk.
- . The Joinery was a 'showcase pioneer' attempt to establish an integrated technologically advanced manufacturer within the Territory. Its failure would have had a detrimental affect on prospects for establishment of such industry in the future.

The business, assets and liabilities of DJFM were subsequently purchased by Dalloway, a Government owned shelf company with nominee shareholders, on 15 March 1990. Dalloway thereafter changed its name to Dalway.

As a result of the purchase the amounts outstanding to the Northern Territory Government were as follows:

|   | \$M                 |
|---|---------------------|
| . Purchase price                            | 2.000               |
| . Working capital                           | 1.500               |
| . Previous loan                             | 0.205               |
| . ANZ Banking Group<br>settlement (part of) | <u>0.113</u>        |
|   | <u><u>3.818</u></u> |

The working capital amount of \$1.5 million was not made available until after 30 June 1990.

TIO transferred its outstanding loans from DJFM to Dalway as at the date of acquisition after initially deciding it wanted the Northern Territory Government to pay it out in full due to problems related to the performance guarantees it had given on behalf of DJFM.

TIO's involvement from a financial view point was as follows:

|                             | \$M                 |
|-----------------------------|---------------------|
| . Original loan             | 2.500               |
| . Additional loan (Oct. 89) | 0.300               |
| . Accrued interest          | <u>0.088</u>        |
|                             | <u><u>2.888</u></u> |

DJFM was subsequently placed in voluntary liquidation on 29 March 1990. \$0.622 million was paid from the initial \$2.0 million injection to the Liquidator of DJFM to pay unsecured trade creditors. A further \$0.316 million was also paid to the Liquidator from the second injection (working capital) to complete the payment of all trade creditors.



The disbursement and draw down of the \$2.0 million and the \$1.5 million respectively is detailed in Appendix 3.10.

## 6.5 THE EVALUATION

The financiers behind DJFM at the time of the Pastrokos letter dated 20th January 1990 to the Chief Minister were:

- . ANZ Banking Group;
- . Esanda Finance;
- . TIO; and
- . DID

On 5 September 1989 Mr Barry Loan (ANZ Loans Manager) had requested a meeting with representatives of Touche Ross (Mr Phil Dewsbury and Mr Geoff Finch). As stated by Mr Dewsbury, contact was made because Mr Loan had some serious concerns about his bank's loan and because he and the other financiers were not getting financial information from DJFM<sup>43</sup>.

As a result of this initial contact a Steering Committee was formed. The Steering Committee consisted of:

- . ANZ Banking Group representative
- . Esanda Finance representative
- . TIO representative
- . DID representative
- . Mr John Pastrokos
- . Mr Tony Pastrokos

The Steering Committee had its first meeting on 22 September 1989. As a result, Touche Ross were instructed to conduct an investigation into DJFM and report on its financial position. This report was issued on 29 September 1989. It was titled *Darwin Joinery and Manufacturing Pty Ltd Investigation Report*.

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43

Transcript of Mr Dewsbury - p. 3 of 28 October 1992



It has become known through the public hearings as the 'First Touche Ross Report'.

The report forecast that DJFM would require additional working capital of \$0.7 million to support it to 30 June 1990.

As a result of the report and further meetings of the Steering Committee, additional funding arrangements were agreed on as follows:

|  | \$M                        |
|--|----------------------------|
| DID loan   | 0.20                       |
| TIO loan   | 0.30                       |
| ANZ Banking Group overdraft facility   | 0.10                       |
| ANZ Banking Group and Esanda Finance<br>moratorium on loan and lease<br>repayments | <u>0.28</u><br><u>0.88</u> |

The DID loan was drawn down on 12 December 1989.

The first Touche Ross Report contained a significant disclaimer because of the unreliability of management information and the nature of the assumptions on which the report was based.

The disclaimer read:

*... The report and appendices are prepared from information supplied by the Company's management and are based upon a number of assumptions which have been explained in the report. If there has been a material omission or mis-statement of fact, the future viability and the financial position may not be as shown in this report. Accordingly we do not accept any responsibility, either to the persons for whom the report is prepared or to any other person, for the accuracy or completeness of this report.*

The report highlighted a number of major problems with DJFM including:

- . Lack of reliable financial and management information
- . The managers did not currently have the skills required to properly manage the company
- . The business and its management had no previous experience of computer integrated manufacturing
- . Work habits required re-direction



Production capacity was very limited because computer integrated manufacturing was not occurring.

Further, on a suggestion from management, one of the assumptions with regard to future income was that DJFM would win the State Square joinery contract worth approximately \$4.0 million and that the project would be completed by 30 June 1990.

The report stated in relation to fixed assets:

*... Land and buildings are shown at a cost of \$3,433,000. The land and buildings located at Winnellie, Northern Territory has been independently valued by Mr P D Doyle FAIV, SCV, FRGI, REIV (Aust) of Darwin Land Services Pty Ltd on 23 May 1989 at a value of \$4,150,000.*

The Budget, Profit and Loss Statement (with the continuation of the proposed joinery and furniture manufacturing operation) as per Appendix C of the Report indicated a net profit of \$0.248 million for the period September 1989 to 30 June 1990.

The related Cash Flow Budget as per Appendix D of the Report indicated that \$0.7 million would be required by March 1990 and that these funds would need to remain in place until June 1990.

The Report further stated:

*... These funds are required immediately in order that credit facilities can be re-established with the major suppliers and for the bank account to operate within its approval limit of \$500,000.*

*... DJFM will require assistance from a professional adviser to monitor the performance of management and the use of the funds for the sole benefit of DJFM to trade out of its present situation.*

The summary and recommendations of the First Touche Ross Report have been included in Appendix 3.11.

As noted above, a package of \$0.88 million was injected into DJFM by the financiers. However shortly after its injection it was realised that the projections and the information on which the funding decision was based were inaccurate. The financial situation of DJFM again reached crisis point. As a result, and due to the refusal of the members of the Steering Committee to provide further finance, DJFM commissioned Touche Ross to prepare a submission for them which effectively amounted to a plea or an application for assistance. As previously mentioned it was lodged with the Chief Minister, Hon. Marshall Perron, DID and TIO on 20 January 1990.



The evaluation process subsequently undertaken with respect to that application for further assistance involved a number of key people who appeared before this Committee. The transcripts of their evidence contain a volume of information, opinions and comments relating to the evaluation process.

The key people are:

- . Mr Geoff James (Mildrens)
- . The Hon. Marshall Perron, MLA
- . Mr Tony Watson (ex DID)
- . Mr Peter Caldwell (ex DID)
- . Mr Otto Alder (ex DID)
- . Mr Phil Dewsbury and Mr Geoff Finch (Touche Ross)

### **Mr Geoff James**

Mr James carried out legal work for DID from early February 1990 to mid April 1990 in relation to the purchase decision. He was a nominee shareholder on behalf of the Government and a director of Dalway in November 1991 following the removal of Mr John Pastrikos from the Board.

He gave legal advice on the means of providing the necessary financial injection into DJFM and stated that:

*... It was a result of that counselling that Mr Watson came back to me and said that as a ways and means of providing financial assistance to this vital industry, it had been resolved that a government-owned company would buy the industry (sic) for enough money to make sure all its existing creditors of an unsecured nature got paid, and the company that did the purchase would be owned by the government and controlled by the government.<sup>44</sup>*

The basic intention appeared to remain unchanged; the Government wanted to inject funds into DJFM to ensure its immediate survival and to enable it to become viable. There was no intention to hold onto the business and assets once it became viable. If the money, which the Government injected, was returned, then the business was apparently to be handed back to the Pastrikos family.

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44

Transcript of Mr James - p. 26 of 2 September 1992



In reply to the following question from Mr Bailey:

*... So when you said for the government not to loan money if that's what you wanted to do but to buy it there was no assessment whatsoever as to the quality of what they were buying, it was only in relation to whether it was legally correct for them to buy it, not lend?.*<sup>45</sup>

Mr James responded:

*No. The former assessment is not one within my role.*<sup>46</sup>

and

*... hardly my role to check that they have done their arithmetic properly.*<sup>47</sup>

and

*... What I was presented with is, the Territory does not want to see this industry disappear for the Northern Territory. We are going to help it. We are going to provide it with money. This will ensure that the creditors of this organisation will be paid and it will ensure that 60 or 70 jobs are preserved in the community, and it will ensure that we don't lose this factory to some southern asset raider. That was roughly what I was told. And if I can go on and say, I agreed with it. I thought it was a jolly good idea.*<sup>48</sup>

**The Hon. Marshall Perron, MLA**

As part of his prepared statement which was given to the Committee at its hearings, Mr Perron stated:

*... Cabinet believed that, with good management and the injection of necessary funds, the Company had excellent chances of becoming*

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- 45 Transcript of Mr James - p. 43 of 2 September 1992
- 46 Transcript of Mr James - p. 43 of 2 September 1992
- 47 Transcript of Mr James - p. 43 of 2 September 1992
- 48 Transcript of Mr James - p. 43 of 2 September 1992



*profitable. There were 70 jobs at risk and other Territory based businesses facing losses of around half a million dollars.*<sup>49</sup>

*... Additionally there was consideration of the effect the company's failure would have on confidence in the Territory manufacturing in general.*<sup>50</sup>

*... Had the company not been in serious trouble there would have been no need for government involvement.*<sup>51</sup>

*... Cabinet, and most everyone else who took an interest, knew that the work (State Square) was to be done and that only DJFM had the capacity or technology to fulfil the major contracts.*<sup>52</sup>

Mr Perron later stated that although a written submission in relation to the purchase decision was not made he recalled that Mr Watson of DID did make a presentation to Cabinet which enabled Cabinet to be comfortable in making its decision in that it had the latest, best advice that it could get.

He also stated that the decision Cabinet reached had to be reached, because of the inevitable collapse of DJFM without the injection of \$1.5 million. In relation to the decision to buy rather than lend, he further stated:

*... I would doubt that any of us would have proceeded with this company if it had involved giving further funds to Mr Pastrokos to try and run it.*<sup>53</sup>

#### **Mr Tony Watson**

Mr Watson believed that the \$2.0 million price tag on the assets of DJFM bore no real resemblance to the actual value of the company as it stood at the date of purchase. Rather the \$2.0 million was just the sum required to pay trade and other creditors including ANZ Banking Group and Esanda Finance.

He stated that Touche Ross played a role in determining the cost to acquire the assets of DJFM, being how much it would cost to pay out all creditors.

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<sup>49</sup> Transcript of Hon. Marshall Perron - p. 2 of 12 November 1992

<sup>50</sup> Transcript of Hon. Marshall Perron - p. 2 of 12 November 1992

<sup>51</sup> Transcript of Hon. Marshall Perron - p. 7 of 12 November 1992

<sup>52</sup> Transcript of Hon. Marshall Perron - p. 7 of 12 November 1992

<sup>53</sup> Transcript of Hon. Marshall Perron - p. 45 of 12 November 1992



Mr Watson played the major role in negotiating the payout of the ANZ Banking Group and Esanda Finance.

He believed that it was the Government's intention that if someone offered to purchase Dalway at a certain price then it would firstly offer it to Mr Pastrikos at that price and, if Mr Pastrikos chose not to or could not, the business could then be sold to the person offering to buy.

He thought that the projected sales figures in the 'Second Touche Ross Report' were '... wildly optimistic.'

In an early analysis of the \$1.5 million application he indicated that \$1.5 million would not be enough and would be expended in quite a short period of time.

In his view, an overseas marketing drive was the last thing that DJFM needed. The company needed firstly to get its fundamentals right, including machinery and management and service the State Square Project, before embarking on an overseas marketing exercise. He stated that a marketing drive should, however, be a long term objective of DJFM.<sup>54</sup>

He did not rely totally on the 'Second Touche Ross Report' but additionally carried out his own investigations, although the thoroughness of those investigations is open to question (see later).

There were apparently agonising discussions within DID as to whether or not the project should be supported, but Mr Watson never put details of his objections in writing. He apparently influenced the Secretary to put options to Cabinet, as opposed to recommendations, and this was what happened.

Capel Court, in a further report to DID dated 19 December 1989, had stated that the sales projections for the First Touche Ross Report would lead to an increase in the working capital requirement. However Mr Watson stated that this was true only if you believed the sales projections in the First Touche Ross Report. He did not.

The documentation used to put the options before Cabinet were: the two Touche Ross Reports; a report from McGuinness Fradkin & Associates ('Fradkin Report') to TIO; two Capel Court Reports; and a DID analysis.

Mr Watson did not feel a valuation of the assets being purchased was necessary as the purchase price, as stated earlier, was the sum of the trade and other creditors to be paid out. The motive and intent of the Government did not require valuation of the assets or a determination of whether the Government was getting value for money.



Mr Bailey questioned Mr Watson as follows:

*... Were you quite clear in your recollection that the second Touche Ross Report was not for the department, not for the steering committee but was in fact just a private report for Mr Pastrikos.<sup>55</sup>*

Mr Watson replied:

*I honestly do not recall it being that black and white ... my recollection, and it is vague, is that the second report, ... was perhaps just the output of a continuing body of work that Touche Ross and the department was doing ...<sup>56</sup>*

*... my recollection of the events was that there was a high level of cooperation between various people to get an understanding of the financial state of the company and perhaps its financial future.<sup>57</sup>*

When reworked figures went forward in the 'Second Touche Ross Report', Mr Watson was as satisfied as he could be in the circumstances that they were accurate. He was apparently not clearly aware that the Report was not an objective accountant's analysis.

When asked by Mr Parish whether he had read the evidence of Mr Finch from Touche Ross, he replied in part:

*... I was moderately surprised at the way they spun the events out to this committee.<sup>58</sup>*

*... When I read the transcript, I couldn't help but think that if I was the managing partner of Touche Ross ... I would have been flabbergasted to hear senior partners of my firm presenting the firms involvement the way that they did ...<sup>59</sup>*

Mr Watson believed that the documents presented to the Minister from DID in relation to the analysis, did in effect say to the Minister:

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<sup>55</sup> Transcript of Mr Watson - p. 3 of 11 November 1992

<sup>56</sup> Transcript of Mr Watson - p. 3 of 11 November 1992

<sup>57</sup> Transcript of Mr Watson - p. 4 of 11 November 1992

<sup>58</sup> Transcript of Mr Watson - p. 8 of 11 November 1992

<sup>59</sup> Transcript of Mr Watson - p. 8 of 11 November 1992



*... we have done as good a job as we think we can do in terms of (a) compiling the financials, (b) analysing them. But notwithstanding that the environment in which the financials were prepared is such that you would still need to be wary.*<sup>60</sup>

He also stated:

*... I felt as good about the numbers that I could be under the circumstances. That is not to say that I was comfortable with the risks.*<sup>61</sup>

Mr Finch of Touche Ross stated that his involvement in the evaluation of the projections in the second Report was inputting figures onto a spreadsheet model.

Mr Parish asked a question of Mr Watson in relation to this assertion as follows:

*Are you saying you disagree that that was the extent of the assistance that Touche Ross gave you at that time to evaluate the projections.*<sup>62</sup>

Mr Watson replied:

*... I think you used the word 'fantasy' a moment ago. I would probably use that word to answer your question.*<sup>63</sup>

*... It does not accord at all with my recollection of the events. Mr Finch may have a better memory than I, but I see there is a fair gap between his view of life and mine.*<sup>64</sup>

Further in relation to sales projections, Mr Watson stated:

*... If there was an area of concern right through the whole period of trying to come to grips with the finances of the business ... I think the*

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<sup>60</sup> Transcript of Mr Watson - p. 10 of 11 November 1992

<sup>61</sup> Transcript of Mr Watson - p. 11 of 11 November 1992

<sup>62</sup> Transcript of Mr Watson - p. 12 of 11 November 1992

<sup>63</sup> Transcript of Mr Watson - p. 12 of 11 November 1992

<sup>64</sup> Transcript of Mr Watson - p. 13 of 11 November 1992



*sales, the revenue stream was clearly the most difficult to get comfortable with.*<sup>65</sup>

Mr Watson believed at the time that the re-worked cash flow assumptions, which resulted in a \$1.8 million increase in projected funding requirement (the major reason for the increase in funding from \$2.0 million to \$3.5 million), were conservative. He was comfortable that, having regard to the fact that he had very little time, he had carried out as much analysis and testing as he reasonably could have been expected to perform.

#### **Mr Peter Caldwell**

Mr Caldwell became involved with the DJFM application to the Chief Minister of 20th January 1990 after being asked by Mr Otto Alder, the then Secretary of DID, to assist Mr Watson in his analysis of the application. His sources of information for the decisions made were:

- . The Touche Ross Reports
- . DID file notes
- . Information obtained from Mr Watson

In relation to the role played by Touche Ross and who they were acting for, he stated:

*I am not certain that I would know. My understanding is that they were acting for the steering committee, but I am not sure if they were reporting directly to the steering committee or to an individual member of the steering committee.*<sup>66</sup>

He believed that Mr Finch of Touche Ross was involved to a limited extent in deciding which course of action to take and in relation to determining the amount of money DJFM might owe. Following discussions with Mr Finch, Messrs Caldwell and Watson became concerned about unknown liabilities and Mr Caldwell suggested the need for a lawyer. As mentioned, following discussions with the Department of Law, Messrs Caldwell and Watson then met with Mr James of Mildrens.

Mr James confirmed that there were potential difficulties with becoming more heavily involved in DJFM and suggested the alternative of purchasing the business and assets of DJFM, with the Government providing a fixed amount to DJFM, (which would be put into voluntary liquidation) to pay its debts.

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<sup>65</sup> Transcript of Mr Watson - p. 15 of 11 November 1992

<sup>66</sup> Transcript of Mr Caldwell - p. 2 of 22 October 1992



*... The Government I understood did not want to be trapped into a situation where unknown extensive debts could create some further difficulty.<sup>67</sup>*

The Department of Law also suggested Messrs Caldwell and Watson seek assistance from an insolvency accountant. This was not done apparently because of the existing contact with Mr Finch of Touche Ross whom Mr Caldwell believed had experience in that area. With regard to a possible conflict of interest, Mr Caldwell stated:

*The question of conflict of interest was in fact discussed. I discussed it, and maybe other people did as well with Geoff Finch and Geoff provided some assurances to us that there was not an actual conflict of interest in him providing such advice to us.<sup>68</sup>*

Mr Finch's past knowledge of the business was considered very important. Mr Caldwell did not have any concerns about the reliability of information being provided by Touche Ross. However he went on to state:

*... If I had been aware that Touche Ross had been acting as you say for the recipient of the financial assistance rather than for the steering committee, I would have regarded that as an abnormal situation and would have been seeking an independent outside expert.<sup>69</sup>*

Mr Caldwell did not see that the consultant's report as being unusually optimistic as he understood that the future of DJFM did not lie in the Darwin market only.

Mr Parish pointed out that this was in conflict with Mr Watson's understanding that the company would firstly concentrate on the Darwin market. Mr Caldwell did not remember having any such thoughts.

Mr Caldwell stated:

*... I think from memory we regarded DJFM circumstances as being risky, and that should the government provide further assistance there was a level of risk associated with it.<sup>70</sup>*

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<sup>67</sup> Transcript of Mr Caldwell - p. 4 of 22 October 1992

<sup>68</sup> Transcript of Mr Caldwell - p. 5 of 22 October 1992

<sup>69</sup> Transcript of Mr Caldwell - p. 6 of 22 October 1992

<sup>70</sup> Transcript of Mr Caldwell - p. 12 of 22 October 1992



*... a higher level of risk than a standard bank would accept.<sup>71</sup>*

With regard to the ANZ Banking Group and Esanda Finance negotiated payouts at a discount, he stated:

*... I understand that both ANZ and Esanda regarded at the time the arrangement as equitable and I think that they would still be willing to agree that is so.<sup>72</sup>*

In relation to the Touche Ross involvement in a further assessment of the needs of DJFM, Mr Parish asked whether it was ever considered that a firm which provided an analysis to indicate that \$1.5 million was needed, should also be involved in deciding whether it was wrong and that \$3.5 million was needed.

Mr Caldwell replied:

*... As I recollect, the circumstances were dire financial circumstances, where there were prospects of the business being put into liquidation at any time. I do not believe that there was any possible option to get an independent third party to start from scratch and I think that concept was not even considered.<sup>73</sup>*

Mr Caldwell indicated that he had some concerns about whether the business would in fact achieve the profit forecasted. His concerns were not conveyed in writing to the Minister concerned but he did recall discussing the downsides of the projections with both the Chief Minister and the Minister for Industries and Development. He told the Minister for Industries and Development at that time that no commercial lender would in fact rescue the business.

The 'Second Touche Ross Report' was apparently regarded by DID as the single most important piece of information it had as to the future of the business. DID appeared to work on the basis, in assessing the situation and in providing advice to Government, that there had been an objective analysis done by Touche Ross on behalf of the Steering Committee.

Mr Caldwell does not remember any statement by Touche Ross suggesting that it was not an objective report.

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<sup>71</sup> Transcript of Mr Caldwell - p. 12 of 22 October 1992

<sup>72</sup> Transcript of Mr Caldwell - p. 22 of 22 October 1992

<sup>73</sup> Transcript of Mr Caldwell - p. 25 of 22 October 1992



Mr Otto Alder

Mr Alder gave evidence that the documentation used to develop options on which the Cabinet could make a decision was:

*... supplemented by discussions and meetings held on the topic at which the options and figures were poured over, as it were.<sup>74</sup>*

*... We presented the facts, an assessment in the time that was available to the Minister, and Cabinet made subsequent decisions about it.<sup>75</sup>*

With regard to the lack of any recommendation from DID, Mr Alder stated:

*... The department ... had not reached a point where it could make a recommendation into that matter. Clearly, however, the need for some decision in principle was urgent and Cabinet decided it would bite the bullet given the same judgement and purchase the company to give it some chance of survival. We did not recommend that as you can see from the paperwork.<sup>76</sup>*

*... we did not have all the information necessary to base that technical recommendation.<sup>77</sup>*

Mr Bailey questioned Mr Alder as follows:

*... So what you are saying is a decision was made on purely political grounds?<sup>78</sup>*

In reply Mr Alder stated:

*... Well, I would not say purely political grounds, the information that they had before them is available to you.*

*... All I am saying is that whether a decision to try to save the TIO's investment and the Department of Industries and Development's*

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- 74 Transcript of Mr Alder - p. 36 of 22 October 1992
- 75 Transcript of Mr Alder - p. 37 of 22 October 1992
- 76 Transcript of Mr Alder - p. 40 of 22 October 1992
- 77 Transcript of Mr Alder - p. 40 of 22 October 1992
- 78 Transcript of Mr Alder - p. 40 of 22 October 1992



*investment is a political decision. ... It is a financial decision as well as a political decision*<sup>79</sup>.

**Touche Ross (Mr Phil Dewsbury and Mr Geoff Finch)**

In giving some background information on the Touche Ross involvement Mr Dewsbury stated:

*... we issued for DJFM a further position paper, or desperate application for funds ... that is the so called second Touche Ross report. It was really a company report which we were the mouth-piece for the company, if you like, in taking their instructions of bringing that report together for them.*<sup>80</sup>

*... The second report ... was done with the knowledge of the same steering committee, but more specifically for the company and for John Pastrokos ...*

In relation to comments on the 'blue sky' nature of the sales projections, Mr Dewsbury said that Touche Ross relied on forecasts prepared by DJFM marketing manager Mr Williams as per their instructions from DJFM.

Mr Dewsbury indicated the main reason for the increasing sales projections was furniture manufacture which was the rationale behind the whole project; the infrastructure was there for the purpose of the production and sale of furniture; it wasn't however going to happen by itself; it had to be made to happen.

He confirmed that, on the basis of the projections in the 'Second Touche Ross Report', DJFM would make losses to 30 June 1991 of \$2.5 million without funding and \$1.5 million with additional equity funding. Even with increasing sales projections the company was not however going to turn the corner for some time.

Mr Dewsbury stated that DJFM never intended to rely solely on the Darwin market. Its whole basic philosophy was to export interstate and overseas. It was a fundamental belief that the only way to go ahead was to expand into interstate and overseas markets progressively from day one, otherwise there would be massive under utilisation of the very expensive machinery.

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<sup>79</sup> Transcript of Mr Alder - p. 40 of 22 October 1992

<sup>80</sup> Transcript of Mr Dewsbury - p. 4 of 28 October 1992



Mr Palmer asked Mr Dewsbury:

*... based on your projections do you believe that a reasonable person would have invested in DJFM at that time.<sup>81</sup>*

In reply Mr Dewsbury stated:

*... A commercial person would not have because we had been there, I mean the existing financiers wouldn't and I think ... that if the government didn't put in \$1.5m that company was at the wall and everyone knew it.<sup>82</sup>*

In relation to the sales projections Mr Dewsbury stated:

*... It is very easy to say now three years later that they were optimistic, but parts of them were not. The contract joinery, not far off the mark, the whole issue is furniture. If the furniture happened, and I reiterate it was never going to be easy, but if it happened I will stand by that number.<sup>83</sup>*

There is no disclaimer in the 'Second Touche Ross Report' nor any express qualification in relation to the Touche Ross involvement, as the report was issued by the Company and not by Touche Ross. The report was handed to Mr John Pastrokos and no representations were made by Touche Ross to Government on behalf of the Company. It was not on Touche Ross letterhead.

Mr Dewsbury's only recollection of his involvement was:

*... I might have spent some time with Tony Watson where he wanted to revisit the figures, and changed some of those, but other than that there would have been no other involvement.<sup>84</sup>*

Certainly both Mr Dewsbury and Mr Finch believed that Mr Watson, in his evidence, had vastly overstated their role in the Government decision. They agreed that the briefing prepared by Mr Watson could have given the Government the impression that they were dealing with a proposition that had been objectively analysed by independent accountants.

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<sup>81</sup> Transcript of Mr Dewsbury - p. 23 of 28 October 1992

<sup>82</sup> Transcript of Mr Dewsbury - p. 23 of 28 October 1992

<sup>83</sup> Transcript of Mr Dewsbury - p. 26 of 28 October 1992

<sup>84</sup> Transcript of Mr Dewsbury - p. 27 of 28 October 1992



Mr Dewsbury and Mr Finch also believed that the way their role has been represented in Mr David Hunt's report on Dalway<sup>85</sup> was totally incorrect.

Mr Dewsbury has stated that Touche Ross had never prepared a report in isolation for DID. Nor had Touche Ross had any involvement in the assessment of the value of the assets being purchased by the Government.

*... My recollection is that at no time were we asked to consider what the values of the assets were that were being acquired.*<sup>86</sup>

Touche Ross were not involved in any way in the discounted retirement of the ANZ Banking Group and Esanda Finance debts.

### Summary and Analysis

The evaluation of the application for finance was conducted with the assistance of the following documentation:

- . First Touche Ross Report
- . 'Second Touche Ross Report'
- . Capel Court (two brief reports)
- . Fradkin Report

The 'Second Touche Ross Report' was regarded as the single most important document in the analysis and evaluation of the application.

Touche Ross have stated firmly that this report was a report prepared solely for DJFM based totally on information assumptions and projections provided by DJFM. Touche Ross assisted by putting all the data together for DJFM but did not carry out an objective assessment. It is significant that the report was not prepared under the Touche Ross letterhead.

DID personnel however were apparently of the strong impression that it was prepared and analysed independently by Touche Ross. Mr Watson of DID developed over a period of time some of the financials included in the report.

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<sup>85</sup> Prepared by Mr Hunt of DID at the request of the Hon. Steve Hatton

<sup>86</sup> Transcript of Mr Dewsbury - p. 57 of 28 October 1992



As a result, DID presented this report to the Government as an objective accountant's analysis of the present financial and future projected situation DJFM was and would be in. It was however re-worked and analysed by DID officials. It is not apparent that DID made any attempt, by independent enquiry, to confirm likely cash flows shown as coming from the State Square Project.

DID believed that Touche Ross also had a continuing role in determining what course of action should be taken. Mr Tony Watson in particular had a different view of the Touche Ross version of events as regards their original and continuing role.

The obvious potential for conflict of interest was discussed and DID was apparently assured by Touche Ross that there was no problem. DID's impression of the Touche Ross role was quite different from what Touche Ross claim their role was.

Even if the DID version of the Touche Ross role is accepted, and there is a clear conflict on the evidence about the issue, it is difficult to understand how DID could contemplate accepting advice from the accountants who were employed by the recipient of any financial assistance.

In all the circumstances the Committee does not believe that Touche Ross held itself out as standing behind the report or endorsing its figures and recommendations as authoritative or reliable. To the extent that DID personnel held a contrary impression this was an error on their part, albeit perhaps understandable, given the pressure under which they were working.

DID apparently believed that there was no time to obtain an independent third party opinion even if they wanted to because of the dire financial circumstances in which the company found itself. DID did not see that it was necessary considering its understanding of the Touche Ross role.

The time factor - or lack of it - is important. DID personnel have stated in one way or another that they didn't have time to obtain and analyse all the information required to make a technically informed recommendation. In DID's opinion, it carried out as much analysis and testing as was possible in the time frame available and as a result, it put options and facts to the Minister and not a recommendation. A submission was not made to Cabinet although Mr Watson did, as mentioned, make a presentation to Cabinet.

In all the circumstances, even without the benefit of hindsight, it is difficult to understand why DID did not at least look at some appropriate level of interim funding to DJFM in order to buy more time to undertake appropriate investigations and analysis. That was a possible option that was apparently never explored.

The decision to buy the assets and business of DJFM and form a separate legal entity was based on advice from Mr Geoff James. It was said this course of action effectively avoided unknown liabilities and contingencies at the date of the takeover.



It is apparent that in deciding on the purchase price of the assets and the business, no valuation of the assets was undertaken, nor indeed was it considered that one may have been required.

Mr James in a letter dated 7 February 1990 from Mildrens addressed to the directors of Dalloway Pty Ltd<sup>87</sup> stated:

*A comprehensive enquiry into the value of assets is not warranted in view of the spirit with which the matter is to be approached, i.e. a rescue. ... It is our understanding that we are instructed that the proposed capital injection is in the nature of an act of faith rather than a sound commercial investment and hence you are not motivated to address the question of the relationship of the asset value backing that may reciprocate the proposed capital injection.*

As noted at 6.6, a retrospective valuation of the assets acquired was subsequently carried out by the Australian Valuation Office ('AVO'). On the basis of that valuation, the historical cost values in the financial statements of DJFM appear to have grossly overstated the actual value at that point in time. On the basis of that valuation, the overstatement of \$2.4 million had the effect of being an immediate capital loss in shareholders' equity and also reduced very significantly the level of security available to the Government.

It is clear that the ordinary and accepted processes of due diligence were not undertaken in relation to the evaluation.

It should be noted however that in the brief to the Minister for Industries & Development, the Hon. Barry Coulter dated 24 January 1990 DID officers stated<sup>88</sup>:

*... DJFM has serious financial and related problems. From a purely commercial viewpoint, it would be difficult to agree to the funding request in light of the inherent risks. If the business was allowed to fail, the implications for local trade creditors and the Pastrokos family would be severe.*

The competing considerations are highlighted by a statement in a later briefing to the Minister dated 29 January 1990.

*DJFM is a showcase pioneer of the introduction of integrated manufacturing technology in the Territory. ... Its demise will cast a pall over future attempts to proceed in this direction.*

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<sup>87</sup> See letter attached to Tabled Document 81

<sup>88</sup> Tabled Document 19



*... Any justification for Governmental financial assistance rests on this broader consideration.<sup>89</sup>*

As noted in detail above, the Hon. Marshall Perron gave his reasons for the purchase decision. These reasons are complimented by the original reasons given for the purchase detailed at 6.4. It is apparent from these reasons that the major considerations for the decision were 'non-financial' in nature, except for those relating to placing the loans of TIO and DID at risk.

The 'non-financial' reasons for the decision to purchase were apparently based on policy considerations. However the fact that the financial aspects of the decision were not adequately considered casts doubt over the reasonableness of the decision on the whole.

As previously noted, the sales forecasts in the 'Second Touche Ross Report' have proven to be vastly overstated. These forecasts were mainly reliant on the successful manufacture and sale of furniture in sufficient volume to achieve significant economies of scale. When the forecasts were prepared, not only did DJFM not have definite markets or even a marketing strategy, it was unable to mass produce furniture because of problems with the computer integrated manufacturing process and lack of employee and management skills. This should have cast great doubts over the reliability of the forecasts and therefore the reliability of the report.

Those sales forecasts were also only a minor reworking of the sales figures in the First Touche Ross Report, which had been entirely supplied by a representative of DJFM, and relied on DJFM winning the lion's share of joinery and furniture contracts for both stages of State Square. There is no indication that this fact was even taken into account in the analysis undertaken by DID.

The forecasts also appear to rest on the assumption that virtually all the Stage II joinery work would be completed and paid for by 30 June 1992. As events transpired none of this work had even been commenced by that date.

The forecasts also contain incredibly high projections for furniture sales within a known limited market. Given that Mr Watson indicated in his evidence that "an overseas marketing drive was the last thing the company needed"<sup>90</sup>, DID should have given far more attention to the sales forecasts in its analysis of the proposal.

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<sup>89</sup> Tabled Document 20

<sup>90</sup> Transcript of Mr Watson, p. 54 of 21 October 1992



In conclusion:

- . The Second Touche Ross Report should not have been relied on by DID.
- . DID held a false impression of the independence of Touche Ross and thus the extent to which it could be relied upon.
- .. DID's analysis of the Touche Ross reports was in any event inadequate.
- . The proper process of due diligence was not undertaken nor apparently were interim funding arrangements considered in order to buy more time.
- . The value of the assets acquired was considered irrelevant to the decision making process resulting in an immediate capital loss of \$2.4 million based upon the retrospective valuation undertaken by the AVO.
- . The decision was made on the basis of 'non-financial' or political considerations, as it was apparent that the financial considerations leaned strongly in favour of a recommendation not to purchase.
- . DID officers did not make a recommendation even though they had grave doubts as to the eventual viability of the business.
- . There was no apparent research or analysis undertaken to determine whether DJFM was in fact a 'showcase pioneer' - the very justification suggested by DID for Government financial assistance.

## 6.6 VALUATION OF FIXED ASSETS

Any evaluation of a purchase/sale of business decision would not be complete without an appropriate review of the fixed assets being acquired, or in the case of a lender, a review of the fixed assets being used as security for its loans. In any purchase of a business, appropriate due diligence checks would normally be undertaken by a purchaser to ensure not only the existence of fixed assets purchased but also the condition of those fixed assets and the market value of land and buildings and other fixed assets.

It is apparent that when the Government acquired the assets of DJFM in March 1990, no review as to the market value of land, buildings and other fixed assets was performed.



The valuation of fixed assets was extremely important when the Government was deciding whether to effectively loan a further \$3.5 million to Dalway, over and above the \$0.318 million still outstanding directly to the Government, and the \$2.888 million which was owing to the TIO at that time.

In simple terms, the Government acquired the assets of DJFM through the purchase of those assets via Dalway. The Government, with the agreement of TIO, assigned the TIO loan of \$2.888 million from DJFM to Dalway (under a first mortgage arrangement) and transferred the Government's loan of \$0.318 million with DJFM to Dalway.

To analyse what was acquired at 15 March 1990, the Committee used the audited accounts at 30 June 1990 as the basis of the assets acquired and simply added back depreciation charged between 15 March 1990 and 30 June 1990. This being the case the Government acquired via Dalway:

|                       |              | \$M                 |
|-----------------------|--------------|---------------------|
| Current assets        |              | 1.553               |
| Fixed assets          | 4.849        |                     |
| Add back depreciation | <u>0.110</u> |                     |
|                       |              | 4.959               |
| Goodwill              |              | <u>0.063</u>        |
|                       |              | <u><u>6.575</u></u> |

At the same date the following loans were taken up by Dalway: TIO \$2.887 million; existing Government loan \$0.318 million; a further \$2.0 million loan from the Government to acquire assets of DJFM; and a facility committed to by the Government to provide a working capital loan of a further \$1.5 million (this amount was drawn down between August 1990 and December 1990).

In summary the Government had loaned or committed loans to Dalway of \$6.706 million at 15 March 1990. (It is appropriate to include the \$1.5 million commitment, even though not drawn down at 15 March 1990, as the decision had been made by that date to commit.)

On the surface it would appear that the Government loans and TIO loans were reasonably covered by gross assets (on a going concern basis). However if due diligence reviews had been performed as would have been expected it can be



demonstrated that the fixed asset values were materially overvalued. The following table points to the extent of the overvaluation:

|                                  | Financial Statements |                     | Australian Valuation Office |                     | Offers for sale      |                     |
|----------------------------------|----------------------|---------------------|-----------------------------|---------------------|----------------------|---------------------|
|                                  | 15 March 1990        | 30 June 1991        | 15 March 1990               | 30 June 1991        | Pastrikos Consortium | Territory Cabinets  |
|                                  | \$M                  | \$M                 | \$M                         | \$M                 | \$M                  | \$M                 |
| Property Plant & Equipment (WDV) | 4.959 <sup>91</sup>  | 4.572 <sup>92</sup> | 2.565 <sup>93</sup>         | 2.365 <sup>94</sup> | 1.454 <sup>95</sup>  | 1.560 <sup>96</sup> |

91 Per audited financial statements 30 June 1990 (\$4.849 million plus depreciation add back to 15 March 1990 \$0.110 million).

92 Per audited financial statements 30 June 1991.

93 Retrospective valuation performed by Mr B Hunt on 15 October 1992 - Australian Valuation Office as at 15 March 1990.

94 Valuation performed by Mr B Hunt on 5 December 1991, Australian Valuation Office as at 30 November 1991.

95 Derived from Consortium offer of \$1.75 million for total assets.

|                      | \$M            |
|----------------------|----------------|
| Total Assets         | 1.750          |
| Less current assets* | <u>(0.296)</u> |
|                      | <u>1.454</u>   |

\* at estimated liquidation value per Desliens report of May 1992

96 Per Territory Cabinets offer as noted in Desliens report of May 1992.



It is the Committee's view that a due diligence review might have indicated that the value of the property, plant and equipment was not as shown on purchase as thus:

|                                 | \$M          |
|---------------------------------|--------------|
| Property plant<br>and equipment | 4.959        |
| Goodwill                        | <u>0.063</u> |
|                                 | <u>5.022</u> |

but more accurately might be shown as per Australian Valuation Office valuation as thus:

|                                 | \$M          |
|---------------------------------|--------------|
| Property plant<br>and equipment | 2.565        |
| Goodwill                        | <u>-</u>     |
|                                 | <u>2.565</u> |

This brief analysis indicates that non-current assets were overvalued on the first day of Government ownership.

It is important to recognise this overvaluation from day one for two major reasons:

- (i) the security covering the Government loans was inadequate; and
- (ii) in assessing the loss of Government funds over the period of Government ownership of some \$5.53 million it needs to be remembered that a significant amount was effectively lost on day one.

Using the table shown above the offers to purchase the property, plant and equipment were extremely low, even having regard to the Australian Valuation Office value:

|   | \$M            |
|---|----------------|
| Value per AVO 30 November 1991  | 2.365          |
| Less depreciation estimate<br>from 30 November 1991<br>to 25 May 1992 | <u>(0.150)</u> |
|   | 2.215          |
| Value placed by Pastroikos Consortium                                 | <u>1.454</u>   |
| Abnormal write down   | <u>0.761</u>   |

It would seem that the amount paid by the Pastroikos Consortium was \$0.761 million less than the adjusted value by the Australian Valuation Office.



In total, the write down of fixed assets from date of purchase to date of sale by the Government would account for approximately \$3.218 million (after allowance for on-going depreciation) of the assessed loss of Government funds of \$5.53 million. It is the Committee's view that an overvaluation of fixed assets should have been identified before the Government purchase as a write down to fair value at that date, with the \$0.761 million write off referred to above representing the peculiar circumstances of the sale of Dalway.

## 6.7 SPECIAL ARRANGEMENTS

The special arrangements relating to the purchase involving the Pastrikos family and which will be dealt with in this section are:

- . Pastrikos family right of first refusal/option
- . Pastrikos family veto on transfer of effective control until June 1992
- . Composition of the Board of directors
- . Employment contract with John Pastrikos

As noted previously, the Chief Minister, the Hon. Marshall Perron met with Mr Pastrikos on 2 February 1990 in Mr Perron's office where in part he told Mr Pastrikos:

*... to go off and talk further with DID officers with a view to reaching an arrangement which may allow the family to buy back the company at some future stage.<sup>97</sup>*

Again as previously mentioned, Mr Pastrikos has alleged that the edited version of the Draft Arrangement and Conditions (which had been considered by Cabinet) along with oral representations made, constituted an agreement.

Mr Pastrikos stated in evidence:

*... My understanding of the agreement made 2 February 1990 was that we have the first option to buy back the company by June 1992. With also an agreement made that any profits made by the company would reduce the cost that the government has put in during that time. And also it was*

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<sup>97</sup> Transcript of Hon. Marshall Perron - p. 4 of 12 November 1992



*said that there would be three Directors from the shareholders and two from the Pastrikos family...*<sup>98</sup>

He also said:

*... Till June 1992 ... if anybody want to buy the business they had to approach me, either I say 'yes' or 'no', and well if I said 'no' that business would not be sold. Now after June 1992 I had I don't know if you call it option or whatever you want to call it, but after 1992 if they found somebody to sell it for \$4 or \$5m I had the option to either come up with the money within 30 days or a certain time given and if I could not come the place would be gone.*<sup>99</sup>

Mr Pastrikos believed the actual deal was done on 2 February 1990. However Mr Perron believed that calling it an agreement was putting too great an importance to what was discussed and the documents exchanged.

*... This description accords too great a status on these documents.*<sup>100</sup>

However Mr Perron later stated:

*... I believe and always have there was at least a moral obligation to offer the Pastrikos family first right of refusal if this company was sold before June this year...*<sup>101</sup>

Following the meeting between Mr Pastrikos and Mr Perron, Messrs Waters, James & O'Neil (now Waters James McCormack) wrote to DID via Mildrens on 15 March 1990 asking that a letter of comfort be issued with regard to various matters arising out of the purchase of the business and assets of DJFM. In summary the letter asked for confirmation of:<sup>102</sup>

- . an option to purchase to 30 June 1992 and first right of refusal
- . an employment contract

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<sup>98</sup> Transcript of Mr Pastrikos - p. 2 of 7 September 1992

<sup>99</sup> Transcript of Mr Pastrikos, pp. 4-5 of 7 September 1992

<sup>100</sup> Transcript of Hon. Marshall Perron - p. 4 of 12 November 1992

<sup>101</sup> Transcript of Hon. Marshall Perron - p. 4 of 12 November 1992

<sup>102</sup> DID File 92/294 - Folio 44



In reply, on the same date, DID wrote to Messrs Waters James & O'Neil in a letter signed by Mr Caldwell which stated in part:

*... So far as 'repurchase' is concerned, the principles outlined are generally acceptable.*<sup>103</sup>

When questioned about his understanding of the purchase option, Mr Caldwell stated:

*... It was my very clear understanding indeed and a matter of considerable time and effort and legal advice that the exchange of correspondence on 15 March 1990, constituted a letter of comfort and they had created a moral obligation between the Government and the Pastrikos family that did not in its own right create any legal undertaking.*<sup>104</sup>

*... I had extensive legal advice and my advice was that we were entering into an arrangement that was constituted in the documents that were signed, and that we had issued a letter of comfort, establishing a moral right which is not the same thing as a legal right.*<sup>105</sup>

Mr Watson who was also closely involved along with Mr Caldwell at the date of purchase stated:

*... I believe that it was the intent of the politicians that the Pastrikos family should be given the opportunity to repurchase the business as a guiding principle and that should be on the basis that someone came along to the Territory Government and said we would like to buy this business, the Government should give John Pastrikos or his family the first right to buy and if they chose not to or could not, then perhaps the business could be sold to the third party.*<sup>106</sup>

The Hon. Barry Coulter stated in the Legislative Assembly on 2 May 1990.<sup>107</sup>

*... There is a moral obligation to give the previous owners of Darwin Joinery the right of first refusal at any time when somebody may wish to*

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<sup>103</sup> DID file 92/294 - Folio 45

<sup>104</sup> Transcript of Mr Caldwell - p. 33 of 22 October 1992

<sup>105</sup> Transcript of Mr Caldwell - p. 44 of 22 October 1992

<sup>106</sup> Transcript of Mr Watson - p. 67 of 21 October 1992

<sup>107</sup> Hansard 2 May 1990 - Page 1497



*buy the joinery ... If a buyer does turn up tomorrow, we have a moral obligation to ask Mr Pastrikos whether he wishes to buy it back.*

It is clear from the evidence noted in the above paragraphs that there was an obligation, at least moral, to give Mr Pastrikos and his family a first right of refusal. Attempts were made by the Government and the Pastrikos family to develop a formal legal agreement with no success. There is a substantial body of evidence available on this issue in the form of correspondence between DID, Mildrens and Messrs Waters James & O'Neil. We do not propose to detail all this evidence here as, in the end, no written agreement was reached.

The conflicting evidence in relation to the moral/legal issue was however highlighted by the differing opinions of the lawyers which were subsequently obtained. Mr James in evidence stated:

*... the spirit in which Mr Waters offered the letter of the 15 March, was that he was not seeking a contract or a legal commitment. He was seeking an expression of policy for the comfort of his client. It is my understanding that there is a major difference between a contract and a letter of comfort...*<sup>108</sup>

However in a letter from the Solicitor for the Northern Territory dated 14 January 1992 to DID signed by Mr Warren Day it is stated:

*... because of the broadness of the arrangement in that exchange of letters, I believe that if Dalway or its assets was sold to anyone else before 30 June 1992 it would be in breach of the Pastrikos family's rights to repurchase. ... In my view the effect of your department's letter of 15 March 1990 precludes Dalway from selling to anyone else but the Pastrikos family until 30 June 1992. ... in my view the wording of the agreement reached by the exchange of letters is in such broad terms that the Pastrikos family could well be able to mount a valid argument that the Territory cannot sell off the business of Dalway Pty Ltd to a third party prior to 30 June 1992...*<sup>109</sup>

The composition of the Board of directors was not an issue of concern in that it was decided that there would be five directors. Three were to be Government nominees, one a Pastrikos family nominee and Mr Pastrikos.

Under the terms of the agreement to buy out DJFM, Mr Pastrikos was to be employed for the next two years. The employment of Mr Pastrikos, as will be seen later, was to have a serious impact on the future running of Dalway. The agreement

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<sup>108</sup> Transcript of Mr James - p. 84 of 2 September 1992

<sup>109</sup> DID file 91/924 - Folio 180



originally did not specifically include this employment arrangement. This however was agreed to by Mr Caldwell on behalf of the Government at a meeting with Mr Pastrikos and his legal representative on the evening of 15th March 1990.<sup>110</sup>

A fuller assessment of the situation may have revealed the difficulties which such a contract could create.

In conclusion:

- . There was at least a moral obligation to give Mr Pastrikos and his family a first right of refusal up to 30 June 1992
- . It is contested that a legal agreement in that regard was reached in February/March 1990
- . The terms of any agreement relating to the special arrangements should have been formalised before or at the date of the contract for the purchase of the assets of DJFM.
- . Further legal advice on the validity of the alleged agreement is not warranted as this is an issue that could only be appropriately determined in a court of law.
- . Considering the position of DJFM and Mr Pastrikos in early 1990, being liquidation of DJFM or injection of Government funds, there was little or no room for him to bargain. It was not necessary for the Chief Minister to offer a first right of refusal, a position on the Board, guaranteed employment, and the like.
- . The alleged option agreement/first right of refusal could quite possibly have affected serious bidders considering the purchase of Dalway in early 1992.
- . Because no formal agreement was reached it led to a caveat being placed over the land and buildings of Dalway by a member of the Pastrikos family. This may have resulted in serious bidders being put off by the threat of protracted legal wrangling over ownership of the assets involved.
- . Whilst it is reasonable to assume that the caveat could easily have been removed by legal action it is likely that an interim injunction would have delayed any sale until the issue could be litigated. No-one

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Tabled Document (unreferenced) dated 15 March 1990 from DID to Waters, James & O'Neil



however appears to have come to grips with the issue on behalf of the Government.

As will be seen later, the special arrangements also led to management problems at Dalway.

## 6.8 EFFECT ON OTHER JOINERIES

Evidence presented suggested that the purchase of DJFM by the Government had an adverse effect on other joineries in Darwin and was partly responsible for the demise of Jaguar Joinery Pty Ltd ('Jaguar Joinery'), owned and run by Mr Peter Mannion.

Jaguar Joinery apparently found itself in financial difficulties in mid 1990 and requested assistance from the Government.

In a memorandum dated 29 May 1990<sup>111</sup> regarding the financial circumstances of Jaguar to the Chief Minister, the Hon. Marshall Perron, from the Minister for Industries & Development, the Hon. Barry Coulter, it was noted:

*Mannion said as well that Dennis Edwards has been around and stirring but had been told to go away. It may be a coincidence but Mannion also says he has a copy of the Dalloway contract with DJFM which details the real extent of NTG commitment.*

A loan of \$100,000 was approved despite reservations by Mr Alan Sprigg (Ministerial officer to the Hon. Barry Coulter) who said:

*... If not for apparent 13-14 full time staff and six subcontractors I would recommend decline assistance. Further loan equal prob. (sic) kiss our first \$80,000 goodbye. Am still only lukewarm. Crunch point Monday 3/6. Needs decision prior to creditors meeting 3/6. Suggest first run past MBP ...*

This prognosis was borne out as Jaguar Joinery went into liquidation and was unable to repay either the initial \$80,000 loan or the subsequent \$100,000 loan.

In a memorandum to the Hon. Steve Hatton from the Secretary of DID, Lyal Mackintosh, dated 6/4/92, it was stated:

*... (It is quite obvious that the loan should never have been provided. However, it would appear that Mr Mannion's claim that it was the Government's rescue of Dalway Pty Ltd that was the underlying cause of his financial problems, seems to have influenced the decision. Mr Mannion is recorded as claiming that all his*



*expansionary policies were based on his perception that Dalway would fail, and that he would subsequently be in a position to capitalise on same.)*

The actual effect of the purchase on other joineries is dealt with in detail in Chapter 7.

The Committee concludes, however, that no apparent research was embarked upon by DID which might have sought to identify the impact that the purchase of Dalway by the Government would have on other joinery operations in Darwin. Furthermore, as detailed elsewhere, there was no apparent assessment of the capabilities of other firms to carry out the joinery work for the State Square Project. This should have been a critical element in pursuing a policy to maintain or expand local job opportunities.

It is recommended that in future DID have in place a set of guidelines for granting financial assistance which includes a detailed assessment of the effect of such assistance on competing businesses and the market place in general.

## 6.9 SUMMARY

Based on all the evidence, it is the Committee's view that the purchase should not have occurred in the circumstances in which the decision was made. Independent advice and review of all the circumstances surrounding the proposal, including a detailed assessment of the proposed corporate strategy and the financial and non-financial factors, may have led to a decision to purchase but, we believe, under very different arrangements and with a more definitive plan for the future survival of the company.



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Chapter 1

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## **CHAPTER 7 - OPERATION**

### **7.1 INTRODUCTION**

The Committee's Terms of Reference require an examination of the trading operations of Dalway during Government ownership, and in particular inquiry into the reasons for Dalway's continuing losses and the write-down of the value of its assets. Clearly, as has been mentioned, the write-down of the value of assets represented a major part of the loss realised after the sale of the company, and so the two are related.

There are four areas of the company's operation which, in the Committee's view, contributed to the unsatisfactory financial performance of the company and which will be dealt with in more detail.

They are:

1. Structure and corporate strategy
2. Practical management problems
3. Operational factors
4. Value of fixed assets.

### **7.2 STRUCTURE AND CORPORATE STRATEGY**

#### **7.2.1 Overview**

DJFM had two distinct product lines: contract joinery and retail furniture. The major product line was contract joinery (85%) for the commercial building industry, where custom made built-in furniture and fittings and wall panelling made up the bulk of such work. In addition the company produced a range of furniture for home and office including desks, chairs, work stations, reception desks, bookcases, tables, dining suites and bedroom suites.

The factory was designed for long run production methods and not for one-off or low volume production.

The manufacturing equipment that the company used was designed to operate under the control of an integrated CAD/CAM system for automated cutting and drilling processes. This machinery was supposed to enable the company to provide an extremely high degree of accuracy in the components for its products thereby enhancing the quality of its final product.



Specifically, the system was designed for mass production of 'flat-pack' furniture with a view to exporting to Asia and for Commonwealth Government furniture contracts. It was not particularly suitable for contract joinery work, and the failure to recognise and act on this shortcoming was a significant factor in the difficulties experienced by the company.

### **7.2.2 Lack of Corporate Strategy**

Conventional management practice requires strategies and policies which give structure and direction to a company's operations.

Corporate strategies provide cohesion for all aspects of a company and its operations. They provide a plan for current and future operational requirements to allow a company to operate successfully. Corporate strategies would normally address such issues as:

#### **. Finance**

- planned or proposed financial structure
- financing arrangements and servicing requirements
- achievable performance budgets with profit and loss projections and yearly balance sheets with sensitivity analyses (including revenue by product type, geographical market and contribution margin for each product)
- cash flow projections for business volume
- projected return on funds invested

#### **. Sales and Marketing**

- current market definition, target market and future growth prospects
- achievable marketing strategies including necessary research
- competitors - actual and prospective - and their pricing and marketing strategies
- any competitive strategic advantage held and impact on cost or revenue structure
- projected revenue identified by product and geographical market and contribution margin for each product



**. Staffing**

- organisational structure
- levels of staffing required
- key positions and specific qualities required for key positions including management
- management structure and responsibilities

**. Production**

- production and operational capabilities (including volume)
- break-even production levels
- product range and turn around time in the manufacturing process
- identification of materials and resources required
- source and security of supplies of labour and materials
- required research and development work

**. Information Systems**

- identification of information needs of users and management
- accounting systems required to provide management information needs and to provide necessary accounting controls
- timetable and plan for development/implementation of information/accounting systems
- accounting systems to be used in interim while specialised systems are developed and implemented

**. Management/Board**

- identity of management team, specific qualities available and relevant experience or background of key management and Board personnel
- organisation chart and chain of command
- reporting responsibilities of management to the Board



- frequency of reporting
- types and contents of reports

Although the above represents a reasonably comprehensive list of what a company should consider in determining its corporate strategy, each aspect would need to be considered and tailored with the particular company's circumstances in mind. However, all these factors should be considered to some degree.

Such an encompassing plan was not produced for either DJFM nor for Dalway, although elements were addressed in the somewhat optimistic business plan produced by Mr Williams and subsequent reports referred to in Chapter 6. Recommendations as to some aspects were made but never implemented.

Apart from these reports, no other formal documented marketing strategies appeared to exist for DJFM or Dalway. None were prepared by the new directors after the purchase of the business by the Government in March 1990 although minutes of Board meetings refer to joinery contracts obtained and the potential for retail sales.

As a result there was an apparent lack of overall direction which appears to have resulted in loss of real control and purpose, with crisis management, as will be seen, becoming the order of the day.

### 7.2.3 Direction

Mr Barry Fradkin, in his report to the TIO on 19 January 1990, stated that the company had a number of problems including:

*... a lack of clear understanding of the direction it should take. Unless these impediments are rectified in the near future, I believe the business will not be able to survive and realise the returns that would appear to be available to it ...*

Mr Fradkin also identified the following major problems:

- . *... The need to change its overall direction away from joinery to furniture manufacture. This is the crux of DJFM's dilemma.*
- . *To utilise the new equipment and facilities effectively, DJFM needs to produce significantly greater volumes of furniture products in a process manufacturing environment. This requires different marketing, selling and production management skills and experiences to that which DJFM has had or currently has available.*
- . *There is no detailed marketing, production or business plan that has been prepared to show how DJFM intends to change its culture from a skilled job shopper to a volume processor and establishes the business objectives,*



*as well as the relevant marketing, production and financial strategies...*<sup>112</sup>

Mr Bell also recognised the need for Dalway to obtain large volume work for its factory. He stated in his evidence:

*... The very first month I was there, the month of May 1990, we put through everything we had that was of a mass-production, anything that looked like new production, and that was when we put through the library for the Supreme Court. But the thing is we used it all up and then for the next umpteen months we had one-offs and two-offs and bits and pieces, and you just can't function on that ...*<sup>113</sup>

Dalway continued to take on various joinery projects which in certain instances were not suited to large volume production, but rather were more labour intensive projects.

Mr Parish asked the following question of Mr Bell:

*... would it be true to say as a general proposition that, although if you look at the gross bottom line stages of the State Square, they look to be big jobs of the sort that a mass production factory would be well-fitted to handle. That in fact, when you actually look at the detail of them, they were a lot of little but very expensive jobs that, where really the high-tech machine was not of a particular advantage ...*

Mr Bell replied:

*... It was useless. That is very right. The thing is that as well as in that building there was a lot of one-offs ...*<sup>114</sup>

Mr Fradkin also identified the need for Dalway to move away from the one-off joinery projects into mass production to realise sufficient levels of sales to support the capital investment in plant and equipment, thus:

*... That is the point that I made earlier, that I felt that for this business to survive it had to move away from joinery, I mean, the factory was set up to get efficiencies out of high volume processing which means you have to get into repetitive type production work. Which is really furniture, because joinery does not always give you that opportunity ... But basically you had got to get into markets where you could sell high volume repetitive manufacturing. Now that is*

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<sup>112</sup> Fradkin Report, 19 January 1990

<sup>113</sup> Transcript of Mr Bell - p. 12 of 27 October 1992

<sup>114</sup> Transcript of Mr Bell - p. 8 of 27 October 1992



*a manufacturing thing which neither John nor his people had ever had experience, real experience in ...*<sup>115</sup>

The directors were well aware of the necessity for the company to pursue large scale volume production, which needed to come from markets outside Darwin. The directors also were aware of the need to move away from joinery jobs. However, Dalway continued to accept one-off joinery projects without any significant effort being made to move to obtain contracts for high volume production of furniture. As it turned out, the course of action taken by the Board in this regard did not facilitate the long term viability of Dalway.

However, it must be noted that in some respects the Board's strategies (or lack thereof) were understandable.

Mr Fradkin stated that the Board did not pursue sales due to the problems with the company's operations, thus:

*... we had two choices at the time. We had to work really hard for sales, and if you go for sales with an unstable environment there is a danger you can't deliver and one of our problems was, can we actually do this. You know, is this place up to doing the things that it is suggested it can do and so the balancing that was needed ... do you go for sales or do you go for trying to get stability and some sort of controls into place ... understanding ... what your capabilities are as a production and manufacturing group ...*<sup>116</sup>

Mr Parish then asked:

*... you made a decision in effect to run it as a holding operation while you assessed what the difficulties were and tried to fix them rather than pursuing growth, expansion or sales ...*

Mr Fradkin replied:

*... Yes ...*<sup>117</sup>

The evidence is that the Board held back on marketing initiatives in mass furniture production, which appears to have resulted in lower than budgeted sales, whilst it came to terms with Dalway's production and operational problems.

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<sup>115</sup> Transcript of Mr Fradkin - p. 28 of 27 October 1992

<sup>116</sup> Transcript of Mr Fradkin, p. 7 of 27 October 1992

<sup>117</sup> Transcript of Mr Fradkin, p. 8 of 27 October 1992



Attempts were made, however, to change the focus of the operation.

From Mr Fradkin's evidence to the Committee it is clear that an attempt was made to remedy the shortcoming with regard to the production of furniture by appointing Mr Yeudall as General Manager:

*... One of our strategies, and probably one of the more successful strategies in terms of generating sales was to move the company in that direction. That was one of the main reasons ... in hiring John Yeudall ... he had a strong experience with furniture and the marketing and retailing of furniture ...*<sup>118</sup>

Apart from the employment of Mr Yeudall, however, there seems to have been no direct attempt to address the important management of sales and marketing. There is no apparent evidence that a sales strategy was developed to further the original goals of furniture export, either nationally or internationally. Most marketing was restricted to the Darwin region.

Given that Dalway was able to complete the library for the Supreme Court project satisfactorily, Mr Fradkin's statement that the Board did not want to market the company, as the Board was unsure as to Dalway's overall capabilities, does not seem to accord with the facts of Dalway's operations. It obviously had certain capabilities which could have been marketed.

## **Conclusion**

With a significant debt to service, it appears that Dalway could not succeed without increasing turnover through the mass-production of furniture. It seemed that the whole purpose of the original expansion of DJFM from a small family joinery into a furniture factory had been forgotten, though it had been recognised from the start that Darwin, or even the whole of the Northern Territory, was an insufficient base to support such an operation.

### **7.2.4 Role of DID**

A significant factor which appeared to inhibit the Board's ability to pursue profitability was the constraints placed upon it by the shareholder, via the Department of Industries and Development.

According to evidence provided by Mr Otto Alder, the Board was advised by DID in making the company a profitable entity:

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<sup>118</sup> Transcript of Mr Fradkin, p. 32 of 27 October 1992



*... The Board was charged with making the company into a viable and profitable concern if that was able to be achieved. And before them were the trend lines established in the budgets which had been prepared at the outset.*<sup>119</sup>

This is supported by the testimony of Mr Steve Margetic to the Committee on 7 September 1992.<sup>120</sup>

The DID files contained a proposed agenda for the initial meeting of the new directors of Dalway and DID on 20 March 1990, which made reference to a number of Government investment objects as follows:

- ...        -        *To preserve the technology in the Territory*
- *Maintain employment skills*
- *Protect creditors and the flow on effect*
- *To dispose of the investment as soon as reasonably possible.*<sup>121</sup>

DID's role in monitoring the investment was also defined:

- ...        -        *No direct Departmental involvement unless called for by the Board*
- *The Board to provide the Secretary (or nominee) with a quarterly report - first being as at 30-6-90*<sup>122</sup>

Although there were no minutes of this meeting, evidence given by Mr Margetic would indicate this meeting took place:

*... At the initial board meeting the Directors met with the existing General Manager ... representatives of the Department of Industries and Development and other consultants that had provided services to the Government ... The new directors were given a run down on the state of affairs of the business ...*<sup>123</sup>

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<sup>119</sup> Transcript of Mr Alder - p. 7 of 22 October 1992

<sup>120</sup> Transcript of Mr Margetic - p. 4 of 7 September 1992

<sup>121</sup> Dalloway Pty Ltd - Meeting of Proposed Directors with Secretary of DID, 4.00 pm, 20 March 1990

<sup>122</sup> Dalloway Pty Ltd - Meeting of Proposed Directors with Secretary of DID, 4.00 pm, 20 March 1990

<sup>123</sup> Transcript of Mr Margetic - p. 2 of 7 September 1992



Further on in evidence, Mr Margetic was asked what directives were given to him as a Board member by the principal shareholder and what the objectives were of the shareholder.

Mr Margetic responded:

*... Yes, they indicated that their desire was to make the facility a profitable operation, and their advice at that time was that their intention was to sell it, when it was in a profitable situation.*<sup>124</sup>

In addition when asked was he, as a Board member, operating under any constraints, he replied:

*... The desire was to maintain the labour force that was there; yes.*

When asked if this constrained rationalising the workforce, he replied:

*... Yes, it did.*

Mr Margetic also went on to state that such reductions would not have turned the business around. He agreed with a suggestion put to him by Mr Parish:

*... you would have had to downsize the whole operation;*

*... Machinery, the size of factory ...*

Mr Margetic also stated in his evidence:

*... The reason Dalway was unprofitable in the first place was the structure of the business.*<sup>125</sup>

He also agreed with the suggestion put to him by Mr Setter as follows:

*... it is far easier to be profitable on jobs like State Square now, (since the sale in May 1992) because of the greatly reduced overheads than it was for Dalway to do so.*

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<sup>124</sup> Transcript of Mr Margetic - p. 7 of 7 September 1992

<sup>125</sup> Transcript of Mr Margetic - p. 48 of 8 September 1992



Mr Margetic:

*... That's correct.*<sup>126</sup>

and in response to a question by Mr Parish on the difficulties of managing Dalway:

*... The gearing or the structure of the business was their biggest problem.*<sup>127</sup>

This all indicates that at least Mr Margetic felt the ability of the Board to operate commercially was hampered by restrictions being placed on the Board.

If Dalway's overheads, debt burden and cost structure was such that it made it unprofitable, then restructuring of the debt, operations and the manufacturing process may have solved certain of these problems. There is evidence that the Board knew of these problems but never conveyed them to Government by indicating restructuring was necessary. This lack of communication may have resulted from the directions given to the Board by DID at the outset to maintain the workforce, preserve the technology and protect the creditors and flow on effect.

DID not only directed the Board to turn the company into a viable concern, but also restricted the Board with certain conditions imposed at the outset in achieving that aim effectively limiting any action the directors may have taken in the beginning to rationalise the business into a profit making venture.

DID also appointed Mr Pastrokos as an employee of the company to be paid by the company under an employment contract for two years from 1990. Again, this constrained the Board in how it could oversee the operations of Dalway. The Board was not totally free to appoint its own management and affect such changes as it thought necessary. Mr Margetic stated:

*... His (John Pastrokos's) role as production manager did affect the ability of a number of the recommendations being implemented, and the perception in the workforce as I have stated in my report also made more difficult implementing change.*<sup>128</sup>

Similarly, DID did nothing at the outset to either formalise or dispel the understanding held by Mr Pastrokos with regard to his option to re-purchase the company and his right of veto in the event of a proposed sale to any other party.

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<sup>126</sup> Transcript of Mr Margetic - p. 40 of 8 September 1992

<sup>127</sup> Transcript of Mr Margetic - p. 22 of 8 September 1992

<sup>128</sup> Transcript of Mr Margetic - p. 9 of 7 September 1992



These factors effectively limited the extent to which the Board could operate in a fully commercial sense and to turn Dalway around into a profitable situation.

## **Conclusion**

The restraints imposed upon the Board effectively hamstrung the restructuring necessary to turn Dalway into a commercially viable concern.

DID created a paradoxical situation in which Dalway was supposed to act as a private company under the control of the Board, but at the same time was subject to interference which curtailed that Board's freedom of action through apparent obedience to bureaucratic directives.

## **7.3 PRACTICAL MANAGEMENT DIFFICULTIES**

### **7.3.1 Directors and Management**

#### **7.3.1.1 Directors**

Prior to the purchase of Dalway by the Government there was a need to appoint a Board of Directors. This was mentioned in the DID Briefing Paper of 24 January 1990.<sup>129</sup> It was felt that more control over public funds could be achieved by installing a majority of Government representatives on the Board and that these were to be appointed by DID. It was also recommended that the General Manager should not be a member of the Board but should attend Board meetings at the discretion of the Board.

As a result, representatives of the Pastrokos Family on the Board of Dalway were Mr Pastrokos and one other Pastrokos nominee. This nominee was a well-known local businessman, Mr Steve Margetic who Mr Pastrokos had frequently dealt with and regarded as a suitable person.

Clearly, the failure of the previous management to correct the problems within the business necessitated significant changes in control. A board was established which consisted of Messrs Fradkin, Margetic, Pastrokos and Kneale. Mr Jim Bell was appointed as Chairman on 24th April 1990 and Mr G James was appointed as an alternative director during Mr Bell's absence overseas. Mr James also served on the Board for six months prior to the sale of the Government's interest in Dalway.



Details of the Directors are as follows:

**Mr Jim Bell (Chairman):**

Appointed by DID as Chairman of the Board on 24 April 1990. Mr Bell had at one stage worked as a building contractor, and had for some years run a joinery business ancillary to his building activities. He had no previous experience in CAD/CAM mass-production of furniture and had no apparent working knowledge of computers.

**Mr Barry Fradkin:**

Mr Fradkin had been a management consultant with McGuinness, Fradkin & Associates Pty Ltd and for some 25 years had acted as consultant to a number of manufacturing companies, but never in the areas of joinery or furniture production. His experience lay mainly in the area of corporate strategic planning rather than in production control. He was based interstate and came from interstate in order to attend board meetings.

**Mr Ian Kneale:**

Mr Kneale was initially appointed Chairman of the Board of Dalway because of his experience in running a successful joinery and had made furniture for some years on the Gold Coast. He had specific expertise in designing, producing and marketing furniture. His connection with the company, however, lasted only some five weeks after which he resigned from the Board following a dispute over expenses.

**Mr Steve Margetic:**

Mr Margetic is managing director of Sitzler Brothers (Darwin) Pty Ltd and was experienced in the construction industry. He had no specific expertise in furniture production and only a very general exposure to the joinery business. He was one of two Pastrokos nominees to the Board of Dalway.

**Mr John Pastrokos:**

Mr Pastrokos was the former founder of DJFM which sold its assets to Dalway. His experience lay in the area of general construction and contract joinery. He had no previous experience in large-scale furniture production and no training in the use of CAD/CAM methods prior to the incorporation of DJFM. Mr Pastrokos was removed from the Board at the insistence of the other directors on 24 September 1991.



**Mr Geoff James:**

Mr James is a senior legal practitioner practising in Darwin.

As previously mentioned in more detail the new directors of Dalway met as a Board on 21 March 1990, with representatives of the DID being in attendance by invitation, and were informed as to the financial position of the company. The directives given to Board members by the Government were the:

*... desire ... to make the facility a profitable operation, and their advice at that time was that it was their intention to sell it, when it was in a profitable situation*  
...<sup>130</sup>

The constraint applied to the Board by the Government was:

*... The desire was to maintain the labour force that was there ...*

This was taken to mean that although the Government wanted the business to become viable, it was not to be achieved at the expense of the labour force.<sup>131</sup>

The Board also appears to have been frustrated in its attempts to implement changes to the business which economic necessity dictated in the light of the deteriorating position of the company. Its frustration appears in part to have been caused by inadequate recording and reporting of stock, work in progress, creditors and debtors.

There was constant friction between some Board Members apparently precipitated by a refusal by Mr Pastrokos to realise that the business was no longer his sole responsibility. Eventually the Board was faced with the problem that when its members made certain decisions with which Mr Pastrokos did not agree, he went to either the Secretary of DID or even the Minister himself.

This situation culminated in the forced removal of Mr Pastrokos from the Board on 24 September 1991.

### **7.3.12 General Management**

The major feature of the management of Dalway whilst under Government ownership was the instability created by major changes in key personnel.

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<sup>130</sup> Transcript of Mr Margetic, p. 7 of 7 September 1992

<sup>131</sup> Agenda for first meeting between the Board of Dalway and DID, 20 March 1990



Mr Dennis Edwards was installed as General Manager in March 1990, but after concerns raised by the Board, he was dismissed on 27 April 1990.

Mr Kneale resigned as a director on 15 May 1990. However, at its meeting on the 15 May 1990, the Board resolved:

*... that the firm of Cordiner King Warburton [recruitment consultants] be asked to wait until such time as Dalway is in a profitable position. Until that time Mr Jim Bell will assume the responsibilities of General Manager under the heading of Executive Director ...*<sup>132</sup>

Mr Bell acted as General Manager until the appointment of Mr John Yeudall in January 1991, although the concurrent holding of a management and Board position ran contrary to the original Briefing Paper recommendations.

The services of the subsequent General Manager, Mr John Yeudall, were dispensed with after six months with the company as it was the Board's view, according to the evidence of Mr Margetic, that Mr Yeudall was not in fact the right person for the job as General Manager, since his expertise lay in the field of furniture marketing and he was not experienced in the area of actual production. Accordingly, the Board did not extend the term of his employment beyond the original six month trial period.

Mr Bell again acted as General Manager from August 1991 until May 1992 apparently because of the impending sale of the Government's interest in the company. Mr Bell was not qualified in a 'state of the art' manufacturing business which is really what Dalway was supposed to be about. He was apparently not computer literate and appears to have had difficulty in following the general ledger and other functions of the CAD/CAM system. Given that Mr Bell did not have the appropriate qualifications or experience to run computerised production systems, his appointment as General Manager appeared inappropriate and appears to have exacerbated the management problems of Dalway. It must be remembered however that the Board was under the impression that the sale of Dalway would proceed with greater expedition than it in fact did.

It is clear from this history of management that no management plan could be formulated and implemented since those involved in management appeared not to have the experience necessary to run the sophisticated production system installed along the lines for which it had been designed.



### 7.3.1.3 Financial Management

The accountant for Dalway, Mr Tony Pastrikos, was dismissed in November 1990 since it was felt by the majority of the Board that he was too inexperienced to run the sophisticated accounting package installed in the computerised system.

His replacement, Mr Tony Cahill, did not commence work until 4 February 1991 and stated in his evidence that the company had operated without an accountant for twelve weeks. Mr Cahill had previously been employed by the Government in a finance capacity and lacked experience in the private sector let alone a manufacturing industry. His credentials in the use of the accounting package installed were not apparently significantly better than those of Mr Tony Pastrikos.

It was stated by Mr Wayne Bastion of Ernst & Young, the company auditor, that:

*... Tony Cahill, I don't believe, ever came to grips with the accounting system. I do not think he was really competent in that regard.*<sup>133</sup>

It was the lack of an appropriately qualified accountant experienced in the accounting system employed by the company which led to many of the problems with the reporting of the company's financial status. This appears to have been a fatal flaw since efficient and effective management calls for an accurate and immediate appraisal of current financial status.

### 7.3.1.4 Contracts Management

Mr John Pastrikos acted as Contracts Manager and apparently from mid-1991 as Factory Manager. He was well experienced in the joinery industry but had no practical experience in the mass production of furniture prior to the incorporation of DJFM. His role is dealt with in more detail later in this chapter.

### 7.3.1.5 Staffing

As mentioned, the First Touche Ross Report made reference to organisational structures and the special problems created by the production methods and staffing foreshadowed by the purchase of the CIM system, which was primarily purchased to:



*... facilitate a change in its production methods from a jobbing basis to a production flow through in order to achieve economies of scale and factory efficiencies from volume throughput.*<sup>134</sup>

This identified a significant shift from how the business used to operate to how it would need to operate to achieve a profitable return and to use the equipment at its best. Touche Ross noted in the Report:

*... The business and its management has had no previous experience with this method of production.*<sup>135</sup>

The report also stated:

*... The work habits of the skilled labour force will require redirection to the new production flow methods rather than the current jobbing practices. The benefits of these new production methods will require incorporation into the present working behaviour in order to minimise resistance to change from the old manufacturing methods ...*

*... DJFM production capacity is very limited by its present operating methods. Work is currently allocated on a jobbing basis to the production employees depending on their level of skill.*<sup>136</sup>

The report recognised the specialist nature of the new system and the associated skilled labour force needed to use it. However, no review was undertaken by management when the Government acquired DJFM's assets to ensure this issue was being addressed. This should have been incorporated in a revised corporate strategy prepared by management at that time.

The 'Second Touche Ross Report', dated 20 January 1990, also recognised the problems raised by implementing this system, thus:

*... The development and implementation of the computer facilities has taken longer than previously anticipated because of the time being taken to train employees, the delay in manuals being supplied by the manufacturers, and the amount of resources required to fully integrate the system.*

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134 DJFM Investigation Report dated 29 September 1989 prepared by Touche Ross paragraph 2.3

135 DJFM Investigation Report dated 29 September 1989 prepared by Touche Ross - paragraph 2.3

136 DJFM Investigation Report dated 29 September 1989 prepared by Touche Ross - paragraph 2.3.



and

*... Further, the Directors recognise their limited experience to implement production management techniques and welcome participation from persons outside of the business at that level.*<sup>137</sup>

This can be interpreted as a plea for help as the DJFM management began to recognise the difficulties they faced with implementing the new CIM system.

Mr Fradkin, in his report to TIO of 19 January 1990, also stated:

*... These levels of production are outside the experience of DJFM's management at all levels. The nature of the production management activities, controls and strategies is also different to that which all levels of management at DJFM have experienced.*<sup>138</sup>

This extract confirms Mr Fradkin's appreciation of the emerging problems and thus it is puzzling why the Board did not request that these issues be addressed early in 1990 with carefully developed and documented business strategies; thus providing management with an appropriate level of guidance given their recognised inexperience. Mr Fradkin's recommendations included the following:

*... DJFM should urgently recruit a production manager with appropriate manufacturing experience to re-organise, control and subsequently manage the production environment as an effective processor.*<sup>139</sup>

It is therefore unclear why no moves were made by the Board to ensure that appropriately experienced management were employed, or failing this, that experienced consultants were employed to give the required level of guidance and advice.

## Conclusion

The Committee is of the view that the instability and lack of appropriate experience in management of the company at the production, marketing and financial levels

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<sup>137</sup> DJFM Funding Requirement Report dated 20 January 1990 for DID prepared by management of DJFM with the assistance of Touche Ross - paragraph 3.2

<sup>138</sup> Report by McGuiness, Fradkin and Associates to TIO, 19 January 1990, Paragraph 2.2

<sup>139</sup> Report by McGuiness Fradkin and Associates Pty Ltd to TIO on 19 January 1990 - Paragraph 3.5



significantly hampered any attempt to make the company commercially viable. In effect, management of Dalway did not have the appropriate experience or qualifications in the successful application of the equipment to its appropriate task and was thus ineffective in achieving the original aim of DJFM of large scale furniture manufacture. As a result it seems that the emphasis returned to contract joinery which was never, according to the market surveys, likely to be sufficient to service the debt.

That management should have recognised its limitations in implementing a system in which it had no previous experience was crucial, however, no General Manager or Production Adviser with such experience was ever subsequently employed by Dalway. This led to significant implementation problems with the computer, production processes, accounting systems and related internal controls over stock and work in progress.

### **7.3.2 The Pastrokos Factor**

As mentioned, Mr Pastrokos had for many years operated, with apparent success, a Darwin joinery business. The expansion into computer-aided control and production systems appears however to have been beyond his level of technical appreciation. The system leased and installed by DJFM turned out to be an 'orphan' in the computer sense with virtually no technical back-up available in Australia.

The dreams of a furniture manufacturing, retail and export business, coupled with an obvious lack of expertise, appear to have led Mr Pastrokos into an untenable situation from the beginning. However, through all the financial troubles he appeared to have continued to see the project as his own, even after actual ownership of the business passed to the Government.

It appears that from the time that Dalway purchased the assets of DJFM there was continual conflict between Mr Pastrokos as Director/Contracts Manager/Production Manager and other Board members and the General Manager(s).

This disharmony was evidenced by several witnesses including Mr Bell, Mr Margetic, Mr Fradkin and even Mr Pastrokos himself. The source of the friction apparently lay within the terms of the alleged agreement between the Pastrokos family and the Government which Mr Pastrokos, DID and the Board believed gave Mr Pastrokos significant rights with regard to the future of the company.

The lack of conclusivity and a final determination about the alleged agreement were much to blame for the uncertainty and helplessness experienced by the Board in its dealings with both management and staff.



Mr Fradkin said:

*... one of the most significant problems we, as the Board, faced right throughout that time was that John (Pastrikos) believed it was his business and we were interim trustees.*<sup>140</sup>

Similarly, the Chairman of the Board gave evidence before the Committee in reference to constraints placed upon his chairmanship.

Mr Bell said:

*... I had basically full control but I could not sack John Pastrikos, that his salary was set at \$75,000 per annum and that he had a car and that car would be serviced by the company, registration and the maintenance etc, and that would be set for two years. Well I took [it] that was from 15 March [1991] to 15 March 1992... but in later events, that was apparently extended to 30 June 1992 ....but I do not think I actually got it in writing...*<sup>141</sup>

Mr Fradkin regarded the fact that Mr Pastrikos remained on the Board after the purchase of the business as a 'conflict of interest' and identified other problems and said in that respect:

*... the problem of this conflict of interest for John Pastrikos and the problem for us of managing that, and the problem of most of the key employee senior managers in the business that had come across from Darwin Joinery seeing John as their boss, being told, as I understand it, by him that he is the boss knowing that he will be the boss again in two years time, [made it] pretty hard for an interim, if you like, management, Board and general manager....there was conflict almost from day one ...*<sup>142</sup>

At the shop-floor level the work force was apparently similarly divided as indicated by the after-work meeting held at the home of Mr Max Bysouth and attended by 21 Dalway workers. Under such circumstances, the decision-making function of management and the implementation of directions was seriously impaired.

In a letter dated 30 August 1991 from the directors of Dalway to Mr Otto Alder, it is stated that:

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<sup>140</sup> Transcript of Mr Fradkin, p. 19 of 27 October 1992

<sup>141</sup> Transcript of Mr Bell, p. 4 of 27 October 1992

<sup>142</sup> Transcript of Mr Fradkin, p. 21-22 of 27 October 1992



*... The role of John Pastrikos has been a continual problem for us. In our view his numerous attempts to undermine the Board by communicating with Ministers without advising us, places us in an intolerable position...*

This was a reference to incidents such as when Mr Pastrikos sought personal intervention by the Minister for Industries and Development in response to the dismissal of the four Pastrikos faction workers, including Nectarios Pastrikos and Cosmos Pastrikos.

Ultimately, the other Directors requested Mr Pastrikos' resignation from the Board on 9 September 1991, and he was removed as a Director by a meeting of shareholders on 24 September 1991.

The removal of Mr Pastrikos from the Board, however, apparently did not relieve the obvious tensions, since all the directors and workers were under the impression that Mr Pastrikos could not be dismissed from the workplace and he continued in a managerial role until told to take leave prior to the sale of Dalway on 14 May 1992.

During the period of Government ownership of Dalway, Mr Pastrikos was responsible for estimation and quotes on various jobs. It has been alleged that he underquoted in order to buy work, a contention strongly denied by Mr Pastrikos on the basis that it was in his interest to make the company a success as he intended to buy back control within two years.

Having purchased the assets of DJFM, it was the responsibility of the Government to plainly state, in writing, the terms and conditions as they applied to Mr Pastrikos so that there would be no room for the uncertainty which appears to have existed in the minds of all other parties. This was a failure which appears to have undermined the attempts to get Dalway back on any sound management and production path, and frustrated the attempts by the other directors to rationalise and reorganise the company's affairs.

## **Conclusion**

The advice regarding control of the company put forward in the DID Briefing Paper before the purchase by the Government appears to have been ignored, allowing disputes to get out of hand. With the benefit of hindsight it would have been better to have removed Mr Pastrikos completely. The argument that he had exceptional skills in joinery and that he was essential to the operations of Dalway, however, cannot be completely dismissed.

His employment contract together with his alleged right to re-purchase and the loyalty of former DJFM employees (or family members) appears to have resulted in the Board being in continual conflict with Mr Pastrikos. The influence of Mr Pastrikos apparently became so great as to counter what experience had been brought to the Board and management when the Government purchased Dalway.



By the time the option of paying out Mr Pastrikos' contract was canvassed by Mr Bell it was an extra expense which Dalway could ill afford, and was probably too late to save the business in any case. Even without the benefit of hindsight, however, the Directors should have more fully explored the options available to them: his suspension on full pay or his dismissal.

### **7.3.3 Financial Reporting**

#### **7.3.3.1 Internal Reporting**

The difficulties experienced by the Board in obtaining accurate and reliable financial information hindered its efforts to turn Dalway around.

In 1990, Dalway installed a new computer accounting system (TABS) which required completely new subsidiary systems for debtors, creditors, fixed assets, payroll and stock including the general ledger, to be set up. Whilst being a time consuming exercise, the system had been fully implemented except for stock and job cost modules by the time the first accountant, Mr Tony Pastrikos, left in November 1990. However, the stock and job cost modules were never fully implemented.

The lack of accurate inventory reporting was a major weakness which made it impossible for the Board to determine Dalway's profitability on individual contracts.

Management information was prepared monthly for the Board by the Company Accountant, the Contracts Manager, the Sales Manager and the General Manager.

The General Manager prepared an operating report of significant matters or matters requiring Board approval.

Financial information such as actual sales, costs of sales and overhead costs against budget were prepared for each Board Meeting and were submitted for consideration by the Board.

Other information which was supplied to the Board included the detailed aged debtors ledger and creditor ledger listings, bank reconciliations and jobs quoted position. Other information would be supplied at Board request, however, the Board was apparently not able to obtain reliable job cost comparisons between actuals and estimates to enable them to effectively monitor the profitability of jobs completed or held work in progress.

### **Conclusion**

The financial reporting by Dalway management to the Board was deficient in at least one significant aspect which did not allow the Board to readily carry out its responsibilities, that being the lack of accurate jobbing records and actual costs against estimates. Without this information the directors could not effectively determine if the



company's individual contracts were profitable with or without allowances for overheads.

### 7.3.3.2 Reporting to the Shareholder

The Board or its representatives reported to DID on at least a quarterly basis to keep it advised of Dalway's activities. Although the Board had concluded in April 1991 that without accurate job cost information they could 'no longer effectively manage the business'<sup>143</sup>, no evidence has been provided to confirm that the Government was formally briefed by the Board on this issue.

However, Mr James, who attended the Board Meeting as Mr Bell's alternative director on 4 July 1991, reported his concerns in a letter dated 5 July 1991 to Mr Otto Alder of DID:

*... Mr Fradkin highlighted the fact that the company does not have in place a 'cost to complete' review technique to enable it to monitor the potential success or otherwise of these contracts. It was Mr Fradkin's rather convincing analysis that on the review technique currently being applied, the company is not in a position to know, midway through the performance of such a contract whether it shall make a profit on those contracts ... As an observer, I was somewhat uncomfortable at this prospect and felt that it would be appropriate to inform you of it ...*

There is also no evidence that DID was informed in April/May 1991 when the directors held major concerns about the on-going viability of the company. Similarly, there is no evidence that Mr Alder took seriously the comments made by Mr James. In fact, on 15 July 1991, Mr Caldwell was responsible for a memorandum to the Minister for Industries & Development, wherein he advised the Minister:

*... I suggest that you confirm that management has advised that past difficulties at management level have been resolved and that the management team is working well together for the benefit of the company.*

*You could also say that there were initial operating losses when Dalway took over the business, but it is now profitable (this is true for recent months)...*

Given that Mr James had expressed the view already stated that it was impossible to know whether the company was running in profit and the fact that every physical stocktake resulted in an increase in the cost of goods sold, the position outlined by Mr Caldwell appears plainly incorrect.



Concern was ultimately expressed by the Minister for Industries & Development in a Memorandum dated 12 August 1991 that the Department was 'not keeping him properly informed.' This issue was addressed by the Department both in correspondence and in oral evidence before the Committee.<sup>144</sup>

However, in response to a question from Mr Parish:

*... It would be a pretty serious matter, would it not, for the Minister to be coming to the department and saying, 'You are misleading me'. You are not keeping me properly informed of what is going on in this matter. Not the sort of thing you would forget, is it?...*

Mr Caldwell replied:

*Well the note does not say the Minister said, 'You are misleading me'. It says 'not keeping you properly informed, which is not quite the same thing...*

Whilst the claim by Mr Caldwell that the company was actually profitable at that small point in time may or may not be true, it is undeniable that the trend was towards a dismal financial outcome for the year.

### **7.3.3.3 Detail of the Financial Management**

Under the original set-up, the Empire Systems (as part of the CIM) were installed to provide financial information such as general ledger and associated subsidiary control ledgers. Management apparently never came to grips with the Empire System. It was replaced in mid April 1990 when the TABS System was installed to supply general ledger, subsidiary ledgers and other asset control functions.

In his evidence, Mr Tony Pastrikos stated that this was because of the lack of professional support for the Empire Systems. He stated<sup>145</sup>:

*... It was a package from America, and we were just facing brick walls every time we went further, and just the lack of support. It was too complex in a sense that you needed a work force to run the computer instead of a small administration personnel.*

and

*... It was far too big for our operation, yes.'*

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<sup>144</sup> Transcript of Mr Caldwell, p. 24 of 9 November 1992

<sup>145</sup> Transcript of Mr Pastrikos, p. 4 of 9 September 1992



Once the decision was made to install the TABS system, not only did accounting resources have to be directed towards making the new system work, but the problem was compounded by a workforce, which had been used to operating in a small environment under manual methods of stock control, who did not appreciate the importance of correct requisitioning.

The implementation of the TABS System resulted in a general ledger, cashbook, debtors, creditors payroll and fixed assets systems being implemented over the time Mr Tony Pastrikos was accountant up to November 1990. However, as previously mentioned, no proper stock costing or stock control modules were in place at November 1990 when he was dismissed.

Ernst & Young conducted an initial systems review and reported thereon prior to undertaking their final audit of the accounts for the year ended 30 June 1990. In their report dated 28 June 1990 they indicated that their main concern was:

*... in relation to the inventory system, for which there is no recording system other than a recently introduced bin card system for hardware stock ... in relation to other materials, components and finished goods, there is no inventory record maintained. Consequently, this limits the amount of control over such stocks.*<sup>146</sup>

This deficiency in the inventory and job costing system also led the auditors to state:

*... Because of the lack of appropriate inventory records it may be difficult to determine if all materials utilised have in fact been charged to a job ...*

This report was addressed to Mr Bell, in his capacity as a director of Dalway.

Mr Bell's response to this letter was in the form of a Management Report addressed to the Board Meeting on 10 July 1990 which stated:

*... b) Inventories - Mr Mike Redmond of TABS system will be giving the staff tuition over three days from 4th, 5th and 6th July inclusive; over the next few days we hope to have this problem taken care of.*

*... c) Job Costing System and Materials - This is inter-related with the inventories system, and with the inventories system up and running, this will be next in line.*

The Board then resolved:



*... that Ernst & Young be commissioned to assist in the implementation of a Month Reporting Package from 1 July 1990.*<sup>147</sup>

The Board at its initial meeting of 21 March 1990, was aware of the stock control deficiencies as one of its resolutions was that:

*... A cost control system be incorporated with the financial accounting records.*

The Board also resolved that monthly management reports were to include detailed work in progress reports.

How, therefore, was management controlling work in progress costs and ensuring that jobs were being run profitably? In Mr Tony Pastrikos' evidence, he stated that about:

*... September/October we were analysing the job costing. What we used to do with John [Pastrikos] is every Saturday we used to get all invoiced jobs at that time, sit down and go through each job file. The labour was not a problem ... But it was the material requisitions that were not going in.*<sup>148</sup>

At September 1990, because there was no inventory control module in place and material requisitions were not always being recorded, it followed that the stock and job cost information supplied to the Board was not and could not be reliable.

At the Board Meeting of 23 August 1990 Mr Bell submitted a proposal by Ernst & Young to assist with implementing an integrated costing system. Mr Bell noted:

*... I feel sure that this is just what we want, but as Mr Tony Pastrikos has been anchored down with auditors and liquidators, it is not much use engaging someone at \$1000 per day unless he is free. Another alternative is ...Merv Sullivan, the auditor ... at approximately \$500 a day. We can make that decision on Tuesday 21 August.*<sup>149</sup>

The Board minutes do not record any decision apart from a resolution in the Board minutes of 10 July 1990 to engage Ernst & Young to assist in preparing the monthly accounts package.

Mr Cahill, Dalway's accountant from 4 February 1991 to the sale of Dalway in 1992, stated in evidence that the company had no accountant for December 1990 and

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<sup>147</sup> Minutes of Dalway Board Meeting of 10 July 1990

<sup>148</sup> Transcript of Mr Pastrikos, p. 9 9 September 1992

<sup>149</sup> Management Report by Mr Bell to the Board of Dalway, 23 August 1990, p. 2



January 1991, after Mr Tony Pastrikos had been dismissed and he had been employed. He also stated:

*... there had been no postings to the cashbooks [in the two months]. None of the records had been posted. So my first role was to bring the postings up to date.*<sup>150</sup>

It must be remembered however that it was the practice of the company to close down from Christmas until the end of January.

Mr Cahill also stated that once he spoke to Mr John Pastrikos about the work in progress:

*... And it was only then [in May/June] that I realised apart from the non-filling in of the requisitions etc at what a mess their job costing was in.*

and

*... What they [the Board] were very concerned about was your work-in-progress figures which I knew was high, and it was only until I sat down with John Pastrikos about the end of May, and we went through every job, job-by-job and looked at the job transaction reports on those jobs, and I think we wrote off something like \$400,000 ...*<sup>151</sup>

This would indicate that inventory and work in progress were mis-stated. Furthermore, nobody was apparently checking either with Mr John Pastrikos or the projects managers to determine what jobs were completed or checking for invoices raised against jobs within the work in progress system.

Dalway carried out a stocktake on 28 February 1991 which resulted in a \$0.272M stock discrepancy. This was noted in the Board minutes of 30 April 1991. As a consequence, the Directors advised:

*... that unless a significant improvement in the accuracy of Stock Control/Job Cost reporting is evident in the next four weeks the Board can no longer effectively manage the business... Any staff member who doesn't comply with company instructions to complete documentation for stock usage must be either trained, disciplined or ultimately dismissed.*<sup>152</sup>

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<sup>150</sup> Transcript of Mr Cahill, p. 3 of 9 September 1992

<sup>151</sup> Transcript of Mr Cahill, p. 6 of 9 September 1992

<sup>152</sup> Minutes of Dalway Board Meeting on 30 April 1991, page 2



This threat does not appear to have been carried out, apparently because the Board was led to believe that the necessary changes were being implemented<sup>153</sup>.

The Board provided a memorandum to Mr Yeudall and Mr Pastrokos on 5 July 1991 indicating its dissatisfaction with the deficiencies in the accounting system which had not been corrected.

*... We recognise that considerable effort has been expended in moving to a solution to these problems; however we are still faced with a business that is making operating losses, maintaining incomplete control methods over major activities and reluctant to take corrective action to resolve cost inefficiencies.*

*... You will need to put in place the following minimum actions before we will agree to forming a view that the business has the potential to become viable.*<sup>154</sup>

The Directors then listed a number of requirements for information presented to them and for job costing control and in particular, for comparison of work in progress to budget. They then stated:

*... All of the auditor's requirements in their 3 July 1991 letter will be implemented immediately ... (a) and (b) ... [i.e. job costs and work in progress actual to budget comparison] have been asked for continually by the Board. They must now be provided or the executive responsible for not providing them must be asked to resign.*<sup>155</sup>

The Board was advised at its meeting of 30 July 1991 that a further \$0.382M needed to be written off work in progress at 30 June 1991. As a result the Board resolved that:

*... all outstanding jobs at the end of each month are to be reviewed by the General Manager before they are included in the work in progress.*<sup>156</sup>

The auditor's report of 3 July 1991 also noted significant fluctuations in gross profit percentages from November 1990 onwards:

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<sup>153</sup> Transcript of Mr Margetic, pp 20-22 of 7 September 1992

<sup>154</sup> Memo to Mr Yeudall and Mr John Pastrokos from the Board on 5 July 1991

<sup>155</sup> Memo to Mr Yeudall and Mr Pastrokos from the Board on 5 July 1991

<sup>156</sup> Minutes of Dalway Board Meeting, 30 July 1991



*... It is uncertain precisely why this has arisen, however it is believed the primary area of concern has been in respect of the job costing system and the correct recording of purchases and material usage.<sup>157</sup>*

The auditors also noted key reports for each system such as general ledger and monthly debtors ledger reports were not being generated and that a number of monthly computer accounting reports had not been kept.

Following a request from the directors, the auditors investigated the accountability of inventories. Their findings were:

*... The company's usage of inventories cannot be readily accounted for primarily because of one major shortcoming, namely the lack of an inventory recording system... Inventories are a manual item of the company and unless an inventory recording system is maintained, the system of internal controls over inventories will remain weak with the potential risk that loss may be suffered through poor accountability.<sup>158</sup>*

The major shortcomings underlying these comments related to:

- no formal goods received recording to support goods received from suppliers
- no inventory recording system to account for inventories
- lack of an audit trail due to there being no inventory system to record stock items being used and to record stock against the jobs on which they were used

The auditors also noted that this matter was raised with Mr Tony Pastrikos in October 1990 and that it was intended to have two systems implemented in February 1991. However, Mr Cahill replaced Mr Tony Pastrikos and he was unfamiliar with many aspects of the accounting system, particularly stock and work in progress, until mid-1991. This meant that this important aspect of the accounting and management systems was never adequately addressed.

The auditors presented their report on 21 October 1991 on the system as at 30 September 1991. In this period Mr Bell had taken over as General Manager. There is no evidence of any remedial action taken by Mr Bell to ensure the required inventory and job costing systems were implemented, notwithstanding that he was also

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<sup>157</sup> Letter to the Board of Dalway from Ernst & Young, 3 July 1991

<sup>158</sup> Review of Accountability of Inventories produced for the directors of Dalway, 21 October 1991



a director and must have been aware of the deficiencies which existed in this area prior to August 1991.

Events culminated in the stocktake conducted on 28 February 1992 which was reviewed by Ernst & Young. It was revealed that a discrepancy of \$0.473M existed. Whilst \$0.1M was identified as errors in the stock system, the remaining \$0.37M could not be adequately accounted for.

The auditors however stated:

*... Stock defalcation cannot be proved unless the accounting records and the gross profit review process is to such an extent where it can be relied upon.<sup>159</sup>*

A review of the estimates and the job cost records indicates it was not possible to accurately check actual materials and labour used on jobs. Estimates would give detailed breakdowns of labour hours and materials to be used, but would not indicate if they were to come from stock or be purchased direct. As actual details of materials and labour used on jobs was not able to be accurately checked, it was not possible for the Committee to then determine if the quoted jobs were making a loss or a profit. Dalway management's own estimates would generally indicate that a 30% to 40% gross profit margin should have been realised.

## Conclusion

Due to the state of the accounting records, actual details of costs incurred were not always available or reliable.

Given these difficulties with the accounting systems, particularly stock and work in progress, and the inability of the directors to be able to review actual costs against estimates on jobs, and the inaccuracies in management information supplied to the Board, it would have made Dalway difficult to effectively manage. This was exacerbated because Dalway had taken a complete change of direction in its manufacturing and joinery operations which meant that timely and accurate information for management and the Board was essential.

The Committee concludes that since management of costs of work in progress was fundamental in determining if Dalway made profits or losses, this should have been one of the first systems implemented. The two accountants employed were able to implement debtors, creditors and set up a general ledger package but they were unable, even with the assistance of TABS who produced the system, to successfully implement a stock and job cost control system.

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<sup>159</sup>

Ernst & Young Report to Mr Bell on the stocktake of 28 February 1992



It is clear how critical these aspects of control were to effective management. Insufficient attention was given to the problem until at least April 1991, at which stage Dalway had been operating for thirteen months and was making significant losses.

#### **7.3.4 Summary**

The management of Dalway was lacking in a number of respects including the lack of appropriate experience in running a mass production furniture manufacturing operation at senior management level and in the production area. Continual change and upheaval in management, with a lack of continuity in general manager and accountant positions, disrupted the management of Dalway and the implementation of policy decisions.

The company also lacked the services in the management team of an appropriately skilled individual with a depth of understanding of the furniture market, not just in Darwin, but in Australia and overseas, and the skills to successfully tap those markets for Dalway. Although the Board attempted in employing Mr Yeudall to address this issue, there is no evidence that a significant effort was made in that direction even whilst he was general manager.

The role of Mr John Pastrikos in the management of Dalway also resulted in conflict and disharmony with the general manager and the Board.

Given the upheaval in management and lack of appropriate skills, Dalway did not have a sufficiently effective management team or approach to successfully deal with its day to day affairs.

### **7.4 OPERATIONAL FACTORS**

#### **7.4.1 Stock Discrepancies**

##### **7.4.1.1 Stocktake of 28 February 1992**

Given the difficulties referred to at 7.3.3 above, it is hardly surprising that a stocktake would reveal some discrepancies in the levels of stock and work in progress. The magnitude of the discrepancies is, however, surprising.

On 25 March 1992 Ernst & Young wrote to Mr Bell attaching a stock report detailing reasons for variants of stock levels of Dalway as at 28 February 1992<sup>160</sup>. The book stock figure was \$931,385 compared to the physical stock take done at the time which was \$458,860, giving a deficiency of \$472,525.

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Approximately \$100,000 was identified as errors attributed to:

1. Invoices entered twice into stock
2. Non stock items posted to stock
3. Non postings of requisitions
4. Internal jobs relating to non stock items posted to stock

This meant that \$370,000 was unaccounted for and could be due to any of the following causes:

1. Stock was stolen;
2. Material requisitions were not being completed, resulting in stock not being allocated to jobs, resulting in higher than actual gross margins;
3. Material requisitions were not completed where stock was delivered direct to a job;
4. Furniture from the showroom was not requisitioned to a job.

Ernst & Young went on to say that:

*The estimating procedures are not detailed enough in many cases for us to determine whether all material relating to a job has been accounted for correctly.*

This proposition was supported by Mr James, in his capacity as Director, in a letter to the Secretary of the DID dated 5 July 1991, wherein he stated:

*... the company does not have in place a 'cost to complete' review technique to enable it to monitor the potential success or otherwise of these contracts ...*

All of the above, excluding theft, were apparently occurring to some indeterminate degree, which meant that the company's financial reports/records were inaccurate.

#### **7.4.12 Witness' reactions to stock discrepancies**

This was not the first time the book to actual stock was inaccurate. At a stocktake carried out at the end of the 1991 financial year, the stock discrepancy was \$381,970.



The original accountant, Mr Tony Pastrokos stated<sup>161</sup>:

*... At the time of my involvement I performed three stocktakes. One being 3rd June 1990 when Ernst & Young was there. One at 5 September 1990 and the last one was around about October. Due to my last stocktake undertaken in October there was a discrepancy in the computer stock module to the physical stocktake of approximately \$100,000. This resulted in my termination.*

Mr Setter asked:

*... Mr Pastrokos were you getting negative feedback from the general manager or the Board with regard to the way in which you were producing financial accounts and the performance of the accounts section generally? ...*

Mr Tony Pastrokos replied:

*At that time it was in an implementation phase. I believe the general ledger, the cash-book was working okay. But because it was integrated and to be effective the stock control, job-costing had to work all in together as one ...*

Mr Setter went on to ask:

*... The job costing had to work all in together. Can you explain that? ...*

Mr Tony Pastrokos responded:

*... There were sales and the cost of goods sold. In the cost of goods sold the job-costing module had to work properly for it to hit the profit and loss ...*

Continuing, Mr Setter asked:

*... Was the information being fed in from the shop floor by way of people on the shop floor completing documentation [i.e. stock requisitions] which can then be fed into the computer by you? ...*

Mr Tony Pastrokos replied:

*... No, it was not, because it was still in the implementation stage.*

Similarly, Mr John Pastrokos identified the problem as stemming from the failure of staff, who were using materials, to correctly fill out the forms which went to the office for processing into the computer.

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<sup>161</sup>

Transcript of Mr Tony Pastrokos, pp 8-9 of 9 September 1992



*... they have got to make a requisition so it can be costed to the job. A lot of purchases have not been requisitioned to go to the job so they remained in the computer's stock module ...*<sup>162</sup>

Further corroboration came from directors Mr Margetic and Mr Bell. Mr Margetic said:

*... there were requisition forms, it was originally done on just blank pieces of paper. Requisition forms were provided for the area supervisors to fill out, or to collect from the employees each day, to fill out on what materials they had used and what job it had gone to. It was evident over a period of time though that this was not happening in all cases ...*<sup>163</sup>

Mr Palmer asked Mr Bell:

*... it seemed that it was just impossible to get both the work force on the floor and others to recognise the need for proper stock control? ...*

to which he responded:

*... All the information, the Board and ourselves was getting was that it was basically a computer problem. It was not going in and it was not coming out. It was just not organised by the accountant.*<sup>164</sup>

Finally the auditors, Ernst & Young, confirmed the inadequacy of control over stock in their evidence.

Mr Parish asked Mr Bastion of Ernst & Young:

*... Despite requests made to the company to identify precisely when and to which jobs specific stock items were charged. This matter has remained unresolved. The above matter would indicate that control over stock is lacking to the extent that the tracking of stock movements is difficult and hence the company may very easily suffer loss in this area without detection. ... Would you consider that the failure to address that contributed in a material sense to the further major stock discrepancy of \$470,000 that you later identified in February 1992, only three months later? ...*

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<sup>162</sup> Transcript of Mr Pastrikos, p. 36 of 7 September 1992

<sup>163</sup> Transcript of Mr Margetic, p. 20 of 7 September 1992

<sup>164</sup> Transcript of Mr Bell, pp 21-22 of 27 October 1992



Mr Bastion answered:

*... Yes . They were ...*<sup>165</sup>

#### 7.4.13 Allegations of Theft

Following the stocktake of 28 February 1992, and the Ernst & Young report of 25 March 1992 in which the auditors said:

*... We are not able to rule out the possibility of material stock amounts being subject to theft ...*

Mr Bell instituted a number of changes to existing procedures. He:

- . engaged Wormalds to replace the existing security system
- . emphasised strongly to staff the importance of material requisitions
- . directed monthly stocktakes to commence at the end of April
- . directed gross margins to be followed up and reviewed especially where they varied from budget.

Mr Bell initiated his own enquiries upon discovering that some stock had been addressed to the previous Darwin Joinery premises. However, the supplier, CSR Wood Panels assured him that all their deliveries had been made to the correct address for Dalway.<sup>166</sup>

The security measures continued, although a stocktake was not carried out on 30 April 1992 as directed, until the issue of stock theft arose in the Parliament on 12 May 1992, in the form of a question from Mr Parish:

*... Is the Minister aware of two stocktakes ... Has the Minister been made aware of any stock losses as a result of those stocktakes? Can such losses be attributed to theft? ...*<sup>167</sup>

The Hon. Steve Hatton's reply was:

*... questions ... should be directed to the Board of the company ...*

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<sup>165</sup> Transcript of Mr Bastion, p. 10 of 22 October 1992

<sup>166</sup> Tabled Document 40

<sup>167</sup> Hansard 12 May 1992, page 806



The Hon. Barry Coulter said at that time:

*... If you have any knowledge of it you should make it available to the police ...*

On Friday 15 May, the Hon. Steve Hatton phoned Commissioner of Police, Mr Palmer, in regard to the allegations of theft. The Commissioner, through Assistant Commissioner Chalker, approached Detective Sergeant Matt Sodoli of CIB HQ and asked him to visit Dalway and speak to Mr Bell.

The reason Mr Bell gave for not contacting the police earlier was that the Board had given him the option of calling in a security firm or the police. He chose the former as he felt morale was bad enough as it was without being exacerbated by a police investigation.

Mr Bell informed Detective Sodoli that the Ernst & Young audit report had not ruled out the possibility of theft and that he asked the police to look into the matter.

Detective Sodoli informed Mr Bell that:

*... it was not a police function to conduct an audit into a company to first establish if a criminal offence had occurred but that it would be up to his own accountants to clarify the alleged discrepancy and indicate that a criminal offence had indeed been committed ...*<sup>168</sup>

He left the premises having discussed further matters not relevant to the allegations of theft, and reported that there was no evidence at this stage to indicate any criminal acts.

Detective Sodoli then conducted a series of informal interviews with a number of individuals in an attempt to ascertain whether there was any foundation to the allegation.

As a result of his investigations, Detective Sodoli submitted a report and in his evidence before the Committee concluded by saying:

*... I was unable to confirm any suggestion of a criminal offence having been committed in relation to the stock discrepancy ...*<sup>169</sup>

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<sup>168</sup> Tabled Document 51 - In Camera evidence of Detective Sergeant Sodoli, p. 2 of 24 October 1992

<sup>169</sup> Tabled Document 51 - In camera evidence of Detective Sergeant Sodoli, p. 11 of 24 October 1992



Ernst & Young on 25 March 1992 recommended that monthly stocktakes be undertaken. The failure to act on that recommendation makes it impossible to ascertain whether or not theft was a significant factor in the stock discrepancies.

## **Conclusion**

The Committee was unable to conclude that any criminal offence had been committed in relation to the stock discrepancies.

The Committee is of the opinion that the stock discrepancies resulted mainly from the failure of either the shopfloor staff to fill out stock requisitions or the front office staff to record those requisitions appropriately, ultimately leading to inaccurate financial reports through an understating of the value of goods sold. Further, the Committee believes that management/Board failed sufficiently to recognise the seriousness of the problem, or if they did, failed to accord it sufficient priority, as this problem existed throughout the whole period of Government ownership.

## **7.4.2 Performance**

### **7.4.2.1 Budgeted Performance against Actual Performance**

The sales forecasts for the 1990 and 1991 years prepared in the First Touche Ross Report relied heavily on winning the State Square contracts (valued at \$4.0M each) in each of those years. This would in hindsight appear at the least to be very optimistic. The original concept identified joinery work as being subsidiary to the major thrust of long-run furniture production and the revenue from this area does not appear to enter the equation even at this early stage.

Projected sales from the budgets prepared at 20 January 1990 have contract sales for the six months to June 1990 of \$1.9M and for the twelve months to June 1991 and 1992 of \$5.0M and \$4.2M respectively.

A review of original to revised budgets indicates none of them were close in estimating the actual sales.

### **7.4.2.2 Initial estimates of the available market for Dalway in the Northern Territory**

Market projections included in the First Touche Ross Report of 29 September 1989 for DJFM indicated:

*... The market size for wood based furniture in the Northern Territory was determined to be in the order of \$9M for the financial year ended 30 June 1989... the potential market share of this market was estimated to be worth approximately \$1.3M to DJFM...*



Budgets prepared and included in this report for the years ended 30 June 1990 and 30 June 1991 under the proposed continuation of the joinery and the furniture manufacturing operations indicated the following:

|  | Budget<br>Sept 1989 to<br>June 1990<br>\$,000 | Actual<br>Mar 1990 to<br>June 1990<br>\$,000 | Budget<br>30 June 1991<br>\$,000 | Actual<br>30 June 1991<br>\$,000 |
|--|---|--|----------------------------------|----------------------------------|
| <b>Sales</b>                                       |   |  |                                  |                                  |
| TIO  | 466   |  |                                  |                                  |
| State Square                                       | 4 000   |  |                                  | 3 597                            |
| Parl. House  |   |  | 4 000                            |                                  |
| Other Joinery                                      | 2 510   | 1 665  | 4 500                            |                                  |
| Chairs/Furn  | <u>175</u>                                    | <u>      </u>                                | <u>1 450</u>                     | <u>756</u>                       |
|  | <u>7 151</u>                                  | <u>1 665</u>                                 | <u>9 950</u>                     | <u>4 353</u>                     |
| Comparable<br>budget to actual<br>sales for period | 2 502   | 1 665<br>66% of budget                       | 9 950                            | 4 353<br>44% of budget           |

Budgets per the 'Second Touche Ross Report' on 20 January 1990 are as follows:

|           | Budget<br>1 Jan 1990 to<br>30 June 1990<br>\$,000 | Budget<br>30 June 1991<br>\$,000 | Budget<br>30 June 1992<br>\$,000 |
|-----------|---|----------------------------------|----------------------------------|
| Joinery   | 1 900   | 5 000                            | 4 200                            |
| Furniture | <u>1 100</u>                                      | <u>4 050</u>                     | <u>6 550</u>                     |
|           | <u>3 000</u>                                      | <u>9 050</u>                     | <u>10 750</u>                    |

Whereas actual results achieved were:

|           | Actual<br>1 Mar 1990 to<br>30 June 1990<br>\$,000 | Actual<br>30 June 1991<br>\$,000 | Actual (unaudited)<br>31 Mar 1992<br>\$,000 |
|-----------|---|----------------------------------|---|
| Joinery   | 1 665   | 3 597                            | 2 274                                       |
| Furniture | <u>      </u>                                     | <u>755</u>                       | <u>674</u>                                  |
|           | <u>1 665</u>                                      | <u>4 352</u>                     | <u>2 948</u>                                |
|           | 95% of budget                                     | 48% of budget                    | 36% of budget                               |



These budget projections indicated that DJFM expected to receive a significant level of work from the two stages of the State Square Project. The 'Second Touche Ross Report' stated that:

*...DJFM recognises that a large part of its present production capacity in the contract joinery work is dependent on its successful tender for the State Square project, other contracts will be required to maximise the production capacity available...*

and

*... The budget has been prepared on a conservative basis and is believed to be achievable on a successful implementation of the marketing strategy and incorporation of production processing work methods. The gross profit margin will improve with the change of sales mix by increasing furniture production and sales, being benefits from utilising production capacity, while maintaining a consistent level of contract joinery...*

The budget prepared in 1989 projected sales 35% higher than 1990 actual results and 65% higher than 1991 actual sales. The State Square Project was the major contributing factor in the anticipated growth. Dalway eventually received \$3.0M for State Square Stage I spread over 1990, 1991 and 1992. The letter of intent for Stage II was only signed in May 1992 at \$1.5M and no revenue had been received at March 1992.

Actual furniture sales were only 52% of budget predictions determined in 1989. From June 1991 onwards, furniture production had not proceeded to the level predicted in the 1989 budget. Retail furniture sales commenced at the end of June 1990 when Dalway opened a showroom and commenced small-scale furniture retailing. Attempts to distribute furniture through other retailers was not greatly successful.

The revised January 1990 budgets by DJFM more closely matched the 1990 activity, but again over-estimated activity for 1991 and 1992 significantly.

Earlier in 1988, Ernst & Whinney (now Ernst & Young) had commissioned the preparation of a research paper into the local furniture market on behalf of TIO and, although very limited in scope, it found that:

*... Opportunities for entry into the small commercial and domestic markets are limited because purchasing is often centralised interstate.*

*From our small sample, it would appear that the overall market is static, if not contracting...*<sup>170</sup>



The revised budgets actually used by Dalway for the relevant period were as follows:

|           | Budget<br>1 Jan 1990 to<br>30 June 1990<br>\$,000 | Budget<br>30 June 1991<br>\$,000 | Budget<br>30 June 1992<br>\$,000 |
|-----------|---|----------------------------------|----------------------------------|
| Joinery   | 2 043   | 6 490                            | 2 840                            |
| Furniture | <u>287</u>  | <u>592</u>                       | <u>1 026</u>                     |
|           | <u>2 330</u>                                      | <u>7 082</u>                     | <u>3 866</u>                     |

Whereas actual results achieved were:

|           | Actual<br>1 Mar 1990 to<br>30 June 1990<br>\$,000 | Actual<br>30 June 1991<br>\$,000 | Actual (unaudited)<br>31 Mar 1992<br>\$,000 |
|-----------|---|----------------------------------|---|
| Joinery   | 1 665   | 3 597                            | 2 274                                       |
| Furniture | —   | <u>756</u>                       | <u>674</u>                                  |
|           | <u>1 665</u>                                      | <u>4 353</u>                     | <u>2 948</u>                                |

Even Dalway's revised estimates appear to have significantly over-estimated its ability to achieve sales income. In 1991, sales income was primarily from contract joinery. In 1992, furniture sales were significantly lower than budget whilst contract joinery was only 80% of budget.

Mr Bell was asked the following questions by Mr Parish<sup>171</sup>:

*But with the exception of that particular job, I take it your evidence is that really there is not a substantial market in Darwin for anything that would make optimal use of mass-production machinery such as Dalway had?*

Mr Bell replied:

*... No (sic), at the present moment I think they [CFM Joinery Pty Ltd] are working a 4-day week with only about 20-odd people out there...*

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<sup>171</sup> Transcript of Mr Bell, pp 11-12 of 27 October 1992



Question:

*... although you were not involved obviously in the purchasing decisions that were made for the initial plant and equipment, I take it that with the benefit of hindsight you would certainly question the wisdom of those purchasing decisions?...*

Mr Bell replied:

*... Yes, that factory would be all right in the middle of Sydney or Melbourne, but not here in Darwin with a population of 60,000...*

Mr Parish also asked:

*... So really you were foisted with an establishment which was just out of kilter with what was in the Darwin market?*

Mr Bell replied:

*... That is correct.*

Mr Fradkin, when questioned as to why Dalway continued to make losses, responded:

*... There is a number of factors. One that you cannot overlook is that Australia was going through a pretty horrendous, and still is, downturn ... And the construction industry was one of the hardest hit industries, and Dalway suffered.<sup>172</sup>*

From Mr Bell's evidence it is also apparent that the Board did not consider the Darwin market as sufficient to provide an adequate sales arena for a manufacturing process like Dalway's.

In 1989, Touche Ross had made the situation quite clear when it stated:

*... Additional markets need to be established to ensure the achievement of production volumes necessary to maximise efficiency and profitability ...*

## Conclusion

Each of the numerous surveys and reports produced appear to use the figures and assumptions which were originally produced by Mr Williams of DJFM for financial backing from TIO, ANZ and Esanda. These figures, as pointed out in the McGregor Report, were optimistic. In the later projections, all that appears to have been done is

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<sup>172</sup>

Transcript of Mr Fradkin, p. 20 of 27 October 1992



a reworking, in the light of contemporary developments, of the originals. There appears to have been a lack of independently researched and recalculated figures, especially in the light of the changing and more restricted role adopted by Dalway.

As the national economy contracted, especially in the construction industry, the only hope for Dalway would appear to have been to exploit its economies of scale (mass-production of furniture) and its economies of scope (diversification between local joinery and export furniture).

In the end, as budgeted income was so grossly over-estimated with regard to the State Square Projects and operations were restricted, the target figures were never realisable.

### 7.4.3 Unique Capabilities of DJFM

Both Jaguar Joinery and DJFM had sought assistance from the National Industries Extension Scheme ('NIES') for a diagnostic review of their operations. Mr Finch from Touche Ross was selected to conduct both reviews.

In respect of his report on Jaguar Joinery, Mr Finch said:

*... Jaguar's design abilities, using the computer-aided design techniques available from 'The Detailer' computer software system [which has become the Australian standard] enables architects, builders and domestic renovators to see their product designed in a finished format prior to construction.*

and

*... Jaguar Joinery Pty Ltd is ideally placed to plan for and achieve controlled growth in future years including the potential to develop export markets ...*

In the report produced for DJFM, Mr Finch said:

*... [DJFM] has changed its direction from a large joinery shop to a sophisticated computer integrated manufacturing operation to enable production efficiencies from batch production methods....management believe the system is essential for DJFM to maintain its competitive advantage and to produce reliable information concerning the performance and costing from furniture production ...*

and

*... The next largest manufacturer in Northern Australia [i.e. Jaguar Joinery] is approximately a quarter the size of DJFM and does not have the technological advantage or the capacity to handle large scale contracts [notwithstanding Jaguar's involvement in the Crocodile Hotel project] ... DJFM differentiates itself in the market place in the following critical areas: the ability to manufacture to the client's specifications ... DJFM current marketing strategy for major contracts*



*is based primarily around the tender process. DJFM has established strong relationships with builders and architects who consistently favour their inclusion in their own projects.*

*DJFM is strategically located to significant export markets located in the south eastern region of Asia.*

Although each company apparently had the intention to specialise in different products (i.e. Jaguar in flat-pack kitchens and DJFM in large scale mass-production), this capacity was never realised and they ultimately remained in a potentially competitive position, in a diminishing market, for the same products and services.

It was claimed by Mr Mannion that prior to the purchase, the joineries in Darwin cooperated to the extent that three might tender for a large job but that the winner would use the others on a subcontract basis.

He said:

*... Well, what happened was it was confused because at the time we had agreed not to tender because it [the Supreme Court tender] was going to be done like a consortium bid and then I am not sure of the mechanics of what happened because you know the Government bought out DJFM and the whole thing changed around ...<sup>173</sup>*

*... the work was to be shared depending on the size of the joinery as to what you got and DJFM expected about \$1.5M, I expected \$750,000 and I think Willy (sic) (Olsen) expected \$300,000 ...<sup>174</sup>*

Mr Mannion claimed also that no attempt by the Government was made prior to the purchase by the Government of the assets of DJFM through Dalway to determine whether there were other joineries in the area which could handle the available work should Dalway be liquidated.

Mr Mannion said:

*... I have had all these experts for the last three years, including people like Terry Smith, telling me how incredible things could be made there (Dalway) and not made anywhere else. My computer saws are the same capacity as theirs. Fred Finch has never even been to our factory. He does not know what our turnover is*

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173 Transcript of Mr Mannion, pp. 20-21 of 28 August 1992

174 Transcript of Mr Mannion, p. 21 of 28 August 1992



*... they gave my monthly turnover as my yearly turnover. There was no attempt to check what was available in the market place ...*<sup>175</sup>

A number of witnesses commented that only DJFM/Dalway had the capacity to carry out the work required for the State Square Project. Mr Caldwell stated in evidence:

*... I understand that it was considered that no other enterprise in the Northern Territory had the technical capability of providing the type of fitout that was required for State Square and if DJFM did not exist as a business, that all those contracts would be lost to interstate contractors.*<sup>176</sup>

Mr Linton, the project co-ordinator for Tipperary Developments, said in his evidence:

*... it became apparent that there was only one company large enough to do the volume of work with the sufficient capacity to produce it in time.*<sup>177</sup>

and later

*... Dalway was obviously the people to do it, on the basis that they had the expertise, the machinery and the capacity to turn the stuff out very quickly.*<sup>178</sup>

Mr Findlay, the Chief Architect, said:

*... I was not aware of any other firm that came near [John Pastrikos] in terms of quality of complicated and intricate joinery such as we would have in the Supreme Court.*<sup>179</sup>

However, it does not appear that any of the people concerned carried out or caused to be carried out any evaluation or analysis of the respective capacities of joinery companies in Darwin. Mr Linton relied upon people such as Mr Roger Linklater (the

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175 Transcript of Mr Mannion, p. 9 of 28 August 1992

176 Transcript of Mr Caldwell - p. 12 of 22 October 1992

177 Transcript of Mr Linton, p. 2 of 19 October 1992

178 Transcript of Mr Linton, p. 3 of 19 October 1992

179 Transcript of Mr Findlay, p. 22 of 20 October 1992



documentation architect) and Mr Richard Galton of T & W. Mr Galton had no particular knowledge, and relied on Mr Findlay. Mr Findlay in turn said<sup>180</sup>:

*It is a matter of knowing ... generally from day-to-day I know what the quality is of various firms and what they can produce.*

*It is an ongoing analysis ... I sat down and went around and talked to everybody. It is an ongoing analysis like an ongoing analysis of contractors.*

The view that only DJFM had the necessary facilities to undertake the size of the State Square contract within the allotted time scale was significantly countered in the evidence of Mr John Brears, the manager of Multiplex, who, having physically examined the facilities of both DJFM and Jaguar Joinery, considered that had DJFM gone into liquidation, as was generally expected, (see evidence of Mr Mannion), Jaguar Joinery had the ability to complete the works to the required standard, although it may have required an extension of time.<sup>181</sup>

In the event, DJFM/Dalway was unable to complete the work to the contracted schedule so the difference may have been inconsequential.

It does appear, therefore, that had DJFM/Dalway not been in the market, other joineries in Darwin could have performed the joinery work required on the State Square Project, although there may have been a need for smaller contract 'packages', leading to greater administrative complexity. In addition concerns such as those expressed by Mr Galton in relation to uniformity and consistency of finished product<sup>182</sup> were no doubt also relevant.

#### **7.4.4 Under-quoting**

It is apparent from Mr Blake's evidence that he believed that Dalway habitually under-quoted. Other evidence also suggests that this was the case.

Mr Mannion complained that after the purchase of DJFM, tenders were submitted by Dalway below cost. Referring to a tender for work on some units for the Paspalis Group, he said:

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<sup>180</sup> Transcript of Mr Findlay, p. 22 of 20 October 1992

<sup>181</sup> Transcript of Mr Brears, pp 10, 34, 40 and 46 of 19 October 1992

<sup>182</sup> Transcript of Mr Galton, p. 21 of 19 October 1992



*... they dropped it [the tender] below cost and their managing director Jim Bell even questioned it before they accepted the contract but Pastrokos said, 'No, it is alright'. They lost \$100,000 on the job.*<sup>183</sup>

Mr Mannion's allegations of underquoting were based on his past experience with DJFM where he claims that their respective prices were generally within 5% of each other and his claim that Jim Bell had told him that this was the case.<sup>184</sup>

In the Jaguar Joinery NIES Diagnostic Report of May 1990, it was stated at 4.3 of that report that:

*... Jaguar's management believe Dalloway (DJFM) have been successful at winning market share by sacrificing profit margin. Further, Jaguar's management believe Dalloway currently enjoy more favourable terms concerning progress payments in respect of the State Square Project than are available to Jaguar or are commercially normal as a direct consequence of the Northern Territory Government's apparent support to Dalloway ...*

Mr Perry Miller operated a business under the name Kitchen Warehouse, which functioned for almost twelve months from around May 1991. The firm was set up to concentrate on producing kitchen cupboards, but primarily one-off type joinery work, at the upper end of the market.

Mr Miller specialised in 2-pack polyurethane finishes and subcontracted with Dalway to do the lacquer finishes for the Supreme Court Project. In his evidence to the Committee he said:

*... we could never get the work to do it because of Dalway's costings practice....Anything in the mid-range pricing against Dalway would just be a waste of time.*

Mr Parish asked:

*... Your evidence in general, to sum it up, is that you ascribe the failure of your business almost wholly to Dalway undercutting the market, is that correct?*

Mr Miller responded:

*... That's true...*<sup>185</sup>

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183 Transcript of Mr Mannion, p. 27 of 28 August 1992

184 Transcript of Mr Mannion, p. 28 of 28 August 1992

185 Transcript of Mr Miller, p. 17, 21 of 20 October 1992



Mr Miller was, however, unable to present supporting documentation since some documents went to the Liquidator when the firm went into liquidation whilst others appear to have been destroyed.

Mr Miller gave evidence that he had worked as an employee for Jaguar Joinery and upon its demise, for Dalway Pty Ltd as a subcontractor where he worked on the lacquer finish of items for State Square. Whilst working in this capacity he claimed that he was charging Dalway \$20 per square metre for finishing work which Dalway had quoted at \$5 per square metre.<sup>186</sup>

Danska Cabinet Making ('Danska'), is a cabinetmaking firm owned by Mr Villy Olsen, engaged in a 50/50 mix of domestic and commercial contracting, employing an average of nine people over the last eight years. Mr Olsen admitted that it was his policy not to directly undertake Government contracts but that he had participated in such as a subcontractor. The firm did not engage in the production of free-standing furniture.

Danska has never apparently applied for nor was it given any financial assistance by the Government.

Mr Olsen admitted a downturn in business after Dalway was purchased by the Government but was unable to either confirm or deny that Dalway had taken away work by under-quoting in its tenders.

Mr Poole asked:

*... Do you attribute that (shrinking in business) to the competition in the market place or specifically to the effects that Dalway had on the market place?*

Mr Olsen replied:

*... It is difficult for me to put it down to one particular thing, but we did feel the pinch last year ...*<sup>187</sup>

Danska did not submit tenders for State Square since Mr Olsen considered:

*... It was probably getting a little bit too political for me, too much controversy I think, and I decided to stay away from it...*<sup>188</sup>

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<sup>186</sup> Transcript of Mr Miller, p. 11 of 20 October 1992

<sup>187</sup> Transcript of Mr Olsen, p. 4 of 20 October 1992

<sup>188</sup> Transcript of Mr Olsen, p. 5 of 20 October 1992



Mr Olsen was aware of allegations against Dalway in regard to under-quoting and was asked whether there were any situations in which he had experienced this, to which he replied:

*... We did get the impression, particularly last year ... that we were missing out on a few jobs. We got feedback from the builders that their (Dalway) quotes were lower than previously ...*<sup>189</sup>

Mr Olsen admitted that he had no proof that Dalway was under-quoting.<sup>190</sup> He went on to say that some of his unsuccessful bids were won by Jaguar Joinery as well as Dalway but could not give a percentage of which jobs went where.

In his evidence, Mr Olsen referred to the size and technical advantage held by Dalway which enabled it to produce some items more efficiently than Danska.

Having regard to the totality of the evidence before the Committee, it is far from clear that Dalway did in fact habitually under-quote. In any event, the Committee is of the view that the relevant question to be asked is whether Dalway deliberately under-quoted. There is no evidence that the Board or the General Manager ever had such a policy and the Committee does not believe this was ever the case.

It is probable that Dalway was under-quoting, but accidentally and inconsistently due to the lack of effective cost-monitoring or stock-control systems. To the extent that there was evidence of under-quoting it appears to have been worse during the last twelve months of Government ownership of Dalway.

## **7.4.5 State Square Tender Process**

### **7.4.5.1 Background**

As has been previously noted, the various sales projections upon which Dalway's survival was predicated rested heavily on the company winning the lion's share of joinery and furniture contracts on both stages of the State Square Project. Some witnesses, particularly Messrs Mannion and Blake, expressed a belief that Dalway was improperly favoured in the State Square tender process. Documentary evidence received by the Committee suggests that the proprietors of Mode Office Furniture, at least at one time, held a similar view.

Acting on information stemming from a meeting between Mr Pastrokos and representatives of T & W, Mr Watson noted in August 1989 that according to Mr Pastrokos, the Minister for Transport & Works (Hon. Fred Finch) seemed to

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<sup>189</sup> Transcript of Mr Olsen, p. 5 of 20 October 1992

<sup>190</sup> Transcript of Mr Olsen, p. 6 of 20 October 1992



indicate that DJFM would have the inside running to win the joinery contract for the State Square Project. This was said to be a contract worth \$15M over 42 months and would create an estimated 150 new jobs at its peak<sup>191</sup>. Mr Pastrokos asked DID and TIO to use their influence to assist DJFM in securing the contract. It was decided by those present at the meeting that no such action be taken at that stage.

Mr Pastrokos continued to communicate with Mr Watson, expressing his fears with regard to cash flow problems. He informed Mr Watson of the preparation of a report by Touche Ross to determine DJFM's cash needs in relation to the State Square Project in preparation for presentation to financiers for increased funds (i.e. the first rescue package). Mr Watson subsequently contacted Mr Finch of Touche Ross on 18 September 1989 to 'register our interest'<sup>192</sup>.

A file note dated 27 September 1989<sup>193</sup> describes a meeting between Mr Pastrokos, Mr Watson and Mr Findlay, with regard to DJFM's involvement in the Supreme Court contract worth \$4.1M. It was noted that DJFM would be offered the contract for Stage II subject to its performance on the Supreme Court contract (Stage I).

A decision was taken by the Project Control Group for the State Square Project ('PCG'), consisting of representatives from Tipperary Developments, Multiplex and T & W, to offer the furniture, fittings and equipment package ('F F & E') as one contract.

DJFM approached the PCG with their proposal to act as supervisor for a consortium of local firms to undertake the F F & E contract and, as part of those arrangements, to sub-contract the supply of goods and services, representing between 30% to 50% of the work to other consortium members. This 'management' role was to be for a proposed fee of around 3% - 4% of the value of the work done.

The proposals made by DJFM appear to be threefold:

*Mr Parish: ... at various stages there were three separate proposals which blurred together ... The first one was that DJFM would be the project supervisor, if you will, for the joinery component. The second one was that they head a consortium who would jointly bid for the joinery work and farm it out between them, so to speak. And the third one, which I think was embodied most precisely in Mr Pastrokos' document of 8 August [1989], was that Darwin Joinery in its own right tender for the work ... and then subcontract it out effectively. I think that*

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<sup>191</sup> File note by Mr Watson, DID, dated 9 August 1989

<sup>192</sup> File note of 18 September 1989 by Mr Watson, DID

<sup>193</sup> Annotated 'tw0989014'



*proposal also contained some element of project supervision. Would you agree, generally, that those were the three proposals that were considered?*

*Mr Findlay: Yes, they were developments. But they were not three separate proposals ... were developments until we reached this document here on 8 August which is probably the most realistic of all the proposals.*<sup>194</sup>

This proposal was in fact forwarded to T & W via Mr Linton. Some four days later the Department, as mentioned, gave their support to the proposal by letter.

Considerable concern was expressed by Mr Linton in regard to the prices quoted by DJFM and cost comparisons forwarded to Mr Crehan of T & W on 14 December 1989, since the overall quote of \$4.8M exceeded the budget by \$700,000.

It was suggested in a Minute of 14 December 1989<sup>195</sup> that:

*Perhaps the most acceptable solution would be to allow DJFM to undertake work on the more standard type of joinery on which their prices, whilst in excess of budget, are within reason*

with the balance being tendered to southern firms.

That DJFM appeared to be taking advantage of its favourable position, referred to by Mr Davis in the Minute of 14 December 1989, was also highlighted quite clearly by Mr R Norris of T & W, who stated that:

*Mr Pastrikos was not prepared to review his time allowed for labour even after it was pointed out that he possibly had allowed 700 hours to make one judge's bench*<sup>196</sup>.

A decision was then made by the PCG to split the large contract into several smaller ones and this enabled other firms to participate. However, the bulk of the work still went to DJFM (i.e. all the actual joinery work went to DJFM whilst other firms supplied loose furniture and whiteboards not manufactured by DJFM). There was however, after extensive negotiations, a price reduction from \$4.8M to \$4.1M but, it would appear, at the expense of postponing the fit-out of three courtrooms.

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<sup>194</sup> Transcript of Mr Findlay, p. 12 of 20 October 1992

<sup>195</sup> Tabled Document 103

<sup>196</sup> T & W Ministerial Briefing, dated 15 December 1989 and signed by R Norris, Public Works Division



It is also clear that DJFM was in a favourable position in relation to the Supreme Court contract since the agreement provided for payment for work done within a fortnight of its completion. This extended to payment for materials purchased by DJFM but not yet processed into the finished product, a term not included in the original 'tender documents'.

#### 7.4.5.2 The Attitude of the Department of Transport and Works

Mr Galton, Project Manager, State Square Project, made the interests of T & W clear in his letter to Mr Linton, 20 December, in which he said:

*... You are to ensure that Darwin Joinery have the opportunity of quoting on all of the F and E Works<sup>197</sup>.*

This included the supply of loose furniture which DJFM did not produce locally and which they would have to source from interstate.

This led on 6 December to a complaint from Mode, a local retailer, which as the sole Territory distributor for Brownbuilt furniture was upset when DJFM contacted Brownbuilt direct 'demanding prices'. The implication is that DJFM would source direct from Brownbuilt and usurp the margins which, in normal practice, would be the prerogative of the local distributor.<sup>198</sup>

From the evidence, it is clear that every effort was made to direct work towards DJFM, and in any event, as admitted by the Hon. Fred Finch, as Minister for Transport and Works<sup>199</sup>, the amount of joinery sub-contracted to other local firms by DJFM amounted to only 13% to 15%.

It is noted in an Internal Minute of T & W dated 29 December 1989 that DJFM had discussions with the Minister for Transport and Works, and that the final decision on who gets the work was that of the Government.<sup>200</sup>

Mr Linton expressed his fears regarding cost over-runs if DJFM were granted the contract and the requirements in regard to pre-payment for materials. However, in a

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197 T & W file reference SQD 0011S8

198 Fax to Hon Fred Finch, Minister for Transport & Works, recorded as received by the Minister's Office, Folio No 2279

199 Transcript of Hon. Fred Finch, p. 33 of 27 August 1992

200 Recorded as Folio No 24/31



facsimile from T & W on 16 February 1990, Mr Linton was instructed to ensure that DJFM was awarded the contract that day.<sup>201</sup>

Mr Linton later voiced his concerns over media reports that DJFM may be 're-structured'.<sup>202</sup>

The reply from Mr Galton of T & W denied knowledge of any situation which might affect the ability of DJFM to perform to contract.<sup>203</sup>

The major reason for the way in which DJFM was treated in respect of the joinery contract for Stage I appears in the evidence of several witnesses who, as previously discussed, felt at the time that only DJFM had the necessary facilities to undertake the size of the contract within the allotted time scale. However, as mentioned, there seems to have been no real investigation to support this assumption. The *raison d'être* for the computerisation of DJFM to make it a mass producer of large numbers of identical articles seems to have been mistaken or ignored.

A further reason given for the awarding of a single contract was to ensure consistent quality in materials and finish which, it was said, would not be possible if different contractors had sourced their timbers independently.

Evidence from the Minister for Transport & Works, the Hon. Fred Finch suggests that the interpretation of the letter from Mr Linton of 8 August to T & W in regard to the negotiation and awarding of the joinery contract to DJFM was a matter of some dispute.

The letter, in part, read:

*... Although Darwin Joinery now has the most sophisticated system of production in the Territory, we are concerned as to how we could ensure that the final price is the keenest possible figure which is obtainable on behalf of taxpayers in the light of the non-competitive nature of the proposal ...*

The interpretation placed on this by Mr Finch was that it was not expressing concern about the non-competitive nature of giving the contract to DJFM as against putting it to open tender, but rather an expression about the non-competitive nature of tendering locally rather than interstate.<sup>204</sup>

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<sup>201</sup> Handwritten instruction, T & W reference SQD 0011-S8

<sup>202</sup> Letter dated 13 March 1990, recorded as Folio No 38/26

<sup>203</sup> Letter from Mr Galton to Mr Linton, dated 13 March 1990

<sup>204</sup> Transcript of Hon. Fred Finch, p. 66-7 of 11 November 1992



In a 'summary' of a meeting between Messrs Linton, Britton, Pastrokos, Haas, Findlay, Crehan and Davis, Mr Davis of T & W wrote:

*... My opinions of the previously mentioned circumstances and proposals are noted below:*

*Our bargaining power is limited due to the requirement to use local contractors .... This problem is compounded and ensures a monopoly to Darwin Joinery by agreeing to the Darwin Joinery consortium proposal ...*

Mr Finch, however, pointed out that the agreement was subject to price and that considerable negotiation took place which resulted in a reduction of DJFM's quote from \$4.8M to \$4.1M.<sup>205</sup> This, to some extent, tends to support the view that the Government still maintained some control over prices.

It is clear, however, that the concerns of Mr Linton related to Dalway's proposed monopoly, and not to the non-competitive nature of tendering locally rather than interstate.

#### 7.4.5.3 Losses on Stage I

Only one part of the contract was awarded before the purchase of DJFM by Dalway, the others being concluded after the assets of DJFM were sold to Dalway.

It is interesting to note the claim made by Dalway that a loss was incurred on the contract awarded to DJFM for the Supreme Court:

*Mr Palmer: Mr Bell, over the period of your involvement with Dalway you are not going to dispute that the company continued to operate at a loss?*

*Mr Bell: There were many reasons for the various losses which were suffered. One of them, I believe, was the contract which we inherited from what you could call the Supreme Court.*<sup>206</sup>

Mr Bell went on to explain that Dalway was unable to achieve the economies of scale for which the factory was established because of the individual nature of the tasks undertaken. The company continued to operate in a jobbing mode, a prime example being the production of eight judges' benches at a total cost of \$230,000. In effect, the nature of Stage I was such that it did not take advantage of the specialised production techniques which DJFM/Dalway claimed put it ahead of local rivals.

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<sup>205</sup> Transcript of Hon. Fred Finch, p. 8 of 11 November 1992

<sup>206</sup> Transcript of Mr Bell, p. 7 of 27 October 1992



*Mr Parish: ....That in fact, when you actually look at the detail of them, they were a lot of little but very expensive jobs where really the high-tech machine was not of particular advantage.*

*Mr Bell: It was useless. That is right.*<sup>207</sup>

#### **7.4.5.4 Local Content by Agreement**

It is clear that whilst on the one hand there was concern that work on Stage I of the State Square Project should go to public tender in order that costs be minimised, there was also the potentially conflicting issue of preference for local content and participation in order that jobs were created and maintained for the Territory work force.

It is the extent to which the latter policy was carried out in terms of favouring not just Territory companies to the exclusion of southern bidders, but rather in terms of favouring DJFM, which attracts the allegations of political interference in the tendering process.

As previously mentioned, a proposal was put forward by DJFM that the joinery contract for the Supreme Court be awarded entirely to DJFM apparently on the understanding that 30% to 50% of the work would be given to other, smaller Darwin concerns.

In a letter from DJFM to Mr Linton, Tipperary Developments Pty Ltd, dated 8 August 1989, it was said:

*... In addition to that we understand it is of major concern to the Government that as much of the work as possible be done by Territory contractors, without compromising quality, but within reasonable price limits ...*

and

*... An agreed portion of this work (somewhere between 30% and 50%) will be subcontracted out to suitably qualified businesses in the Territory ...*

The nature of such negotiated contracts was much canvassed by the Committee members during the course of the hearing. It is apparent that in one instance, where the price quoted for a particular job by DJFM was 192% of that which the quantity surveyor indicated might be reasonable, further negotiations took place in an effort to reduce the price of that item. Such negotiations seem to have occurred only in respect



of joinery, not in other areas of construction, as attested to by Mr Terry Maddox, the current Project Coordinator, Tipperary Developments.<sup>208</sup>

#### 7.4.5.5 State Square Stage II

As indicated earlier, ultimately Dalway was the major beneficiary of the awarding of contracts for joinery work on Stage I of the State Square project. In a file note of 27 September 1989 by Mr Watson of DID, it was predicted that, with regard to Stage II, Parliament House:

*... This contract would be offered to Darwin Joinery subject to performance on the Supreme Court project ...*

Although this was written some time before the Government bought the assets of DJFM, that company had already received considerable moral and financial support from the Government. The TIO was exposed to severe financial losses should DJFM fail and these debts would have to be ultimately borne by the Government.

Comments made by Mr Mannion of Jaguar Joinery in his evidence suggest that the tender period for Stage II of State Square was extended to advantage the bid by Dalway.

Evidence from Mr Brears, Manager of Multiplex in relation to that tender, contradicts the assumption by officers of DID that the work could only be handled by Dalway. In response to Mr Setter's question as to whether he felt it was odd that Jaguar did not tender on the Parliament House contract, Mr Brears replied:

*... I was very surprised that they did not put in a tender for the whole package. My feeling is that they had the capability to do the work, had the expertise. They had drawn the documents so I was very surprised...*<sup>209</sup>

Mr Mannion explained his failure to tender in his evidence before the Committee:

*... Well we prepared a tender and we felt that we had a significant competitor advantage when we prepared it through the use of different materials ... we contacted Multiplex to ensure that there were going to be no extensions (to the tender period). We were assured by Multiplex that there was no way that the tender would be extended and that it would definitely close on the Monday...*<sup>210</sup>

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208 Transcript of Mr Maddox, p. 11 of 10 November 1992

209 Transcript of Mr Brears, p. 40 of 19 October 1992

210 Transcript of Mr Mannion, p. 4 of 28 August 1992



From the evidence of Mr Pastrokos it appears he had at some stage, close to the close of tenders, sought an extension of the closing date but was refused<sup>211</sup>, and there is no evidence to suggest that Mr Pastrokos' request had any bearing on the decision to extend the closing date. Mr Brears, however, was unaware of the reasons for those extensions, stating that the direction to extend the tender date probably emanated from the Government, and were conveyed to him by Tipperary Developments. It should be noted that the extensions related to all tenders, and not only the joinery component.<sup>212</sup>

The tender period was actually extended twice and finally closed a week later than advertised, on 17 September. Mr Mannion did not submit the tender he had prepared since he apparently believed that Dalway was bound to get the work.

The letter of intent from Multiplex to Dalway regarding Stage II was not received until some three weeks before the sale of Dalway by the Government. The actual contracts were not signed and returned before the sale. Evidence indicates that the hold-up was due to an impasse with regard to an original demand by Mr Pastrokos for an unusually high rise and fall clause which was in excess of that normally approved by T & W. Mr Pastrokos required an increase of 5%, compounded, for each six monthly period for which the contract was on foot. This would have meant that the Principal would have been liable for a further \$200,000 to \$250,000 on top of the contracted price. Evidence presented to the Committee suggests that this demand was far in excess of movements in construction cost indices and the general CPI at that time.

It appears that shortly before the sale of Dalway there was much activity designed to get the contract in place and this involved the Minister for Transport and Works, Mr Bell and Mr Brears. The rise and fall clause was in fact ultimately negotiated along more usual lines and close to the formula required by T & W. The resulting increase in cost over the period was held to around \$38,000 which approximates to the allowance of \$34,000 originally proposed by the use of T & W guidelines.

## Conclusion

The Committee believes that the tender process for both stages of the State Square contract may have been flawed by the assumption that Dalway was the only local company which could handle the job.

It was proposed during the second half of 1989 that DJFM be favoured for State Square work to the extent that it would be awarded work without going to open tender. Whilst not ultimately implemented, this was contrary to normally accepted

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<sup>211</sup> Transcript of Mr Pastrokos, p. 57 of 7 September 1992

<sup>212</sup> Transcript of Mr Brears, p. 3 of 19 October 1992



tender procedures and should not have been considered. It is arguable that DJFM, because of its prior familiarity with the scope and nature of the works, gained an advantage as a result of the original negotiations over that proposal.

There is a fine balance to be achieved between economising on the expenditure of taxpayer's dollars and the targeting of local industry for Government support. Under the appropriate conditions of open government and disclosure, this may be achieved with the understanding, if not total approval, of the local business community.

### **Recommendation**

That, where contracts of more than \$3,000 are awarded through negotiation without first going to tender, the details of such contracts and reasons for not going to tender should be published.

## **7.5 FIXED ASSETS**

### **7.5.1 Reasons for Loss**

Reference was made at 6.6. to the immediate but unrealised capital loss upon the purchase by Dalway of the business of DJFM. The Committee recognises that the circumstances there outlined contributed significantly to the overall loss suffered by the Government as a result of this venture.

### **7.5.2 The External Auditor's Role**

#### **7.5.2.1 Reports**

##### Statutory

In brief, an auditor's responsibility is to report to the shareholders whether or not a company's financial statements are properly drawn up (a) so as to give a true and fair view, (b) are in accordance with the Corporations Law and (c) in accordance with accounting standards.

Ernst & Young were appointed as auditors of Dalway with effect from 15 March 1990 following a tender by the company.

Ernst & Young conducted an audit and submitted their report upon the company's financial statements to the shareholders for the following periods:

- (i) period from 15 March 1990 to 30 June 1990
- (ii) twelve months ended 30 June 1991



The audit report for the period ended 30 June 1990 was signed by the auditor on 31 October 1990 and contained an opinion stating that:

- . the accounts gave a true and fair view of the state of affairs of the company and the loss to the company for the period
- . the accounts complied with the Corporations Law and accounting standards.

However, the audit report as at 30 June 1991 was qualified. This report is discussed in more detail later in this section.

### Management Reports

During the period of Government ownership of Dalway the external auditors wrote a number of reports to the Board of Directors covering accounting problems that had come to their attention during the audit process. The more significant matters raised are summarised as follows:

| Date     | Matter  |
|----------|---|
| 28/6/90  | Inventories - apart from 'hardware items' there are no inventory records maintained for materials components and finished goods.<br><br>Costing system - no system in place to determine if all materials utilised have been charged to a job.  |
| 3/7/91   | Monthly Reports - lack of fundamental reports such as monthly general ledger and debtors ledger reports.<br><br>Gross profit percentage - significant fluctuations month to month. It is believed the primary area of concern is the job costing system and recording of purchases and materials usage. |
| 21/10/91 | Inventory recording system - no inventory recording system in place which means the system of internal control over inventories is weak with the potential for loss through poor accountability.  |
| 5/11/91  | Monthly accounts - no evidence of adequate internal control procedures in place to ensure that the accounts were being regularly monitored.<br><br>Monthly accounts were being presented to the Board without having been subject to proper analysis and review.  |



| Date    | Matter   |
|---------|--|
| 25/3/92 | Report to Mr Bell after completing a review of stock discrepancies at the request of Mr Bell. Summary: |

*... We have not been able to quantify the effect of many poor or deficient accounting procedures which were being followed by the company's staff during the period to February 1992. An amount of \$100,000 had already been identified prior to our visit and we are in agreement with those errors however, our review indicates that the accounting records continue to be poorly maintained and do not provide any trail to be able to determine where the precise breakdowns have occurred. As a result, although we believe that the majority of the discrepancy would have occurred due to poor paper work in the accounting trial, we are not able to rule out the possibility of material stock amounts being subject to theft ...*

#### 7.5.2.2 Comments on Reports

##### Statutory

The audit reports signed by Ernst & Young for the year ended 30 June 1990 and 30 June 1991 stated that the financial statement gave a true and fair view of the operations and state of affairs of the company.

Before the 1991 financial statements were signed, the Directors themselves felt uncomfortable with the financial condition of the company, especially in regard to the onerous responsibilities on directors imposed by the Corporations Law. The Directors sought and received from the Government a deed of indemnity from any liability arising out of holding the office of Director of the company. Additionally, in a letter to the Board, the Minister for Industries and Development stated:

*... I advise you that the Northern Territory Government agrees to underwrite the operating expenses of Dalway Pty Ltd whilst ever the Government is the sole owner of the Company, provided such expenses are incurred in the normal course of prudent business.<sup>213</sup>*

The 1991 Audit opinion was subject to the company being given continued financial support from its shareholder and the TIO. It would seem entirely

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<sup>213</sup>

Undated letter to the Board of Dalway from Hon. Steve Hatton.  
See Appendix 3.12



appropriate that the 1991 financial statements should carry the rider - 'subject to continued financial support from the Government'.

The following table however points to an apparent overstatement of value of fixed assets as shown in the audited financial statements:

|                               | Financial Statements   |                        | AVO Valuation          |                        | Offers for Sale   |                              |
|-------------------------------|------------------------|------------------------|------------------------|------------------------|-------------------|------------------------------|
|                               | 30 June<br>1990<br>\$M | 30 June<br>1991<br>\$M | 30 June<br>1990<br>\$M | 30 June<br>1991<br>\$M | Consortium<br>\$M | Territory<br>Cabinets<br>\$M |
| Property<br>Plant &<br>Equip. | 4 849                  | 4 572                  | 2 565                  | 2 365                  | 1 454             | 1 560                        |

It appears that neither the Directors nor the auditors adequately considered the carrying value of the fixed assets in the financial statements.

In evidence, the Ernst & Young audit partner, Mr Wayne Bastion indicated that:

- (i) *the value of the fixed assets in the financial accounts was on a cost basis.*
- (ii) *he was aware that the Corporation Law required directors to take reasonable steps to ensure that the value of fixed assets shown in the financial statements is appropriate and not misleading.*
- (iii) *considering the Australian Valuation Office valuation, it appeared that the directors had not complied with their obligations.*
- (iv) *at no time did he recommend to the directors that they should have obtained a valuation.*
- (v) *he agreed that it would have been prudent for the Government to obtain a valuation at or shortly after acquisition.<sup>214</sup>*

If, for instance, the value of the property, plant and equipment in the 1990 and 1991 financial statements had been written down to the Australian



Valuation Office valuations, the net deficiency of shareholders funds would have increased as follows:

|                            | 1990<br>\$M    | 1991<br>\$M    |
|----------------------------|----------------|----------------|
| Deficiency per Accounts    | (0.285)        | (1.580)        |
| Write down of fixed assets | <u>(2.285)</u> | <u>(2.207)</u> |
|                            | <u>(2.570)</u> | <u>(3.787)</u> |

Given the position posited above, this matter should have impacted upon the auditor's report as to the truth and fairness of the financial statements.

### Management Reports

An important theme flows through the auditor's management letters from the first letter dated 28 June 1990 until the last dated 25 March 1992, being the lack of a costing system and the deficient inventory system.

Although the auditors raised the issue on numerous occasions, the Board did not or could not act to fix the problem effectively. Major problems were noted at every stocktake with significant adjustments being made to final accounts after writing off book stock losses. By way of example, \$0.475M was written off book stocks after a physical stocktake was conducted as of 28 February 1992.<sup>215</sup>

These deficiencies were continually brought to the attention of the Board. The extent to which the Board and management ever dealt with those and other deficiencies is dealt with elsewhere in this report. In general, it is fair to say that some of these deficiencies were never adequately addressed.

## 7.6 SUMMARY

The financial performance of Dalway was affected by a number of factors. Some of those were foreseen, some were not. The extent of the losses was obviously not anticipated by the Government, when it first acquired the operations of DJFM via Dalway.

The factors that eroded the Government's investment in Dalway up to May 1992 and the losses made over the years ending 30 June 1990, 30 June 1991 and the nine month period ended 31 March 1992 of \$0.286 million, \$1.295 million and \$1.524 million (unaudited), respectively, were as follows:

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Transcript of Mr Bastion, pp 24-25 of 22 October 1992



- . The constraints imposed on the Board by DID particularly in relation to the rationalisation of the workforce.
- . Technical difficulties of implementing new technology in the form of the computer integrated manufacturing system
- . Initial over-estimates of the available market for Dalway's products in the Northern Territory
- . Failure to pursue larger markets to realise the necessary economies of scale of large volume production
- . Inability of management to monitor the costs arising on contracts due to the lack of proper accounting systems
- . Lack of reliable management and financial information to allow the Board and management to make effective decisions on a timely basis
- . Significant levels of cost carried by the company compared to the level of actual operating activities.

## **7.7 RECOMMENDATION**

The Committee recommends that the corporate strategies referred to in 7.2.2 be comprehensively addressed and form an essential element in any consideration by DID of applications for financial assistance. If such strategies have not been comprehensively addressed by an applicant, then DID should consider bearing the cost of the preparation of such strategies, to the extent necessary to be able to assess the application on the basis of adequate and reliable information.



The Committee's report on the 1991-1992 period is contained in the report of the Committee on the 1991-1992 period, which is available in the Committee's report on the 1991-1992 period.

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## CHAPTER 8 - SALE

### 8.1 REASONS FOR SALE

#### 8.1.1 Background

At the time of the purchase of the assets of DJFM, it was never envisaged that the Government would continue to conduct a joinery/furniture business for very long. The purchase was a temporary means of saving the only company apparently thought capable of doing the work for State Square and the employees' jobs. It was a holding pattern to allow a restructuring of the company and to put it back on track whilst protecting it from the demands of creditors. However, it became clear that Dalway, for various reasons, continued to be a loser and a drain on the public purse.

The background section of the Departmental submission which led to the Cabinet decision of 10 September 1991 to dispose of Dalway set out the options available to the Government.

- . Permit or control a liquidation of the company
- . Sell the business as a going concern
- . Continue to operate the business
- . Restructure the business
- . Restructure the finances
- . Mothball the business

#### 8.1.2 The Continuing Performance of Dalway

The unaudited financial result then available for the year ended 30 June 1991 indicated a loss of \$1.02M. This came as a shock to those involved as the monthly results throughout the year were indicating losses of approximately \$0.3M. Mr David Hunt, Business Analyst, DID, made a file note on 9 September 1991 to the effect that the loss was much greater than expected, and the reason given was an overstatement of stocks (of \$0.3M) and of overstatement of work in progress (of \$0.4M). He reported that Dalway had a negative cash flow of around \$45,000 per month and that at the current rate, given the Company's cash position, it could continue trading for only a further four months. This pessimism extended to the 1991/92 budget estimates indicating a far poorer performance than that of the previous year. It was forecast that an injection of a further \$0.5M would be necessary for the company to break even and that under the current conditions further propping up would be required in future years. Mr Hunt, recognising the future drain of public monies, recommended that the



most commercially prudent action would be to dispose of the business as expeditiously as possible.

During the period immediately prior to the sale decision there were many items of documentary evidence in the form of internal Dalway memos, internal DID memos, and correspondence between DID and Dalway. They dealt with the problems that the Directors were encountering and they assisted in the review of the decision to sell.

In a file note dated 1 May 1991, Mr Hunt recorded his understanding of a meeting held with the Directors of Dalway (except Mr Pastrikos). He noted with regard to their concerns relating to the behaviour of Mr Pastrikos:

*... It would seem the Government has instituted an almost impossible situation which needs to be solved promptly to ensure the continued viability of the company.*<sup>216</sup>

He was referring to the problem of having:

*... a fellow director, both working in a subservient role to the Board's appointed General Manager, and at the same time acting as 'pseudo owner', to the extent of circumventing the Board and making direct approaches to Government.*<sup>217</sup>

Mr Geoff James attended a Directors' meeting on 4 July 1991 as an alternate to the Chairman, Mr Jim Bell, who was on vacation. On 5 July 1991 he wrote to the DID noting some of the concerns raised at the meeting. In relation to longer term contracts, he wrote:<sup>218</sup>

*... Mr Fradkin highlighted the fact that the company does not have in place a 'cost to complete' review technique to enable it to monitor the potential success or otherwise of these contracts.*

In a letter dated 8 May 1992, Mr Bell wrote to the Minister and stated, in part:

*... I wish to inform you that the board of directors of Dalway Pty Ltd feels most uncomfortable with the present situation of the company. The doubts about the company's future have dramatically eroded its viability.*<sup>219</sup>

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<sup>216</sup> DID file 91/108 - Folio 117

<sup>217</sup> DID file 91/108 - Folio 117

<sup>218</sup> DID file 91/108 - Folio 198-200

<sup>219</sup> Tabled Document : not numbered.



and

*... the current holding pattern is very expensive and becomes more expensive by the day as the affairs of the company become less and less settled.*<sup>220</sup>

and

*... on our present circumstances the company is simply buying work in an effort to justify its existence.*<sup>221</sup>

In a letter dated 30 August 1991 from the Directors of Dalway to Mr Otto Alder, it is stated that:

*... The role of John Pastrikos has been a continual problem for us. In our view his numerous attempts to undermine the Board by communicating with Ministers without advising us, places us in an intolerable position.*<sup>222</sup>

and

*... Until this issue is resolved, we cannot take appropriate action to put in place effective management and fulfil our responsibilities as director.*<sup>223</sup>

### 8.1.3 Recommendation to Sell

All the options available as noted above appear to have been considered but, from the evidence available, it is not clear whether sufficient in-depth analysis of the potential outcome of each option was carried out.

The Government was apparently determined not to inject further funds into the project. This left the Government with only two options, namely:

- . sale as a going concern
- . liquidation

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220 Tabled Document : not numbered.

221 Tabled document : not numbered.

222 DID file 91/501 - Folio 115

223 DID file 91/501 - Folio 115



Because of the initial reasons for the purchase of the business and assets of DJFM, the liquidation option was, for non-financial or political reasons, the least preferred option.

#### 8.1.4 The Cabinet Decision

In his submission to Cabinet on 10 September 1991, the Hon. Steve Hatton, as Minister for Industries and Development, outlined the poor performance and prospects of Dalway and recommended that the company be sold.

The Cabinet Decision<sup>224</sup> :

- . approved the orderly disposal of Dalway
- . authorised the engagement of a consultant to report on the best disposal options
- . required any course of action to be endorsed by Cabinet
- . assured the company that 1992 loan repayments to TIO would be met if necessary
- . required that all undertakings to Mr John Pastrokos and his family be withdrawn
- . required the removal of Mr Pastrokos from the Board
- . required liaison between DID and Treasury in identifying the most appropriate disposal option.
- . confirmed that relevant State Square matters be identified by the Minister for Transport and Works.

The decision was disclosed in a press release on 11 September 1991 which indicated that the disposal would be handled by consultants but that the Minister's preference was for the sale as a going concern. Mr Hatton further stated that there was no longer any agreement with Mr Pastrokos with regard to a right to re-purchase.

Mr Pastrokos refused to comply with a letter dated 9 September 1991 from Mildrens suggesting that he resign from the Board. A meeting of shareholders on 24 September determined to remove him from the Board.



On the 17th September 1991, Nictarios (sic) Pastrokos lodged a caveat over the land owned by Dalway. These events led to legal action being taken which will be dealt with later.

## **Conclusion**

Based on the evidence available, the Committee has formed the belief that the disposal decision was the correct course of action. However, the Government reduced its possible options and therefore possibly a better outcome by its determination to cease any further injection of funds and by ruling out, without full consideration, the liquidation option because of the non-financial and political reasons put forward for the original purchase decision.

## **8.2 THE SALE PROCESS**

### **8.2.1 Appointment of a Sales Consultant**

As a result of Cabinet approval for the sale of Dalway, DID, on 14 September 1991, called for expressions of interest from consultants to advise on the disposal of Dalway. Thirteen bids were received and the short-listed group were asked to present detailed proposals. A joint consultancy comprising ANZ Capel Court and Desliens Business Consultants ('Desliens') was ultimately decided upon on 20 November 1991.

The brief, contained in a letter of appointment from DID on 2 December 1991, required the consultants to:

*... prepare and execute a plan of action for the disposal of Dalway Pty Ltd, achieving the following objectives:*

- . To obtain the best possible selling price, with the maximum return to the Northern Territory Community.*
- . To seek to ensure that the business can remain based in Darwin as a viable business with regard to:*
  - work in progress and future business opportunities*
  - the capability of the plant and the desirability that Darwin be developed as an export base for furniture and joinery work.*

### **8.2.2 Recommendation to Liquidate**

On 13 September 1991, DID wrote to the Directors of Dalway in relation to the TIO loan which was due to become repayable on 1 July 1992. The letter in part stated:



*... You are assured that this department will ensure that all necessary and appropriate arrangements are made, on a needs basis from time to time, to ensure that the company's obligations to TIO will be discharged in full or otherwise resolved to the satisfaction of TIO.<sup>225</sup>*

On 14 September 1991, the Board of Dalway wrote to DID and stated<sup>226</sup>:

*... It is also the opinion of the board that if the company were run in a genuine private enterprise manner, it would immediately cease operations and wind up its affairs ... you need to be aware that the company does not have the capacity to trade beyond early in the new year ... in order for the company to be preserved during this difficult period and to enable directors to work on issues other than their own protection, it is only common sense that the Territory provide the directors with clear instructions and an indemnity.*

The Directors required indemnities in relation to their duties as directors and a letter of comfort in relation to the continuance of Government support in meeting the operating expenses of Dalway.

The Deeds of Indemnity were provided under cover of a letter from DID of 10 December 1991.<sup>227</sup>

The Board of Dalway again wrote to DID on 29 November 1991 and stated:<sup>228</sup>

*... The Board's grave concern at present however, is the matter of the company's ongoing funding requirements and therefore its present viability as detailed in my letter of the 14th November 1991 to which we urgently seek your response.*

*... I reiterate that the end of year accounts cannot be signed until this most important factor is resolved.*

The Minister replied in an undated letter (probably issued in January 1992) to Mr Bell<sup>229</sup>:

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225      Tabled Document 121

226      DID file 91/923 - Folio 129-131

227      DID file 91/923 - Folio 187

228      DID file 91/923 - Folio 151

229      Tabled Document 121



*... I advise you that the Northern Territory Government agrees to underwrite the operating expenses of Dalway Pty Ltd whilst ever the government is the sole owner of the company, provided such expenses are incurred in the normal course of prudent business.*

Prior to the issue of this letter, DID prepared a draft Cabinet submission for the Minister dated 17 December 1991 which in part recommended that Cabinet:<sup>230</sup>

*... decline the board's request for a commitment to the provision of further funding to Dalway Pty Ltd ... approve of the winding up of the company by placing it into voluntary liquidation on 31 December 1991.*

The Minister recommended to Cabinet that the company be liquidated having regard to the reasons behind the Directors' refusal to sign the annual accounts and the liabilities that would arise under the State Square contract without a government commitment to further funding.<sup>231</sup>

In Cabinet Decision 7149 dated 18 December 1991, Cabinet declined the recommendation and opted to allow the appointed consultants the opportunity to secure a sale of the business as a going concern.<sup>232</sup>

As mentioned, from the evidence available it is not clear whether sufficient in-depth analysis of the potential outcome of liquidation of Dalway was carried out. The emphasis of the letter of appointment of the consultants again appears to have been to keep Dalway afloat and operating despite the recommendation from Mr Lyal Mackintosh, the present Secretary, DID. In his evidence before the Committee he stated:

*... I formed the opinion with others, that liquidation offered the government an opportunity to cap their exposure to a degree, not knowing what the holding cost would be during the liquidation.*<sup>233</sup>

In his evidence he went on to state that this was an opinion held independently from the similar view, of which at the time he was unaware, held by the Board of Dalway. His recommendation to the Minister and to Cabinet in December was that liquidation was the best prospect for limiting further losses which were then averaging around \$50,000 per month and would continue until the sale was completed.

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<sup>230</sup> DID file 91/924 - Folio 18-35

<sup>231</sup> DID file 92/621 - Folio 173

<sup>232</sup> DID file 92/621 - Folio 173

<sup>233</sup> Transcript of Mr Mackintosh, p. 3 of 9 November 1992



### 8.2.3 Consultant's Interim Reports

The Sale Consultants, in their initial advice<sup>234</sup>, identified serious shortcomings already apparent to those involved:

- . *there is a major problem with stock levels, materials recording and job costing systems*
- . *the information systems are poor*
- . *the integrity of the financial information available is low (i.e. unaudited)*

They went on to point out that should the Government require the company to survive then those shortcomings would need to be sorted out before any sale. This would involve a full stocktake and audit to provide integrity in the figures put forward:

*... only then will there be any chance of making realistic projections on which to interest a buyer on a going concern basis.*

In addressing this issue, the consultants sought the assistance of DID in having external auditors conduct an investigation of the accounts in order to verify them. This was noted in a memorandum dated 10 January 1992 by Mr Hunt.<sup>235</sup>

The Secretary, DID, approved the appointment of Ernst & Young to carry out some limited accounting and auditing procedures on 13 January 1992 as the consultants were so concerned with the lack of credibility of the figures they received that they did not wish to issue the memorandum.

It is an unfortunate aspect of the time frame from when Cabinet decided to get out of Dalway in September to the appointment of the consultants, that the normal practice was followed whereby Dalway closed at Christmas until the end of January and the Sale Consultants were precluded from seeing the company in operation.

With regard to the prospective market value, the Sale Consultants stated in their interim report on 6 December 1991:

*... a realistic expectation then would be in the range of \$2.0M plus stock at say 50c in the dollar.*

DID had commissioned the AVO to prepare a valuation report of Dalway's non current assets in November 1991. The value of land, buildings, plant and equipment,

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234 DID File dated 6 November 1991

235 Tabled Document 89



fixtures and fittings and existing business was put at \$2.365M so that some independent indication of the 'price range' was available to the consultants.

The consultants forwarded a second interim report following the audit on 20 February 1992<sup>236</sup> and enclosed the Information Memorandum which was to be provided to potential buyers. This document made no mention of the caveat which Mr Nictarios (sic) Pastrokios registered on the land owned by Dalway claiming an interest in the land under the alleged Option Agreement. To the extent that there was no firm agreement relating to its removal, this was an omission since it represented a hindrance to the sale of Dalway. The evidence of Mr Gordon from Desliens was that he was told not to worry about it. He said

*... We thought we had undertakings that the caveat would be lifted and our instructions were not to worry about that option ...*<sup>237</sup>

The Information Memorandum set out:

- . a full description of Dalway including its history, organisational structure, operations and assets.
- . a market analysis together with historical financial performance and future projections based on the analysis and conclusions set out in the Information Memorandum.

The Information Memorandum also carried an extensive disclaimer with regard to its contents and indicated that it was the responsibility of a potential purchaser to carry out an independent investigation prior to purchase.

The document contained a summary of financial projections which, based on the assumptions set out, indicated sales increasing from \$4.95M in 1992/93 to \$8.1M in 1996/97. Profits before tax were projected to improve from \$0.467M in 1992/92 to \$1.925M for 1996/97.

These figures were significantly more conservative than those previously provided by Mr Tom Williams and contained in the First Touche Ross Report.

The consultants undertook the promotion activities for the sale and received fifteen expressions of interest.

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<sup>236</sup> Tabled Document 89

<sup>237</sup> Transcript of Mr Gordon, pp 31-32 of 2 September 1992



On 15 May 1992 two offers were received by Capel Court/Desliens:

- . The Pastrokos Family \$1.75M
- . Territory Cabinets \$1.474M

Subsequent to the receipt of the offers, further clarification and negotiations occurred between the consultants and representatives of the above parties.

#### 8.2.4 The Pastrokos Family

In order to finance the family offer, Mr Pastrokos had originally obtained contingent approval of finance from the National Bank. This approval was subsequently withdrawn and made subject to the investment by way of equity of \$0.5M by other parties. At the last moment, 21 May 1992, the equity partners secured by Mr Pastrokos withdrew from the venture. At the initiation of Mr Colin James of Ernst & Young, an approach was then made to Mr Leo Venturin (after Mr Venturin had expressed interest to Mr Bob Cowling, one of Mr James' partners) who enlisted the support of Mr M Sitzler and Mr Margetic to join Mr Pastrokos in forming the consortium which made the successful offer for Dalway on 22 May 1992.<sup>238</sup> Mr Margetic immediately resigned from the Board of Dalway on becoming aware of Mr Venturin's proposition. Mr Pastrokos then wrote to the consultants confirming the funding arrangements. The consortium was informed of the success of their offer late on 22 May 1992, contracts were signed on 25 May 1992 and settlement took place on 29 May 1992.

#### 8.2.5 Territory Cabinets

Mr Blake, of Territory Cabinets, made an initial offer for the business which was rejected by the consultants, but was asked to submit an alternative offer which he did. By way of background, Territory Cabinets had purchased the assets of Jaguar Joinery after its financial demise and Mr Mannion was employed by the new company.

Territory Cabinets wrote to the Chief Minister on 25 May 1992 in relation to two major concerns they had with regard to the ultimate rejection of its offer. The letter stated:

*... We were given an understanding for and on behalf of your Government that no director of Dalway Pty Ltd would be a party to any purchase offer. We now find that a director of Dalway, Mr S Margetic, is the managing director of a member of the purchasing consortium. We are frankly bemused at how the purchasing consortium could even be considered in such circumstances.*

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This is supported by evidence given to the Committee  
Mr Venturin and Mr Pastrokos



*... In order to prepare our bid we requested a copy of Dalway's major contract for the fitout of the Northern Territory Parliament House. We were refused access on the basis that we were a competitor. No such restriction applied to the other tenderer who through Mr Pastrokos and Mr Margetic had complete knowledge of that particular tender.*

*... We have now raised two fundamental matters for your consideration. The first, the clear conflict of interest within the purchasing consortium is a matter which will no doubt cause considerable public concern ... The second, the unfair manner in which the information was available to one tenderer but not the other has produced an unnecessary loss to the public purse, is at best incompetence and at worst an attempt to subvert the tender process.*

The first concern raised above related to Mr Margetic and was investigated by the Australian Securities Commission who found there was no breach of the Corporations Law. Mr Margetic was a very late participant in the purchasing consortium. He resigned his directorship of Dalway immediately upon becoming a participant. Mr Pastrokos was not a director of Dalway during the sale process and was stood aside as an employee of Dalway on 13 May 1992. At that point in time, however, based on evidence given to the Committee, it is clear that Mr Pastrokos was aware that Dalway's tender for the Parliament House Project had been successful and that he was also aware of the final price. It is fairly clear that Territory Cabinets was not privy to the same information.

The second concern, relating to the withholding of information from Territory Cabinets associated with the Parliament House contract, has been acknowledged by the consultants who believed this was an appropriate course of action. In their opinion, it would have been commercially improper to release sensitive contract details given that Territory Cabinets may have become a potential competitor of the purchaser of Dalway. Mr Gordon said:

*... it was improper for us to hand over the Parliament House contract documents.<sup>239</sup>*

*... Territory Cabinets were still a competitor and if unsuccessful they would continue to be a competitor. In that situation we believe it to be commercially improper to make tender details available. Release of the contract documents would have been a breach of confidentiality as far as Dalway is concerned ...<sup>240</sup>*

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<sup>239</sup> Transcript of Mr Gordon, p. 5 of 2 September 1992

<sup>240</sup> Transcript of Mr Gordon, p. 7 of 2 September 1992



*... Our refusal to provide the contract documents has been endorsed by Mr Bell who was chairman, Mr David Hunt ... and Mr Fred Finch ...*<sup>241</sup>

It is the opinion of the Committee that the view put forward by Mr Gordon was in all the circumstances incorrect. It is the Committee's view that whilst Mr Gordon may have been justified in his stance initially, this information should have been made available to Territory Cabinets.

In appropriate circumstances full disclosure of such vital financial details is essential in order that a proper assessment may be made to determine the price which a prospective purchaser is prepared to offer. Had Territory Cabinets been fully informed of the terms of the contract, rather than having to rely on the recollections of Mr Mannion who purported to have prepared a tender which he failed to lodge for that job<sup>242</sup>, a revised offer may have resulted. They were clearly a serious bidder, and it remains possible that disclosure of the information sought may have resulted in a higher offer being received from Territory Cabinets.

Indeed, the Territory Cabinets' bid was some \$0.543 million higher than the Pastrikos Consortium bid in terms of how much it would pay for the total assets of Dalway. Territory Cabinets then reduced its bid by \$0.75 million to take account of: anticipated losses on general contracts of \$0.35 million; specific losses on the Parliament House contract of \$0.4 million; and a further \$0.069 million in relation to the employee liabilities it would take over. Having regard to the evidence as to the operations of Dalway, the view taken by Mr Blake was certainly justified. In fact, the concerns which led to Mr Blake's reduction were apparently shared by Mr Gordon who, as previously noted, had reported serious shortcomings at Dalway, including that 'there is a major problem with ... job costing systems'. It is therefore difficult to understand why Mr Gordon did not immediately recognise the legitimacy of Mr Blake's need to be fully satisfied as to the profitability of major future contracts.

Assuming that Territory Cabinets had full access to the general contracts and after that assessment deducted \$0.35 million from their offer to account for future losses on those contracts, the specific Parliament House contract would remain to be considered. If it could be demonstrated to Territory Cabinets that there were no future losses to be incurred with the contract and the \$0.4 million was not therefore required to be deducted, it would have meant the Territory Cabinets offer was \$1.874 million, being \$0.124 million higher than the Pastrikos Consortium.

However, the position taken by Mr Gordon was perhaps understandable in some respects. On his own evidence, he believed that Mr Blake had or had access to the tender documents; apparently only one request for the information was made and not

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<sup>241</sup> Transcript of Mr Gordon, p. 7 of 2 September 1992

<sup>242</sup> See 6.3 for the evidence of Mr Mannion in this regard



followed up; it was not entirely clear what he was actually seeking; and Mr Blake and Mr Garraway rejected the opportunity to have Mr Gordon go through the details line by line to ascertain whether the contract entered into was as set out in the tender documents in any event.

However, the latter point assumes that Mr Blake actually had the tender documents available to him. Since he did not, it was not possible for him to go through them with Mr Gordon 'line by line' or otherwise. Unfortunately, Mr Blake failed to make it clear to Mr Gordon that he did not have the tender documents for Stage II for the State Square Project. It appears likely that Mr Garraway, Mr Blake's accountant, may have believed that there was some negotiating advantage in not making Mr Gordon aware of this fact.

Mr Garraway's and Mr Blake's evidence is, of course, contradictory to Mr Gordon in many respects. Overall, the state of the evidence is unsatisfactory, and the Committee is unable to draw any conclusion as to the true circumstances.

The Committee believes that the major concern should have been to obtain the best price possible for the Government, and the view taken by the consultants may have diminished the return of funds to the public purse. The Committee considers that the consultants, who stated that the decision was theirs alone, although subsequently endorsed by others, demonstrated an error of judgment in this respect, particularly in apparently failing to obtain specific instructions on the matter at the time. By the same token, however, the conduct of Mr Blake and Mr Garraway, in apparently not specifying what they required and why, did not assist the consultants in making their assessment.

#### **8.2.6 The Recommendation for Sale**

At the conclusion of some six months activity by the Sales Consultants, two written bids were received for the purchase of Dalway as at 21 May 1992.

A report dated May 1992 was prepared by Desliens for the Government which set out the details of the final offers received, evaluated the offers (including the alternative to sale, namely liquidation) and recommended that the Pastrokos Consortium offer be accepted.



In summarised form the offers were as follows:<sup>243</sup>

|                                     | Pastrikos<br>Consortium<br>\$M | Territory Cabinets<br>\$M | Liquidation<br>\$M |
|-------------------------------------|--------------------------------|---------------------------|--------------------|
| Land and buildings                  |                                | 1.250                     | 1.100              |
| Plant and equipment                 |                                | 0.310                     | 0.200              |
| Debtors                             |                                | 0.270                     | 0.135              |
| Stock                               |                                | 0.287                     | 0.143              |
| Work in progress                    | <u>      </u>                  | <u>0.176</u>              | <u>0.018</u>       |
|                                     | 1.750                          | 2.293                     | 1.596              |
| Less anticipated<br>contract losses | -                              | (0.750)                   | -                  |
| Employee claims                     | <u>-</u>                       | <u>(0.069)</u>            | <u>-</u>           |
| Purchase Price                      | <u>1.750</u>                   | <u>1.474</u>              | <u>1.527</u>       |

Particular conditions accompanying the offers were as follows:

(i) **Pastrikos Consortium**

- . The liabilities of the DID, the TIO and all other external and trade creditors would become the responsibility of the Northern Territory Government.
- . The Government was to indemnify Dalway in respect of contingent liabilities.

(ii) **Territory Cabinets**

- . Twenty-three conditions of sale (refer Appendix 3.14 for details)

These particular conditions were in the main normal warranties common to many purchase agreements, apart from item 19 which specified that 'assets to be physically present' and 'value to be not less than contained in this offer'. This condition could be particularly onerous as it effectively passed the responsibility to the vendor. For example, the offer included land and buildings at \$1.25 million; if subsequently the value was shown to be something less than that value, then the Government may have had to make good the difference to Territory Cabinets.

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<sup>243</sup>

Per Desliens report dated May 1992, Appendix 3.13



- . Debtors - vendor to warrant the amount (\$0.270 million) and collectability within forty-five days.
- . Stocks - vendor to warrant that purchaser will use raw material stocks within forty-five days. If not so used purchase price to be adjusted to writing down such unused stock to just 25% of cost (warranty against \$0.193 million of stock).
- . Work in progress - net realisable value to be assessed on the day of settlement.

This left the consultants with a choice of four options:

- . the Government to retain ownership
  - . liquidate the company and realise the assets
  - . sell to Territory Cabinets
  - . sell to Pastrokos Consortium
- (i) Option one would not have been acceptable to the Government as significant funds for working capital would have been required almost immediately.
- (ii) Option two - Liquidation

The consultants considered the liquidation alternative as follows:

|   | Book<br>Value<br>\$M | Liquidation<br>Value<br>\$M |
|---|----------------------|-----------------------------|
| <sup>244</sup> Land and buildings (AVO) | 1.900                | 1.100                       |
| <sup>245</sup> Plant & equipment (AVO)  | 0.465                | 0.200                       |
| Debtors                                 | 0.270                | 0.135                       |
| Stock                                   | 0.287                | 0.143                       |
| Work in progress                        | <u>0.176</u>         | <u>0.018</u>                |
|   | <u>3.098</u>         | <u>1.596</u>                |

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<sup>244</sup> Per AVO report dated 5 December 1991

<sup>245</sup> Per AVO report dated 5 December 1991



The Committee has not reassessed the liquidation values calculated by the Sales Consultants in any detail. However, although it does appear conservative, the following matters need to be considered:

- . the AVO values shown above for land, buildings, plant and equipment are based not on a fire sale basis but assume a 'willing but not anxious buyer and a willing but not anxious seller'.
- . debtors at 50% appears a little too conservative, and a further \$50,000 to \$60,000 could be expected.
- . stock and work in progress appropriately reflects fire sale value of Dalway stocks.
- . realisation and liquidation fees which would be charged by a liquidator may be in the order of \$75,000 to \$100,000.

Based on this option the liquidation route could only be recommended where no offers exceeded approximately \$1.5 million.

(iii) Option Three - Sell to Territory Cabinets

This option was not able to be recommended as:

- . the offer was \$0.276 below the Pastrokos Consortium's price
- . even at the higher figure, the Territory Cabinet's offer contained a number of quite onerous warranties and conditions which may have had the effect of lowering the ultimate selling price considerably. The particular warranties mentioned above could have been quite difficult for the vendor as they effectively transferred the responsibility for conducting appropriate due diligence reviews away from the purchaser to the vendor. For example, even after the offer was accepted, disputes could have arisen as to the value included in the selling price of fixed assets and work in progress; debtors uncollected after forty-five days would be returned to the Government and the selling price adjusted by that amount; raw material stocks not used within forty-five days to be subject to an adjustment to the purchase price from 100% of cost to 25% of cost (this would be difficult for the vendor to control as production would be in the hands of the purchaser after settlement). However, it does not appear that any attempt was made to negotiate or explore reasonable alternatives to the unacceptable warranties and conditions in the Territory Cabinets' bid. In the interests of maximising the sale proceeds, some attempt at negotiation would have seemed appropriate, although Mr Gordon may have taken Mr Garraway's negotiating stance for intransigence.



(iv) Option Four - Sell to the Pastrokos Consortium

This option was recommended as:

- . the price was \$0.276 million in excess of the offered price of Territory Cabinets, and \$0.233 million greater than liquidation value.
- . the warranties and conditions were minor with no carried over disputes as to the value of fixed assets, stocks, debtors or work in progress, and consequent adjustment of purchase price.

In general, it appears that Mr Gordon may have failed to take full advantage of the competitive situation presented by the two bids. It would appear that more could have been done to play the bidders off against each other, thereby maximising the return.

**8.2.7 The Purchase/Sale Agreement**

A purchase/sale agreement was drawn up with the following terms and conditions in summary form:

- . purchase price \$1.75 million for shares in Dalway
- . all cash at bank to be paid by the Company to the vendor
- . TIO loan to be forgiven
- . Government loan to be forgiven
- . contract retentions and performance guarantees to remain with the vendor
- . vendor to assume liability for the Company's creditors (other than for wages, salaries, holidays and long service leave)
- . vendor to assume any liability relating to litigation relating to Mr Edwards
- . vendor to indemnify the company and purchaser from all damages, losses, costs, and expenses that may be incurred by the company by reason of such litigation
- . work in progress - no adjustment to price
- . stock - no adjustment to price
- . materials - no adjustment to price



orders of materials - for undelivered purchase orders exceeding \$90,000, the vendor to indemnify the company in respect of the excess over and above that sum

debtors - no adjustment to price.

### 8.2.8 Sale Contract Conditions

The contract conditions did not call for:

a full stocktake of the levels and value of stocks, materials and work in progress

review and audit of trade debtor balances

review and audit of trade creditors

A full stocktake was not carried out on the date of handover to determine the level of stocks. As a result, the level of stocks, materials and work-in-progress were open to manipulation, albeit there was no evidence to suggest such manipulation occurred. In effect, the Government had no idea whether Dalway was handing over say, \$0.2M worth of stocks or \$0.8M. The book stock figure had been totally unreliable throughout the period since purchase, yet no attempt was made to verify the level at or around the date of the acceptance of the offer or hand-over date. Stock levels could have been increased above normal levels (although there is no evidence to suggest it was) in anticipation of the sale.

Trade debtors were not verified as at the date of sale. Again the Government had no idea what their exact level was at that point in time. It is possible, for example, that debtor cheques received just prior to the sale date were not lodged until a date after the sale was completed. Also, there was the situation whereby if for example, a large debtor paid \$100,000 a few days before the sale then the Government got the money but if there was a delay in the post or the cheque didn't arrive until after settlement date then the cash belonged to the new owner. Cut-off procedures are critical in relation to the finalisation of a sale of this nature. There were no cut-off procedures undertaken. This was, based on the evidence available to the Committee, a further significant weakness on the part of those involved in finalising the sale arrangements.

Trade creditors were not verified as at the date of sale and proper cut off procedures were not undertaken. As noted above this resulted in the emergence of approximately \$0.2M of additional creditors. Creditors may have been artificially inflated prior to the sale by such methods as purchased stock in advance of needs and arranging for goods to be invoiced in advance of receipt. Again, whilst there was no evidence of such events occurring, there was the potential for such events to have occurred.



## Conclusion

On the basis of the evidence available to the Committee there appear to have been a number of potentially damaging decisions and errors made during the sale process:

- . The failure to give Territory Cabinets information essential to an informed bid
- . The failure to resolve the issue of the right of first refusal/option and the veto on the sale of Dalway created a situation which may have deterred contenders for the company which limited the applications and therefore the potential return of public funds.
- . The failure to disclose to Territory Cabinets, until 14 May 1992, that Mr Pastrikos would be given the right to match any bid was unfair to Territory Cabinets.
- . It is not clear that Desliens, after 21 May 1992 explored all alternatives to resolve onerous conditions in the bid by Territory Cabinets.
- . Whilst recognising the dangers inherent in a 'Dutch-auction' of losing both bidders, it is not clear that Desliens took full advantage of the opportunity presented by two serious bidders to maximise the selling price.
- . A stocktake and audit to the extent necessary to verify the completeness and accuracy of debtor and creditor levels should have been undertaken immediately prior to acceptance of any bid.
- . The lack of a full audit or financial statements that could have been the subject of appropriate warranties was likely to deter some investors since no clear picture was available of the viability of a revamped organisation.
- . The Government emphasis on the sale of Dalway as a going concern may have reduced the total return to the Government. It was apparent that there would be rationalisation by any buyer which would result in significant retrenchments, and had others been able to purchase the assets through liquidation, the equipment may have been utilised by local business to maintain or possibly increase their employment levels.



### 8.3 THE PASTRIKOS OPTION

Although the circumstances surrounding the sale would indicate that it may have been convenient legally to sell Dalway to Mr Pastrikos, and that information requested by the alternate bidder was not given to allow a 'level playing field' in formulating that bid (which may have had the effect of reducing that bid below the Pastrikos bid), from the evidence presented to the Committee, there is no evidence for the Committee to conclude that the Government or its selling agent designed the sales process to return the business back to the Pastrikos Consortium to the exclusion of all others.

However, the fact that DID failed to do anything about the issue of the Pastrikos option following the receipt of two advices from the Department of Law was not satisfactorily explained to the Committee, despite the fact that those advices suggested that there were potential difficulties in selling to anyone other than Pastrikos prior to 30 June 1992.

### 8.4 FINANCIAL RESULT

The financial results of Dalway for the period of Government ownership can be summarised as follows:

| Operating loss              | \$M    |
|-----------------------------|--------|
| Audited 1/3/90 to 30/6/90   | 0.286  |
| Audited 1/7/90 to 30/6/91   | 1.295  |
| Unaudited 1/7/90 to 25/5/92 | 1.860* |

\*Latest internal accounts available to March 1992 showed a loss for the nine months to be \$1.525 million. This has been extrapolated to \$1.86 million for the period to 25 May 1992 at \$0.169 million loss per month.

At the date of sale loan funds owed to TIO and the Government were:

| TIO<br>\$M   | NTG<br>\$M   | Total<br>\$M |
|--------------|--------------|--------------|
| 2.888        | 0.318        |              |
|              | 2.000        |              |
|              | <u>1.500</u> |              |
| <u>2.888</u> | <u>3.818</u> | <u>6.706</u> |

As previously indicated, the sale of Dalway to the Consortium realised \$1.75M but it must be recognised that the sale agreement passed the responsibility for the creditors



from the company to the Government including repayment of the TIO's outstanding principal. From the proceeds of the sale approximately \$0.575M was to be paid to creditors and to cover the various costs incurred in the sale. Thus the net proceeds were reduced to approximately \$1.175M.

It must also be recognised that a true assessment of costs to the Government should include the loss of interest which was due to be paid, together with the capital, by 1 July 1992. This foregone interest payment due to TIO was disclosed as \$1.156M.

A summary of the total loss to Government during its ownership of Dalway may be represented as follows:

|                           | \$M            |
|---------------------------|----------------|
| Funds lent to Dalway      | \$6.706        |
| Foregone interest on loan | \$1.156        |
| Creditors and sale costs  | <u>\$0.575</u> |
|                           | \$8.437        |
| Less proceeds of sale     | <u>\$1.750</u> |
| Total loss                | <u>\$6.687</u> |

The total loss figure above does not include any costs to Government incurred by it for consultant's reports, legal costs, etc. which would have been substantial.

A further cost to the Government may be posited as the opportunity cost of using the interest foregone to invest elsewhere. This would be applicable only in the case of an income-producing investment and may be ignored if the funds had been used in capital works or grants.

## 8.5 CONCLUSION

The expenditure of public funds on Dalway was motivated by the political desire to maintain employment opportunities and the genuine, although probably erroneous, perception that Dalway was a 'showcase pioneer' of high-tech furniture manufacture and the only joinery with the capacity to undertake the State Square joinery work. CFM, formerly Dalway, has now scaled down operations to the extent that the current level of employment is approximately twenty. Additionally, other joineries have collapsed with the loss of further jobs. On balance, the Government's involvement in Dalway has saved very few jobs and added significantly to the erosion of the public purse, the burden of which must be borne by the taxpayers of the Territory in a period of general economic hardship. While some of the problems which ultimately led to this result could not have been anticipated, many of them should have been.







## CHAPTER 9 - FRAMEWORK FOR THE FUTURE

### 9.1 THE CORPORATE FRAMEWORK

#### 9.1.1 The Corporate Framework

The company structure is based upon the legal fiction of establishing a separate and defined legal personality which is capable of the legal functions available to a natural person.

Governments have recognised that by forming companies, with government as the primary and perhaps only shareholder, they may pursue policy goals freed from the shackles of the rules which normally control public sector activities. However, this does not imply that such bodies are free of all constraints since they will fall within the province of the *Corporations Law* and the general law.

Apart from being a legal 'person', the company structure attracts, inter alia, a flat 39 cents in the dollar tax rate, limited liability of the shareholders and a complete separation of the resources of the company and shareholders.

Much has been made in recent years of the shortcomings of the *Corporations Law*. This has led in part to a review of directors duties of care and diligence and liability for insolvent trading. That review is embodied in the *Corporation Law Reform Act 1992*.

Clearly, any Government engaging in the establishment of companies such as Dalway, should be aware of the existing law particularly as it relates to the obligations of directors.

Evidence presented to the Committee clearly indicates that Dalway would have been classified as insolvent had it not been for the Government ultimately agreeing to underwrite all costs associated with the company until it was sold.

The Directors at the relevant time of Dalway were sufficiently concerned about the solvency and general viability of the company that on 12 December that they wrote to the Secretary, DID seeking written assurance from the shareholder (the Government):

*... that it shall make sufficient and adequate financial and contractual arrangements for the future support of the company in such a manner as shall ensure that the company will have the capacity to pay and comply with its financial and other obligations'.*



This assurance was given in an undated letter from the Minister for Industries and Development, the Hon. Steve Hatton.<sup>246</sup>

Prior to this, the Directors had been granted indemnity by the Government on 10 December 1991 against:

*... all actions, proceedings, claims, demands, liabilities, losses, expenses (legal and otherwise) and payments whatsoever arising out of any act or omission by him in good faith as Director of the Company or in any way done or omitted to be done arising out of his holding of the office of Director of the Company.*<sup>247</sup>

In all the circumstances these indemnities and assurances seem justified given that the existing law in appropriate circumstances involves the real prospect of unlimited personal liability on the part of officers of a company for debts and other obligations incurred by a company.

### 9.1.2 Standard of Care

The standard of care and diligence required of directors has been steadily increasing. In *Commonwealth Bank of Australia v Freidrich* (1991) 9 ACLC 946, Tadgell J, noted:

*As the complexity of commerce has gradually intensified...the community has of necessity come to expect more than formerly from directors...in response, the parliament and the courts have found it necessary in legislation and litigation to refer to the demands made on directors in more exacting terms.*

*To speak of a director of ordinary, reasonable or average competence or prudence, or indeed of an ordinary reasonable or average director, is to give no very useful description, whereas as a person seeking properly to perform the duties of a director of a particular company can be identified by reference to more specific criteria of which ordinariness, reasonableness and averageness are, or may be, merely ingredients.*

*What constitutes the proper performance of the duties of a director of a particular company will be dictated by a host of circumstances, including no doubt the type of the company, the size and nature of its enterprise, the provisions of its articles of association, the composition of its Board and the distribution of work between the Board and other officers.*

The *Corporations Law Reform Act* 1992 imposes a more objective test as to the degree of care and diligence required of directors, so that the conduct of an officer is to be

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<sup>246</sup> Appendix 3.12

<sup>247</sup> Deed of Indemnity, 10 December 1991. See Appendix 3.15



judged having regard to what is reasonable to expect of any person holding such an office rather than the personal capacity of that person.

## **Conclusion**

In the case of Dalway, it appears to be clear that the Directors were not given free reign to make decisions in the best interests of the Company, in particular because of the shareholder's policy aims of ensuring continued employment levels, notwithstanding the Company's financial position, and because of the perceived entitlements of the Pastrokos family, which burdened the implementation of appropriate reforms.

## **Recommendation**

That any Board of a company of which the Government is the shareholder be carefully selected for the personal qualities and competence now expected, and that each director be made fully aware of his or her liabilities, and be allowed to perform his or her functions free from artificial restraints imposed by the Government.

## **9.2 AUDITOR-GENERAL**

It is the view of the Committee that audits of government-owned companies and instrumentalities should be conducted by the Auditor-General. The financial disarray of Dalway reinforces this view. Had the Auditor-General had an appropriate role, it is possible that the present outcome would be different.

It should be noted that the Northern Territory Office of the Auditor-General has been using private sector auditors under contract to audit Government departments and statutory authorities since 1982.

In its Report Number 12, this Committee canvassed the issue of appointing the Auditor-General as auditor of all Government owned companies, corporations and trusts.

*In examining the issue of the Auditor-General's involvement in the audit of these entities, the Committee considered the arguments advanced by concerned parties, however, the Committee is of the view that accountability to Parliament and the people outweigh any potential breach of commercial confidentiality.*

*The Committee heard evidence from the Auditor-General of the Northern Territory, who tabled a statement known as the 'Waitangi Statement' from the (1989) conference of Australian Area Auditors-General which said in part:*



1. *All Government agencies should be accountable to Parliament from which they derive their authority and should be subject to the scrutiny of the Auditor-General or his agent.*
2. *The responsibilities of the Auditor-General extend beyond those of private sector auditors in that they have a wider legislative mandate designed to meet the needs of Parliament and to protect the interests of the public.*
3. *If Auditors-General are to provide Parliament with adequate assessments of public sector accountability there should be no restriction on audit scope.<sup>248</sup>*

The following text is reproduced from that report:

*In a 1989 article 'Governments Hide Behind Exempt Status', in New Accountant, Professor Walker posed the following question:*

*Why are governments using exempt proprietary companies as vehicles to operate government business or administer government programs?*

*Directors of such companies need not comply with public service rules requiring the formal authorisation of transactions. If they support a private sector auditor operating solely in terms of the local Companies Act or Code then the auditors need only report on whether the financial statements provide a 'true and fair' view.*

*But the most significant feature of the use of exempt proprietary companies by governments is the fact that if they appoint an auditor and are subject to audit, then they do not have to place any financial statements on the public record.*

Professor Walker reinforced his view in his *New Accountant* article of 6 September 1990 titled 'The SBV: Accounting Joke of the Year':

*The SBV<sup>249</sup> may be on the block, but Victoria should take steps to ensure that henceforth the Auditor-General will be responsible for the audit of all state-owned enterprises, perhaps in association with arrangements for the appointment of private-sector auditors under contract.*

In its March 1991 review supplement, the *Financial Review* newspaper published an article 'Bureaucrats in Business' which stated in part:

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<sup>248</sup> Northern Territory Public Accounts Committee Report Number 12

<sup>249</sup> State Bank of Victoria



*... that the Companies Code and commercial auditing standards are not sufficient for public business.*

*According to James Guthrie, a lecturer in accounting and auditing at the University of NSW, many pro-corporatisers are dangerously supportive of proposals to replace public sector scrutiny (emphasising probity and compliance with often-exhaustive rules for financial administration) with private sector audits. The reputation of private sector audits has been undeniably poisoned by the Rothwells example and others like it. In some cases, public enterprise has gone the same way.*

Given those opinions, and the fact that accountability to the Parliament and the people is an essential pre-requisite of government, the Committee endorses the proposal that the Auditor-General be responsible for the audit of all government owned companies, trusts and corporations.

The Committee expressed the same view in its Report on the Auditor-General's Reports 1989/90, Report No 16 of May 1992.

In his audit handbook 'On Adding Value', the Auditor-General lists the types of audits which may be required by Public Sector audit mandates. These are:

- (a) financial statement audit - an examination of financial information for the purpose of attestation, being the expression of an opinion on financial statements to help establish the credibility of those statements;*
- (b) compliance (or regularity) audit - an examination of financial information for the purpose of reporting on the legality and control of operations and the probity of those dealing with public funds, and including the expression of an opinion on an entity's compliance with the statutory requirements, regulations, rules, ordinances or directives that govern the activities of the entity; and*
- (c) performance (or value-for-money) audit - an examination of financial information and other records for the purpose of reporting on the controls, process and systems used to manage the entity's resources, money, people, physical assets and information, and in many cases to make comment on the entity's operations in terms of the economy in acquiring resources, efficiency in using resources and effectiveness in achieving objectives.*

*In respect of any particular type of public sector entity the related audit requirement may specify one or a combination of the above types of audits.*



## **Conclusion**

The Committee feels strongly that all Government-owned companies<sup>250</sup> should be subject to the more stringent form of audit by the Auditor-General than is found in the private sector, especially audit type (c) referred to above. It is the view of the Committee that the financial problems of Dalway would have been exposed by such scrutiny at a time when some steps may have been taken to correct the situation or a decision made to liquidate the company before the public purse suffered a loss of the present magnitude.

## **Recommendation**

That in all instances the Auditor-General be appointed auditor of all Government owned companies and instrumentalities.

## **9.3 A FRAMEWORK FOR THE FUTURE**

A government is a most unsuitable vehicle through which to efficiently operate a private business and government should refrain from such ventures even though the motive may be laudable.

It is also important and relevant to ask the question: Why is the government lending funds to a private company? The usual answer will be that private sector lenders have assessed the company and found the risk of default too great to justify advancing funds. The Government must recognise that when it lends in these circumstances it is taking a much greater risk with public funds than a private sector lender is prepared to take. This being the case, the Government must take even more stringent steps to protect its position by performing an in-depth due diligence review, and putting in place a strong and formalised on-going review and monitoring procedure.

Further, the events surrounding the Government's involvement in Dalway demonstrates a blurring of the distinction between assisting industry and assisting individual business. Doing the latter will not necessarily achieve the former, and may in some circumstances have the opposite effect.

### **9.3.1 Due Diligence**

It is the responsibility of potential investors or lenders to take such steps as to inform themselves fully before any decision is finalised. Areas which would commonly be focused on would include:

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As defined in Public Accounts Committee Report No. 12



- . management and control
- . industry and competitors
- . human resources
- . operations
- . legal
- . financial considerations

Only after evaluating all those areas and compiling a comprehensive report can an informed decision be made. Significant matters which would be considered under these broad headings would include:

- . Management and Control
  - covers an evaluation of management roles in the organisation, their strengths and weaknesses, lines of communication and management philosophy.
- . Industry and competitors
  - covers product lines, existing and new markets, industry trends and conditions, competitors.
- . Human resources
  - covers availability of key labour, stability, competence.
- . Operations
  - covers review of plant, facilities and production process; inventory and costing systems in place, and ensure purchasing function appropriate.
- . Legal
  - investigates any legal proceedings and any legal government or other restrictions or impediments as to future operations



## Financial considerations

### - covers

- . financial analysis
- . accounting policies
- . operating results
- . - analysis of trends in sales, gross profit, net income, return on assets
- . financial position
- cash (present and projected)
- debtors (collection problems)
- inventories (accuracy of inventories as recorded, basis of valuation, review significant write-offs)
- fixed assets (condition and valuation)
- creditors and provisions (completeness and accuracy)
- debt finance (repayment terms, security)
- equity
- . forecast and budgets
- . computer systems
- . taxation issues

Without this comprehensive review it is not possible to make a fully informed decision. It would seem useful to develop appropriate due diligence procedures which could be used by Government in compiling its report on an enterprise before a final decision is made to lend or purchase. The Committee recognises that, notwithstanding a final decision will not always be made purely on commercial grounds, any decision must be made on a fully informed basis.

### 9.3.2 On-going Review

After funds are lent or an investment is made, a lender or investor must then turn its attention to monitoring the company's performance and the security position. This monitoring function needs to be carried out on a regular basis to ensure early warning is given of any significant deterioration, so that appropriate action can be taken on a timely basis. It follows that as the Government is dealing with public monies, its duty of care could be considered to be even greater than in the private sector.

There are always early warning signs which a regular monitoring function will seek to identify. For example, there are environmental signs outside the control of the company which may give early warning of potential problems:



- . increases in interest rates
- . low consumer demand
- . government spending cuts
- . industrial unrest

In addition, internal early warning signs might include:

- . lack of a comprehensive corporate and business plan
- . fiscal disarray
- . management squabbles and problems
- . high stock levels
- . fluctuating gross margins

It would seem essential to review the financial statements of a company on at least a quarterly basis, considering such matters as:

- . negative financial trends
- . operating losses
- . negative cash flows
- . deficiencies of share capital and reserves
- . working capital deficiencies
- . adverse key financial ratios (e.g. high gearing, quick asset ratio)
- . comparison of actual results to prior years and budgeted results

In addition to the review of financial statements formal meetings should be held with the Board at least on a quarterly basis to assess operational and other financial factors, for example:

- . loss of key management
- . dependence on a particular project or contract
- . difficulties in realising current assets (e.g. stock and debtors)



liquidity problems

corporate and business plans and strategies

As well as the financial statement review and formal meetings with the Board, the Government shareholder (or lender) should ensure that it receives, directly from the auditor, a copy of all auditors' periodic management letters sent to the Board. Management letters address important issues such as weaknesses and breakdowns in the company's system of internal control, accounting issues, advice to management, and concerns of the auditor which may affect the performance of the company presently or in the future. At least once per annum the shareholder should meet with the auditor and discuss the company's performance and problems. It should be remembered that the auditor's first and foremost responsibility is to the shareholder.

## SUMMARY

In summary, no decision to purchase or lend should be made without the Government being fully informed through appropriate due diligence reviews. It is the responsibility of a purchaser or a lender to ensure it knows what it is getting into. After funds are lent or an investment is made, the Government must ensure appropriate monitoring procedures are put in place to enable it to protect its interest. This can only be effectively done by receiving early warning of impending problems and taking an appropriate course of action. Regular reports on the financial soundness of an investor's business and the adequacy of a particular security cannot be over emphasised. These reports would cover such performance indicators as: actual cashflows compared to budget; debtors; stock levels and trading results and should include ways of dealing with detected or potential commercial weaknesses revealed during the review process. It is often only when a company gets into financial trouble, and lenders are confronted with attempting to realise their security, that it is discovered that they are not so secure after all.



## CHAPTER 10 - SUMMARY OF RECOMMENDATIONS

### **Recommendation - Page 51**

The power to direct the TIO under S.7 of the *Territory Insurance Office Act* where it may relate to investment or lending decisions of the Board be limited to:

1. A veto of proposed investments or loans; and
2. General directions in relation to investment or loan policy.

Such directions should be reported along with reasons to Parliament within six sitting days of the exercise of the Ministerial power.

### **Recommendation - Page 87**

The Department of Industries & Development devise and put in place a set of guidelines for granting financial assistance which includes a detailed assessment of the effect of such assistance on competing businesses and the market place in general.

### **Recommendation - Page 144**

Where contracts of more than \$3,000 are awarded through negotiation without first going to tender, the details of such contracts and reasons for not going to tender should be published.

### **Recommendation - Page 149**

The corporate strategies referred to in Section 7.2.2 of this Report should be comprehensively addressed and form an essential element of any consideration by the Department of Industries & Development of applications for financial assistance. If such strategies have not been addressed by an applicant, then the Department of Industries & Development should consider bearing the cost of the preparation of such strategies to the extent necessary to be able to assess the application on the basis of adequate and reliable information.

### **Recommendation - Page 175**

That any Board of a company of which the Government is the shareholder be carefully selected for the personal qualities and competence now expected, and that each director be made fully aware of his or her liabilities, and be allowed to perform his or her functions free from artificial restraints imposed by the Government.



**Recommendation - Page 178**

That in all instances, the Auditor-General be appointed auditor of all Government owned companies and instrumentalities.

**Recommendation - Page 182**

That no decision to purchase or lend should be made without the Government being fully informed through appropriate due diligence reviews. After funds are lent or an investment is made, the Government must ensure appropriate monitoring procedures are put in place to enable it to protect its interest. This can only be effectively done by receiving early warning of impending problems and taking an appropriate course of action. Regular reports on the financial soundness of an investor's business and the adequacy of a particular security cannot be over emphasised. These reports would cover such performance indicators as: actual cashflows compared to budget; debtors; stock levels and trading results and should include ways of dealing with detected or potential commercial weaknesses revealed during the review process.



## **APPENDIX 1 - SUBMISSIONS NOT TABLED DURING INQUIRY**

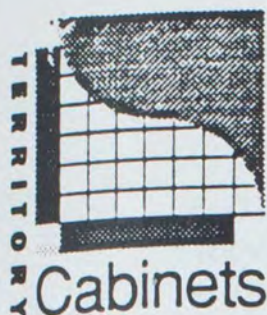
- 1. Territory Cabinets**
- 2. KPMG (formally Touche Ross)**

**NB: These submissions were sent to the Committee in response to evidence adduced during the hearings.**









The Chairman  
Public Accounts Committee  
GPO Box 3721  
Darwin N.T. 0801

22 January 1993

Dear Sirs,

RE; DALWAY ENQUIRY  
WRITTEN SUBMISSION - J.W. BLAKE

SUMMARY OF SUBMISSION

Evidence has been received that -

1. The sale process of Dalway conducted by Desliens/ANZ Capel Court did not provide Territory Cabinets or any other third party with the information necessary to evaluate the true worth of Dalway because, in particular, no information was provided which would enable anyone outside of Dalway to put a value on the contracts in hand.
2. The value of contracts in hand represented a large, and in fact the most variable factor in estimating the worth of Dalway, especially because Dalway had accrued a large deficit both prior to and during Government ownership.
3. Had the necessary information been provided to enable Territory Cabinets to properly calculate the value of contracts in hand their bid would have been higher than the successful bidder.
4. The reason for the failure to supply the necessary information has not been adequately explained by Desliens.

10 Totem Road  
Coconut Grove NT  
GPO Box 147  
Darwin NT 0801

Phone: (089) 480 299  
Fax: (089) 851 987

ACN 055-855-304



- Both Mr Blake and Mr Garraway have given evidence of their repeated requests for the necessary information.
- Mr Sciacca's evidence corroborates the evidence of Messrs Blake and Garraway.
- Mr Gordon's evidence in this matter is unsupported and unsupportable.

TERRITORY CABINETS SUBMITS -

- A. The sale process was fatally flawed by the failure to provide information necessary for Territory Cabinets to formulate its bid.
- B. Desliens/ANZ Capel Court knew or should have known that the purchasing consortium which included Pastrokos and Margetic had in-house knowledge about the worth of Dalway.

Margetic, a director of Dalway and Pastrokos, a former director and the contracts manager had the ability from their own knowledge to put a precise figure on the value of the contracts in hand, which were profitable (and how much) and which were unprofitable (and by how much). The commercially unusual brevity of their bid should have put Desliens on notice that the purchasing consortium was relying on information available only to them, even if it was from the simple fact that a director and the contract manager were submitting a bid.

The proper course for Desliens was to reject that bid and use the information contained in it to negotiate a better bid from Territory Cabinets. Desliens failure to do so cost the Northern Territory dearly.

- C. The sale process was unfair or at worst a sham and did not provide the Government with the best price obtainable.



- D. Territory Cabinets bid was induced by representations that the sale process would be properly conducted, that all bidders would have an equal access to information, that Pastrokos did not have an option, that Pastrokos would not be shown Territory Cabinet's bid, that Directors of Dalway were not involved in the sale process and that the offer to sell was made in good faith. None of the presentations were true.
- E. Territory Cabinets should be compensated for the costs of its bid and compensated for its loss of opportunity.

SUBMISSIONS ON DESLIENS REASONS FOR REJECTING TERRITORY CABINET'S BID.

1. The difference between the bids of Territory Cabinets and the purchasing consortium was the deduction made by Territory Cabinets for losses on forward contracts.

Had Desliens provided details of the forward contracts to Territory Cabinets its bid would have been higher than the purchasing consortium and estimated liquidation returns.

No consideration was given to Territory Cabinets offer to perform the Parliament House at cost which would have made their bid greater than the purchasing consortium and estimated liquidation returns.

2. The indemnity and warranty items requested by Territory Cabinets and said to be onerous were in fact normal. The final executed copy of the purchasing consortiums contract has not been produced for comparison purposes in any event.

Even if the purchasing consortium's contract did not contain the normal indemnities and warranties (which in itself would be unusual and supply evidence of in-house knowledge unfairly not available to Territory Cabinets) the indemnities and warranties



4.

sought were simply that what was said to be offered for sale was as described.

3. The structure of the purchasing consortiums offer being different from Territory Cabinets reflects more on the difference of knowledge of Dalway which Margetic and Pastrokos were unfairly allowed to use and perhaps, the lack of ability of Desliens/ANZ Capel Court to clarify the issues raised in the negotiating process.
4. The standing of the majority of the shareholders of the purchasing consortium is by implication said to be higher than that of Territory Cabinets.

Territory Cabinets shareholders consider the implied comparison without foundation. They have been successfully involved in the building industry in the Northern Territory for over 17 years and owned and operated Budget Homes Pty. Ltd. for 10 years.

Budget Homes Pty. Ltd. builds over 100 homes for the private sector in the Territory each year and has done so for 10 years. It is of substance and is held in high regard by the financial community as are all the shareholders of Territory Cabinets.

5. Territory Cabinets shareholders have and had at the relevant time the business capacity to ensure the ongoing financial stability of the existing company. As owners of an existing major cabinet making operation, the merger of the two businesses represented an opportunity to rationalise the oversupply of these services in Darwin.
6. The alternative of liquidation of Dalway causing consequent job losses, against sale to the purchasing consortium which was supposed to preserve jobs, was clearly either not properly documented or set as a condition of the purchasing consortium's purchase. Jobs have been lost. Territory Cabinet's bid would have kept employee levels up because of the effect of the merger.



FURTHER SUBMISSIONS

The sale of Dalway represented an opportunity to combine the two major cabinet making operations in Darwin with consequent saving on overheads.

Dalway had been a major problem for cabinet makers in Darwin since it was purchased by the Northern Territory Government. Since that time Dalway had been operating at a loss by deliberately undertaking work at less than cost. The massive losses made by Government on the sale are proof of that. In fact an analysis of Dalway's financial position based on Dalway's own figures show Dalway has consistently undertaking work for 65% of the real cost. The directors and management of Dalway are responsible for the \$5.26m loss by Government.

The purchasing consortium included Mr Steve Margetic, who was a director and Deputy Chairman of Dalway until the day before their bid and Mr John Pastrokos, who was the management person in Dalway responsible for preparing the underpriced contracts which caused the massive losses by Government.

Territory Cabinets put in a bid for Dalway determined to stop Dalways underpricing policies. The Agents, Desliens/ANZ Capel Court, who were engaged to sell Dalway for the Government produced a document for prospective purchasers which contained details of what was being sold, namely, the land and buildings, plant and equipment, debtors, creditors, work in progress and stock and contracts in hand.

Territory Cabinets engaged two separate accounting firms to review Dalway's figures presented by the agents. Both accountants advised that Dalway consistently lost about 35% on its contracts. The 1991 Audited Financial Statements produced by Dalway show they make sales of \$4.25m for a trading loss of \$1.427m which is a loss of 35%.



The valuation of the items for sale that is, land, buildings plant etc was made by experts in those areas and included in Territory Cabinets bid.

Territory Cabinets bid for those items was \$2.293m and was therefore the highest bid. However, because of the consistent underpricing practices of Dalway's board and management the bid as reduced to take into account anticipated future losses on underpriced contracts by 35% of the contract values.

The total value of contracts which Dalway had obtained but not yet started was about \$2.5m. Territory Cabinets bid said that it would deduct \$750,000.00 for the anticipated losses on these contracts OR do the work on a cost plus basis.

During negotiations the Agents for Government told Territory Cabinets (Blake and accountant Garraway) the only item which made Territory Cabinets Bid lower than the Margetic/Pastrikos bid was the 35% deduction for expected losses on those contracts. The Agents also told Blake and Garraway that those contracts had been re-negotiated to make them profitable. In so doing they acknowledged the unprofitable pricing practises discovered by Territory Cabinets.

When Territory Cabinets asked to see the contracts said to have been re-negotiated to make them profitable so they could be sure what they were being asked to buy was worth having, they were told they could not see the contracts because Territory Cabinets was a competitor of Dalway.

No documents at all were produced to support the Agents statements. In fact, during negotiations the Agents admitted in writing that the contracts were worth nothing and were not profitable. (See document prepared by Desliens "Territory Cabinets Pty. Ltd. Comparison of Offer" which put no value at all on future contracts. The same position, ie. future contracts were worth nothing appears in Desliens recommendation to Government in the second



page of the Executive Summary of the part on the sale of Dalway, which shows both the purchasing consortium and Desliens valued the future contracts at NIL value.)

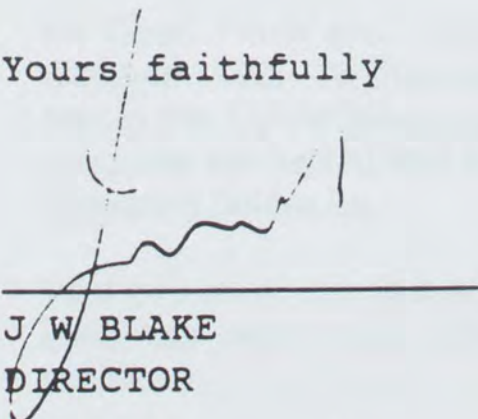
The only people who had access to the information which showed whether or not the contracts were loss making, break even or profitable were the Board of Dalway,, including Deputy Chairman Steve Margetic, and John Pastrokos who prepared the contracts.

The only difference between the Margetic/Pastrokos bid and the Territory Cabinet bid was the 35% deduction Territory Cabinets made for the contracts worth \$2.5m. Territory Cabinets was refused access to the documents to check the pricing.

Territory Cabinets was not allowed to bid on equal terms to Margetic/Pastrokos.

The people responsible for losing \$5.26m of public money were allowed to use the information they had on the loss making scheme they perpetrated to buy Dalway.

Yours faithfully



---

J W BLAKE  
DIRECTOR







PUBLIC ACCOUNTS COMMITTEE  
INQUIRY INTO THE AFFAIRS OF DALWAY PTY LTD

Further submission by KPMG Peat Marwick (incorporating  
the practice of Touche Ross since 6 April 1990)

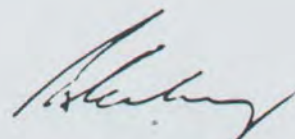
SWORN STATEMENT

DEPONENT: PHILIP ASHLEIGH DEWSBURY

SWORN: 13 DECEMBER 1992

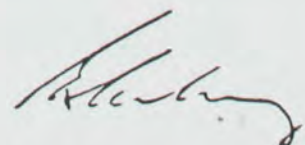
I, PHILIP ASHLEIGH DEWSBURY of 9 Banksia Street, Nightcliff NT 0810, Chartered Accountant, and Partner of the abovenamed Firms, MAKE OATH AND SAY as follows:-

1. On 16 November 1992, immediately after the conclusion of scheduled examinations of witnesses on 13 November 1992, I wrote to the Chairman of the Public Accounts Committee requesting the opportunity to be re-examined by the Committee. My reasons for so doing were set out in my letter of 16 November 1992, a copy of which is attached as 'ANNEXURE A'.
2. On 10 December 1992 I received a response from the PAC Chairman (dated 8 December 1992), advising that,  
*"At this stage, the Committee has resolved to seek clarification of your concerns by way of sworn written submission".*  
A copy of that response is at 'ANNEXURE B'.
3. This submission responds to that invitation.
4. Mr Geoff Finch and I appeared before the PAC on the afternoon of 28 October 1992. At that time we gave evidence, under oath, regarding our role in the DJFM/Dalway saga and took the opportunity to clarify numerous concerns we had at that time with evidence given by certain witnesses who appeared before us.
5. Vital pieces of our earlier evidence warrant reiteration at the outset, since there has been much subsequent evidence which is contrary to our stated position;
  - (a) Our report of 28 September 1989 (the first Touche Ross Report) was prepared for the Financiers Steering Committee pursuant to instructions given to us at the Steering Committee meeting held on 22 September 1989. It was not commissioned solely by the Department of Industries & Development.





- (b) The report issued on 20 January 1990 by us to Mr Pastrokos and in turn presented by him to the Chief Minister and to TIO (the so-called second Touche Ross Report) was prepared upon instructions from Mr Pastrokos for DJFM.
  - (c) Touche Ross had no involvement in any other relevant formal report in relation to the financial affairs or prospects of DJFM subsequent to 20 January 1990.
  - (d) Touche Ross was never engaged solely by the Department of Industries and Development to prepare any report upon DJFM exclusively for their use.
- 6.1 In my correspondence to the PAC Chairman dated 16 November 1992 (copy at **ANNEXURE A**) I referred to my very serious concerns with the document titled **"Dalway Pty Ltd - A report prepared for the Minister for Industries and Development covering the Department's involvement in the Government's acquisition, ownership and sale of the Company"**, prepared by Mr David Hunt.
- 6.2 Had we been given the courtesy of examining this document prior to its release we could have very easily saved Mr Hunt inevitable embarrassment, us a lot of anguish, and the PAC a lot of time.
- 6.3 The abovenamed document grossly overstates and misrepresents the role of Touche Ross and Mr Hunt acknowledges in his own evidence that,
- (a) he was not at DID at the time when he alleges our involvement occurred. He commenced on 3 September 1990, long after the events of late 1989 to March 1990, which he describes so authoritatively.
  - (b) he did not bother to check any details in his report with either Mr Watson (who was at least there at the relevant time but who unfortunately cannot remember much about what he did, when he did it, with and for whom), or ourselves.
- 6.4 In this latter regard it gave us absolutely no satisfaction at all to learn from subsequent transcripts that at least some interested parties (eg. TIO) were given the courtesy of reviewing the document in draft form before its publication.
- 7.1 One of Mr Hunt's allegations (his report page 6 point 7) is that;  
*"As a consequence, the Department, in conjunction with Touche Ross, formulated an arrangement which would effectively remove the Company's commercial borrowings, including a discounted retirement of the outstanding liabilities to both the ANZ Bank and Esanda Finance".*
- 7.2 Despite our earlier evidence denying any involvement in the formulation and implementation of such arrangements, the matter has been the subject of further conflicting evidence subsequent to our earlier appearance.





- 7.3 We gain very little comfort from Mr Hunt's acknowledgement in his evidence (transcript pages 154.3 and 154.4) that eventually admits his report is wrong viz.

*"Mr Hunt: I agree with Touche Ross's evidence that they to my knowledge from the reading of the files were not involved in the negotiated settlement ....."*

It begs the question then as to why he put it in his report in the first place.

- 7.4 The facts are that this allegation, together with many others which grossly misrepresent the role of Touche Ross, stand as they are in Mr Hunt's Report, a document which, in our view at least, is unfortunately a central piece of evidence before the PAC and others interested in the Dalway saga.

- 8.1 Further instances of misrepresentation of our role and where Mr Hunt got his chronology all wrong and confused are on page 7, point 7 (continued) of his report viz.

*"The conditions precedent were that the Company would agree to the Department, in conjunction with Touche Ross and the Pastrokos Family, forming a Steering Committee to oversee the operation of DJFM P/L for a period of at least eighteen months, which was the projected period required for the Company to fully recover.*

*Following the formation of that Committee, a critical review/analysis of the Company's position/financial projections etc was undertaken, which raised concerns as to the "assumptions" on which the original sales projections/cash-flow forecasts etc were based.*

*As a result, the Department again commissioned Touche Ross to undertake a further review of all aspects of the operation of the Company, including forward projections/funding options, long-term viability, etc.*

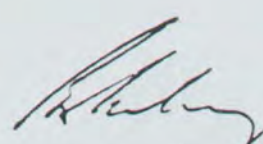
*A copy of that report is at Attachment A."*

- 8.2 All of this follows a reference to Cabinet Decision No 6338 of 30 January 1990.

- 8.3 Touche Ross reiterate that they are not aware of any such second Steering Committee convened in the circumstances and timeframe alleged above and deny any participation in any such formal Steering Committee Group.

- 8.4 At least Mr Almond of DID in his evidence (pg. 164-3) supports our position that this second (post January 1990) Steering Committee never existed.

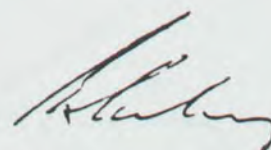
- 8.5 Mr Hunt's alleged further commissioning of Touche Ross to undertake a further review as stated in his report, as above, is totally incorrect. The report he refers to "at Attachment A" as being the result of that further review after 30 January 1990, is in fact the 20 January 1990 report prepared for Mr Pastrokos and presented to the Chief Minister and to TIO. We trust that PAC members appreciate this important issue of timing, because there





has been much confusing and contradictory evidence given by any number of witnesses on this point.

- 9.1 Much has been said in evidence about the inordinate escalation in the quantum of the rescue package that was eventually settled at approximately \$4 million.
- 9.2 Criticism has been levelled at the serious errors and conservatisms in the so called "Second Touche Ross Report" of 20 January 1990 which identified an urgent need for \$1.5 million and this has reflected adversely upon the credibility and reputations of Touche Ross and Mr Finch and myself.
- 9.3 The starting point of \$1.5 million has been inappropriately linked with the eventual package of \$4 million, inferring that the so called "Second Touche Ross Report" got it manifestly wrong by \$2.5 million.
- 9.4 The facts are that the \$1.5 million was assessed as the amount required urgently from the Government, as lender of last resort, to save DJFM from imminent liquidation. The 20 January 1990 Report anticipated \$1.5 million as a deferred, subordinated loan or the acquisition of only a partial equity in DJFM. It certainly did not anticipate the acquisition by the Government of the whole of the assets and business of DJFM and the removal of the Pastrokos equity in its entirety. This is what caused the massive increase in the rescue package, not any manifest errors in the "Second Touche Ross Report".
- 9.5 Whilst on the topic of this so called "Second Touche Ross Report" I feel obliged to make some other relevant observations.
  - (a) I invite PAC members to read the document in its entirety, rather than to focus on selected "suitable to the cause" extracts which have been raised in evidence by a variety of witnesses.
  - (b) Irrespective of for whom the report was prepared (this is another issue entirely and has been raised earlier), the facts are that it presents, on balance, far from a glowing, rosy, picture. It identifies a very considerable number of significant problems; key staffing deficiencies, accounting problems, production inefficiencies and weaknesses, furniture manufacturing expertise deficiencies, computer problems inter alia, all of which had to be addressed as matters of urgency within a formalised management strategy. The budgets and cash flows attached to the report also predicted that ongoing trading losses would continue for some time.
  - (c) The report must be seen for what it was; an urgent plea for assistance by Mr Pastrokos on behalf of his Company DJFM which, without that assistance could not survive and would proceed forthwith into liquidation. The Pastrokos family had no more funds to put





in; the existing financiers would go no further; no alternative financiers could be identified; the Government was approached as the lender of absolute last resort.

- 9.6 We were comforted somewhat by Mr Perron's evidence in this regard. It is apparent that he saw the report for what it was and this in itself is vitally important, after all he was one of the two people to whom Mr Pastrokos presented the report.

Mr Perron said at transcript 274-2

*".....Had the company not been in serious trouble there would have been no need for government involvement. The government rescued a company on the brink of insolvency in the belief it could be turned around by good management and interim financial assistance. "*

and further at transcript 280-4

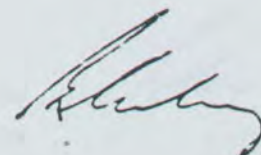
*".....and the facts are that the company was facing imminent collapse, and this is all irrelevant to Mr Pastrokos's bid for \$1.5M. Not irrelevant to, I guess, but notwithstanding. The company was on the verge of collapse, and the government had to make one of 2 decisions, I guess. That was, do you stand back and do nothing and let it collapse. Certainly an option, which loses money for the government and the TIO, as well as the jobs and the State Square contracts and the hi-tech capacity and so on, or do you say, what would it take to solve the problems the company faces, and I use that term, rather than simply how much money would it take, because it was clear my belief at the time for what reason I am not sure which documents I may have read or whom I may have talked to reach that conclusion, that it was not only additional funds that this company required. The Pastrokos family were clearly out of their depth, clearly, in my view, and so the Department of Industries and Development were to come forth with a new scenario that if the government believed that the factory should remain, on what basis could it do that, and once receiving that scenario, you then say can I live with this, can we the government live with this, and if you cannot, because it is either too much money, or whatever, then you say no we cannot and you weigh the 2 issues up and you say collapse is the option. Let it collapse and cut your losses and run. The decision which we subsequently made much later."*

- 10.1 A considerable volume of evidence has been tendered subsequent to our earlier examination in relation to the extent of work Mr Finch might have carried out with Mr Watson and the nature of any such work particularly in the period subsequent to the 20 January 1990 "Second Touche Ross Report". eg. (a) Mr Watson at transcript page 238.3 said, inter alia

*"Well, it does not accord at all with my recollection of the events. Mr Finch may have a better memory than I but I see there is a fair gap between his view of life and mine."*

and

*"Mr Setter, if you can accept that I cannot be specific as to day, week or actually month, but in a period of time Geoff Finch and I probably spent 60 hours a week for an extended period in trying to make sense of the company's financial state. I would have to say that*





*Geoff Finch and perhaps his colleagues, put in an enormous effort. It occurs to me that if he was just using his PC modelling figures that I gave to him or figures that Tom Williams gave to him, then he seemed to be pre-occupied. I wonder what else he was doing to consume all the time that we were spending together."*

(b) Mr Hatton and PAC members at transcript page 266-2 and 266-3 said,

*"MR HATTON: Mr Chairman, perhaps I could clarify an issue which led to some consternation earlier in respect of the decision, the comments in my department's report on pages 6 and 7. I have been reminded that in fact immediately following the 30 January's decision that group of people did in fact meet quite extensively and to recast and more closely analyse the figures that were shown in the Touche Ross report of early January, it led to, the sum, I am told some 60 or 70 hours of work between Mr Watson and the gentlemen from Touche Ross and others that led to the recasting and then coming back to cabinet saying look this \$2M will not make it that is why it needs to go to \$3.5M so in fact this area was referring also to that follow up discussion.*

*MR PARISH: So to put it bluntly, you are saying, are you, that Mr Finch's evidence about this time, which was to the effect that all he did was input numbers into a computer that Mr Watson read out to him does not accord with your understanding from discussions with your departmental officers.*

*MR HATTON: No, it does not.*

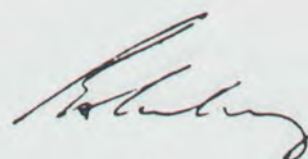
*MR PARISH: And in order for us to evaluate those contradictions, did Touche Ross subsequently produce an account to the department which set out what work they did.*

*MR HATTON: I am not aware one way or the other. I can seek to obtain that information.*

*MR PARISH: I wonder if you could because one would suspect if they presented an account that showed 60 or 70 hours of work we can make our own assessments on their evidence given before this committee."*

(c) Mr Hatton and PAC members at transcript page 267-6 said;

*"MR HATTON: I am surprised that you did not note the fact that in the background to this particular Ministerial, it says in line with Cabinet decision No 6359; 'officers of this Department with Geoff James of Mildren's and Geoff Finch of Touche Ross have documented arrangements to take over the business of Darwin Joinery and Furniture Manufacturing Pty Ltd, that answers the question you asked me earlier.*





MR PARISH: Further evidence of Mr Finch's involvement was somewhat greater than he asserts.

MR BAILEY: .....continued to be involved in some form or other."

(d) Mr Coulter and PAC members at transcript page 293-6 and 293-7 said inter alia;

"MR COULTER: Well then you have got to understand and it is in Mr Watson's evidence and I think he gives the best insight into the development of these figures etc. I mean to say, as Mr Bailey has said that is simply a Pastrokos PR document, worked up with figures supplied by Mr Williams, etc. is to deny the evidence that you have all heard here during the course of this week from Mr Watson, who claims that in fact that he worked up to 60 hours, per week.....

MR BAILEY: That was after the 30 February. (I think he meant 30 January).

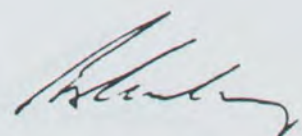
MR COULTER: .....no, Mr Watson, was also involved during this particular point in time. It is quite clear in his evidence that he gives, you have only got to go back and read the Hansard and you will come that conclusion. I do not really believe.....

MR BAILEY: What happened after the 30 January. They went back and did the figures more realistically.

MR COULTER: No, I have been asked a question, now if you want to keep him quiet, do so, but do it before he asks the question. Mr Chairman I would like to table indeed another account from Touche Ross, this is in fact, this footpath here is the going back to do the figures again as, and remember the Cabinet submission in January, it simply says that the Chief Minister and the Minister for DID negotiate up to \$2 so there is no real \$2M sort of approve we are working through these figures, things are happening on a day to day basis that this footpath here is my load of spreadsheet model, run that through your things, spit a few figures out and if we are talking about it took 6 days or 3 days to do the other one. We have an account another account here.....

MR PARISH: I am not going to chance, I am not going to go the Maths again you can do them this time.

MR COULTER: Well it is \$5526 and this bill was submitted to us on 30/3/1990, hardly a flick pass Mr Speaker, almost as much as the first document and whether it goes by weight or number of pages I am not sure but there is another account that in the evidence that Mr Finch gave that this was simply, here is my model, spit a few words out and in fact Mr Watson, replied his 14 year old daughter would have been able to that so.....".





(e) Later, Mr Coulter and PAC members, at transcript page 294-2, (after the Touche Ross fee account had been photocopied) said;

*"MR COULTER: Mr Chairman if I could read in this for the benefit of the record, attending to all matters in respect of providing financial advisory servicing including preparation of revised cash flow and profit projections to the 31 December 1990. Review the list of plant and equipment, stop work in progress, finish stock and conduct physical inspection prior to the acquisition of the business from Darwin Joinery and Furniture Manufacturing Pty Limited attending to meetings, DID to discuss meetings of Directors, attending to Directors Meetings and preparation of minutes. Attending to Statutory matters relating to change of registered office. Mr Chairman, what it does, it certainly demonstrates that Touche Ross were still involved in this project through to some time after the second report.*

*MR BAILEY: They have never denied that.*

*MR PARISH: I don't know about that.*

*MR BAILEY: What they have denied is the production of figures other than being asked to put in I mean this is quite clear.*

*MR COULTER: I think if you read that in conjunction with the evidence that has been supplied by Mr Watson, that one can only conclude that a great deal of work in fact went in to the revised projection figures.*

*MR COULTER: Well, I think what it points out really and I don't want to labour the point, but to suggest that it was merely a flick past and here is the model, spit some figures out, I think it puts that to rest.*

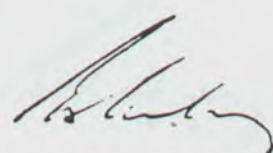
*MR PALMER: I think you are right."*

It goes on, on transcript page 294-3

*"MR COULTER: That may well be a satisfactory solution and I am pleased to say Mr Bailey is taking the time to provide the Chairman with an interpretation of the account in the manner that he has because he seems to be defending it quite well.....*

*MR BAILEY: I am not defending Touche Ross*

*MR COULTER: .....or is in fact inferring that I am suggesting that anything other than that they were involved for a period of time after the report and one of those things was to do, now that may be the cost of the flick pass of the figures, and that may be there Mr Bailey might like to offer what the cost in fact of that one-tenth is and if he is suggesting to us that it was \$500 to do the revised figures then I think this committee has a problem in reaching any conclusion other than what I have provided here today.*





*MR PARISH: You would say would you, I mean I take it that you would agree that we have a decision to make as between a total conflict in evidence between Mr Finch and departmental officers.*

*MR COULTER: Certainly Mr Watson.*

*MR PARISH: Yes, and you would say I take it that this document provides fairly conclusive evidence that Touche Ross did a lot more work in analysing the figures than they claim to have done."*

and page 294-4;

*"MR COULTER: .....Can I just finish because the date is important, this date of this account is the 30 March which is about the time after.....*

*MR PARISH: That is what I was about to come to.*

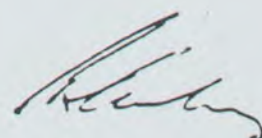
*MR COULTER: .....we we, March 16 I think the deal was....*

*MR PARISH: Sure, would you agree that it is probable that this relates to the work that Touche Ross did to revise that first report of 20 January rather than work that they did prior to 20 January.*

*MR COULTER: I would suggest that but I think that that question should be put to Mr Finch."*

- 10.2 To put to rest this multitude of gross misinterpretations and overstatements of Mr Finch's role, we have taken the time to compile a detailed extract of all time recorded in Mr Finch's client time diary as being charged to DJFM or Dalloway during the period 2 January 1990 to 30 March 1990.
- 10.3 The two summaries are attached as **ANNEXURES C & D** respectively.
- 10.4 By way of explanation I would point out (and this can be confirmed by the PAC Accounting Consultant, Mr Pridham) that it is customary practice in the Accountancy Profession for all staff to maintain a time diary to record chargeable time to clients. Times recorded in these diaries are then transposed periodically (at the relevant time, half monthly) into timesheets which are in turn processed through a computerised client Work-in-progress system.
- 10.5 With regard to transcript extracts (a), (b) and (d) above, an examination of **ANNEXURE C** reveals that in the three month period ended 30 March 1990, Mr Finch spent a total of 118.8 hours upon work for DJFM. The narration and hours are a verbatim extract from the diary (which we are prepared to have examined by PAC members if considered necessary).

The analysis indicates an understandable heavy time involvement in the few days prior to the issuance of the 20 January 1990 report, including working closely with Barry Fradkin.





The analysis also reveals no evidence of the extensive work (60 hours per week etc.) allegedly carried out with Mr Watson revising the 20 January 1990 figures subsequent to that report. In fact the work performed on 21, 22, 23 and 24 January 1990 is essentially the regular monthly preparation work for the Financiers Steering Committee meeting held on 24 January 1990.

On 26 January 1990 Mr Finch spent a whole 2.5 hours making adjustments to the 20 January 1990 financial model, which of course is totally in accord with our earlier evidence given under oath, and totally at variance with the allegations quoted from transcripts above.

A further 3.0 hours was spent with Mr Watson on 7 February 1990 making similar revisions and adjustments, exactly as we said earlier during our evidence.

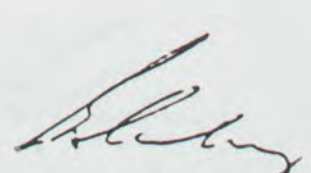
We cannot help but think that Mr Watson must have Mr Finch confused with someone else, perhaps Mr Dennis Edwards, who he might have spent 60-70 hours per week working with in this time frame?

- 10.6 With regard to transcript extract (c) above we are totally comfortable that these matters are in complete harmony with Mr Finch's earlier evidence at transcript page 133-1. Frankly we fail to understand the point at issue here.
- 10.7 In relation to transcript extracts (d) and (e) above where the Touche Ross fee account for \$5,526 is introduced and there is much speculation as to what it might or might not encompass in terms of our involvement, we have appended, as **ANNEXURE E** a copy of that invoice supported by our Work in Progress (WIP) Summary Report of 30 March 1990 as **ANNEXURE F**.

To put the various allegations in the abovementioned transcripts hopefully finally to rest, we make the following observations;

- (1) The fee account and our supporting WIP summary are on account of Dalloway Pty Ltd and not DJFM.
- (2) Our client charge code (DO75) for Dalloway Pty Ltd was only opened on 1/3/90 (refer **ANNEXURE F**).
- (3) An analysis of the content of **ANNEXURE F** reveals total costs incurred on the Dalloway P/L account as,
 

|                               |            |
|-------------------------------|------------|
| First half month to 15/3/90   | 1,480.00   |
| Second half month to 30/3/90  | 4,046.80   |
|                               | -----      |
| Amount of fee account raised  |            |
| 30/3/90 per <b>ANNEXURE E</b> | \$5,526.80 |
|                               | -----      |
- (4) Mr Finch is the principal person charging time to the Dalloway P/L charge code and his time input in the period from commencement (1/3/90) to 30/3/90 is 35 + 60 + 55 + 184 = 334 time units  
= 33.4 hours.



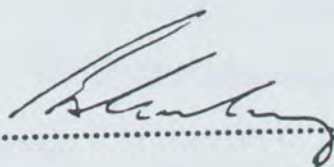


- (5) This 33.4 hours ties up exactly (and not coincidentally) with the abovementioned extract of Mr Finch's client time diary which is attached at **ANNEXURE D**. That Annexure can be referred to for the precise detail of the work which was carried out for Dalloway by Mr Finch.
- (6) By the foregoing disclosures we hope we have dispelled any misunderstandings as to the exact timing and nature of work done and billed, appropriately to Dalloway P/L, per the fee account tendered by Mr Coulter during his evidence,
- viz. - it is nothing to do with revised projections with Tony Watson during the period 20/1/90 to the time of the decision to purchase DJFM. (mid February 1990)
- Mr Finch's first involvement in relation to this fee account is on 9 March 1990 (per **ANNEXURE D**.)
- the involvement is totally in accord with Mr Finch's earlier evidence as recorded in the transcript eg. page 133-1
- we sent our fee account to Dalloway P/L C/- DID and DID, as the "owners" of Dalloway paid our fee, and there is absolutely nothing sinister in that.


11. We have numerous further concerns arising from our review of relevant transcripts of evidence given subsequent to our earlier examination on 28 October 1992.

We believe however that the foregoing, (which is already too long), supported by **ANNEXURES A** through **F**, satisfactorily disposes of the more significant issues which misrepresented our role, and/or reflected unfairly and adversely upon the reputations and credibility of Touche Ross, Mr Finch and myself.

SWORN by the said )  
 PHILIP ASHLEIGH DEWSBURY )  
 at Darwin this 13<sup>TH</sup> )  
 day of DECEMBER 1992 )



Before me:



.....  
 G.L. MATTHEWS  
 COMMISSIONER FOR OATHS  
 35 VRD DRIVE  
 WOODLEIGH GARDENS NT  
 PH: 277829



This is the ANNEXURE marked A referred to  
in the Sworn Statement of Philip Ashleigh  
Dewsbury sworn on...../8<sup>th</sup>.....day of December 1992  
before me.....

**KPMG** Peat Marwick  
Chartered Accountants

G.L. MATTHEWS  
COMMISSIONER FOR OATHS  
35 VRD DRIVE  
WOODLEIGH GARDENS NT  
PH: 277829

19 Lindsay Street  
Darwin NT 0800

GPO Box 1616  
Darwin NT 0801

Telephone: (089) 818722  
Facsimile: (089) 410238

FACSIMILE

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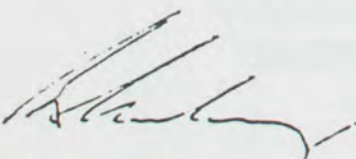
DATE: 16 November 1992  
TO: Mr Mick Palmer MLA  
Chairman - Public Accounts Committee  
FAX NO: 81 2528  
FROM: Phil Dewsbury  
KPMG Peat Marwick  
FAX NO: 81 3973  
SUBJECT: Dalway Enquiry  
NO. OF PAGES: 3 (Including This Page)

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Dear Mr Palmer,

Self explanatory correspondence attached.

Yours faithfully,  
KPMG Peat Marwick

  
P.A. Dewsbury  
PARTNER



# KPMG Peat Marwick

Chartered Accountants

Incorporating Touche Ross Australia

1st Floor  
19 Lindsay Street  
Darwin NT 0800  
Australia

GPO Box 1616  
Darwin NT 0801  
Australia

Telephone (089) 81 8722  
Facsimile (089) 41 0238

16 November 1992

Mr Mick Palmer MLA  
Chairman,  
Public Accounts Committee  
GPO Box 3721  
DARWIN NT 0801

Dear Mr Palmer,

## RE: DALWAY - PUBLIC ACCOUNTS COMMITTEE ENQUIRY

During our appearance as witnesses at the abovementioned enquiry on 28 October 1992, Mr Geoff Finch and I clarified a number of anomalies and omissions in the evidence given by earlier witnesses, and which had come to our attention from a review of evidence transcripts made available to us.

Subsequent to our appearance, it has become very apparent, from both media coverage and from a review of certain subsequent evidence transcripts (not all of which are available at the time of writing), that there have been further anomalies and omissions in evidence given, which reflect adversely upon Mr Finch and myself, and my former firm of Touche Ross.

This situation is of very serious concern to Mr Finch and myself, and to my partners in KPMG Peat Marwick, which as you are aware, now incorporates the Touche Ross firm (since April 1990).

Whilst I am aware that scheduled examination of witnesses has now been concluded, I also understand (albeit from a Channel 8 television news item of Friday 13 November 1992) that "...the witnesses from Touche Ross are likely to be recalled..".

Being unaware of your own official position in this regard at this time, I seek your advice and assistance as to your preferred method of our availing ourselves of the essential opportunity to respond to the further serious anomalies and omissions in subsequent evidence which, you will appreciate, has very adversely reflected upon the reputations of Mr Finch, myself and Touche Ross.

This might be by way of our reappearance (as suggested by the media) or a formal written submission responding to the issues with which we take exception, or both.

Similarly, we have now had, subsequent to our earlier examination, the opportunity to review and consider the document titled "DALWAY PTY LTD - A report prepared for the Minister for Industries and Development covering the Department's involvement in the Government's acquisition, ownership and sale of the Company" by a Mr David Hunt.

We had formerly understood that this document was not a public document and therefore unavailable to us.



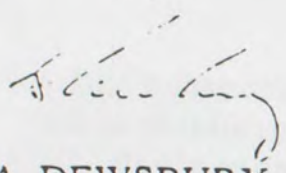
We hold very serious concerns regarding the outrageous misrepresentation of the role of Touche Ross in the events leading up to the Government's acquisition of the assets and business of Darwin Joinery & Furniture Manufacturing Pty Ltd as alleged in the abovementioned document.

With the benefit of hindsight it is most unfortunate that;

- a) we had not seen this document prior to our earlier appearance,
- b) the author, Mr Hunt was not personally involved in the events which he alleges Touche Ross had an intimate involvement in,
- c) Mr Hunt, even in the abovementioned circumstances, did not take the opportunity, (let alone give us the courtesy) of clarifying his erroneous allegations prior to their publication in this document, which, it now seems, is a central piece of evidence before your committee.

Now that the scheduled examination of witnesses has concluded, we were anxious to take this earliest opportunity to make you aware of our further serious concerns and seek your advice and assistance.

Yours faithfully,  
KPMG Peat Marwick



P.A. DEWSBURY  
PARTNER



This is the ANNEXURE marked B referred to in  
the Sworn Statement of Philip Ashleigh  
Dewsbury sworn on...18<sup>th</sup>...day of *December*...1992  
before me...*[Signature]*.....

G. L. MATTHEWS  
COMMISSIONER FOR OATHS  
35 VRD DRIVE  
WOODLEIGH GARDENS NT  
PH: 277829

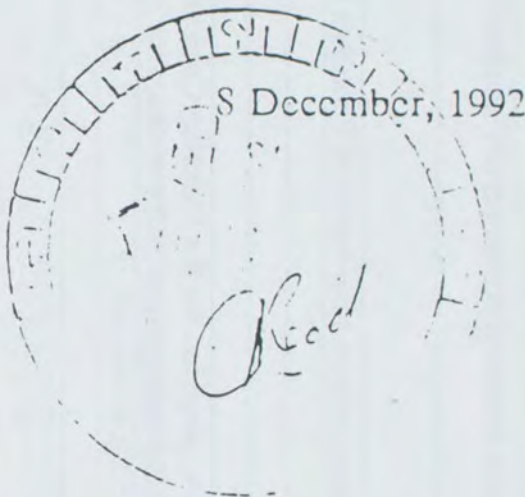
Legislative Assembly of the Northern Territory  
PUBLIC ACCOUNTS COMMITTEE

Telephone (089) 46 1465  
Telex AA85154  
Fax 81 6156  
Telegrams Compantas

GPO BOX 3721  
DARWIN, NT 0801

*→ FING → DEWS*

Mr Phil Dewsbury *6/10/12/92*  
KPMG  
Chartered Accountants  
GPO Box 1616  
DARWIN NT 0801



Dear Mr Dewsbury,

**DALWAY: PUBLIC ACCOUNTS COMMITTEE INQUIRY**

I note your concerns in relation to evidence presented to the Public Accounts Committee regarding the role of Touche Ross in the DJFM/Dalway saga.

At this stage, the Committee has resolved to seek clarification of your concerns by way of a sworn written submission.

With respect to the document prepared by David Hunt of the Department of Industries and Development, I suggest you make direct representation to that Department.

However, you may be assured that the document at issue is not a central piece of evidence before the Committee. It is simply the Department's perspective of events that occurred leading up to and including the sale of Dalway Pty Ltd.

Yours sincerely,

*[Signature]*  
MICK PALMER, MLA *8/14/92*  
CHAIRMAN



| GEOFFREY DONALD FINCH  |  |       |   |
|--|--|-------|---|
| EXTRACT FROM DIARY DURING THE PERIOD 2 JANUARY 1990 TO 30 MARCH 1990 |  |       |   |
| CLIENT : DARWIN JOINERY & FURNITURE MANUFACTURING PTY. LTD.          |  |       |   |
| DATE   | NARRATION  | HOURS | COMMENTS  |
| 3/ 01/90   | Meeting at DID with Tony & John Pastrikos to discuss refinancing of group.   | 1.50  | Refinancing of Pastrikos Family investments requested by the Steering Committee at 14/12/89 meeting.    |
| 6/ 01/90   | Attending DJFM to discuss the General Manager's contract & prepare model to calculate the effect of assets sales.  | 2.00  | Assets sales reviewed consisted of Pastrikos Family properties.   |
| 8/ 01/90   | Reversal of 30/11/89 balance date adjustments, telephone T Pastrikos re: meeting 9/1/90, telephone General Manager re: position.   | 1.20  |   |
| 9/ 01/90   | Meeting to review refinancing & sale of group assets.  | 1.60  | Assets sales reviewed consisted of Pastrikos Family properties.   |
| 10/01/90   | Telephone ANZ Bank re: Dec A/c's   | 0.20  |   |
| 11/01/90   | Telephone Tony Pastrikos & Charlie ANZ Bank re: Dec A/c's  | 0.30  |   |
| 12/01/92   | Preparation of Dec A/c's   | 5.00  |   |
| 13/01/90   | Preparation of budget for Jan-June 90 with expected cash flow & financial position   | 4.00  | Information prepared for the Steering Committee to monitor DJFM's performance during the next 6 months. |
| 14/01/90   | Preparation of proposal for increase in equity and alternatives which are available, discussion of financial position with management.   | 6.00  |   |
| 15/01/90   | Meeting with ANZ to discuss Dec figures & present financial position, preparation of meeting with TIO & Fradkin re: current status of DJFM & action taken.   | 7.50  |   |
| 16/01/90   | Meeting with the Doctor, assisting in the preparation of a 5 year plan to determine the future viability and funding require for the survival of the business. Visit to Development House to view DJFM work.   | 7.50  | Company Doctor - Fradkin  |
| 17/01/90   | Meeting with DJFM to discuss 5 year plan & additional funding strategy with Barry Fradkin & company management. Draft report to obtain additional equity. Telephone John Naylor re: Fradkin visit.   | 7.00  | This is the Report prepared for John Pastrikos dated 20/1/90.   |
| 18/01/90   | Draft report to obtain additional equity, discussion with prospective general manager.   | 5.50  | This is the Report prepared for John Pastrikos dated 20/1/90.   |
| 19/01/90   | Complete draft of report, telephone to arrange meetings with ANZ & DID, telephone Esanda re: effect of Report, telephone re: payment of wages.   | 7.50  | This is the Report prepared for John Pastrikos dated 20/1/90.   |
| 20/01/90   | Complete report for equity from the Government   | 3.50  | This is the Report prepared for John Pastrikos dated 20/1/90.   |
| 21/01/90   | Collect cash flow & production reports for circulation to Financiers   | 1.00  |   |
| 22/01/90   | Photocopy and delivery of the report to the Steering Committee members, review of Dec trading results, review of Fradkin report, preparation of notes for meeting with Barry Slade, Geoff Masters ANZ Bank, meeting with DID re: DJFM request for funding. | 6.90  | This Report is the monthly Steering Committee information package.                                      |
| 23/01/90   | Meeting with ANZ Barry Slade, Geoff Masters re: present position of DJFM; review position of GDF to consent to act.  | 2.10  | ANZ Bank were considering their future options including the appointment of a Receiver & Manager.       |
| 24/01/90   | Meeting with Steering Committee; meeting with general manager re: management controls etc.   | 3.50  |   |

pg 1

COMMISSIONER FOR OATHS  
35 VRD DRIVE  
WODDLEIGH GARDENS NT  
PH: 277829

This is the ANNEXURE marked C referred to in the Sworn Statement of Philip Ashleigh Dewsbury sworn on... day of ... 1990 before me: *[Signature]* G.I. MATTHEWS



| GEOFFREY DONALD FINCH  |   |        |   |
|--|---|--------|---|
| EXTRACT FROM DIARY DURING THE PERIOD 2 JANUARY 1990 TO 30 MARCH 1990 |   |        |   |
| CLIENT : DARWIN JOINERY & FURNITURE MANUFACTURING PTY. LTD.          |   |        |   |
| DATE   | NARRATION   | HOURS  | COMMENTS  |
| 26/01/90   | Financial model adjustments to Tony Watson DID  | 2.50   | T Watson advised adjustments to the 5 year projections that were entered in the model to recalculate the profitability and funding requirements.  |
| 2/02/90  | Telephone G Riley re general manager redundancy package; confirm with T Watson re: same   | 0.60   |   |
| 6/02/90  | Preparation of Profit & Loss & Cash Flow for February 1990 to Dec 1990 based on information prepared by Dennis Edwards.   | 3.20   | D Edwards was managing DJFM and requested the DJFM financial model to calculate monthly trading projection and cash flow to Dec 90 (T Watson was not present).  |
| 7/02/90  | Preparation of amended cash flow projections etc for DID  | 3.00   | T Watson advised adjustments to the 5 year projections that were entered in the model to recalculate the profitability and funding requirements.  |
| 9/02/90  | Telephone Tony Watson re: NT Govt proposal; telephone John Naylor   | 0.30   |   |
| 12/02/90   | Draft alternatives available for payment of funds to creditors, discussion regarding action after commencement of business, a meeting DID and Mildrens (G James)  | 4.50   | T Watson requested advice of the alternatives available which ensured that additional funds provided would be used for their intended purpose, and information concerning the requirements for commencement of a business. DID meeting with P Caldwell. |
| 14/02/90   | A/c for Jan 90 processing entry.  | 3.50   | Preparation for next Steering Committee meeting.  |
| 15/02/90   | Entries for Jan A/c, review expenditure & prepare correcting entries.   | 3.50   | Preparation for next Steering Committee meeting.  |
| 19/02/90   | Complete Jan 90 A/c's   | 1.20   | Preparation for next Steering Committee meeting.  |
| 20/02/90   | Telephone ANZ, Esanda re: meeting of Steering Committee; revise calculations on information as at 16/02/90 for company, copy accounts for company.  | 3.20   | A summary of DJFM assets and liabilities at 16/2/90 was prepared by TWatson on 20/2/90 and I was requested to update the 5 year projections with this information.  |
| 21/02/90   | Meeting at DID to discuss contract and implications of the liquidation; meeting with G James to discuss contract.   | 4.80   | Meeting with T Watson.  |
| 22/02/90   | Draft consent to act; review of contract.   | 1.00   | Consent to act as Liquidator of DJFM.   |
| 23/02/90   | Draft notices re: sale of business.   | 1.50   |   |
| 27/02/90   | Meeting to discuss matters relating to sale of business.  | 2.00   | Pre liquidation matters.  |
| 6/03/90  | Meeting to discuss purchase & sale of business at Mildrens office   | 3.00   | Meeting requested by D Edwards, present G James, T Watson & D Edwards   |
| 7/03/90  | Meeting at DID to discuss action prior to settlement for the restructuring  | 2.50   |   |
| 27/03/90   | Discussion with TR & Co Adelaide re: tax position of winding up of trust; draft declaration of solvency & telephone Tony Pastrokos; telephone Guy Riley re: winding up; telephone TIO re: proxy for members meeting | 1.70   |   |
| 28/03/90   | Obtaining signatures for Declaration of Solvency, lodging forms, arranging meeting of members, draft minutes, telephone creditor.   | 3.00   |   |
|  |   | 118.80 |   |



| <b>GEOFFREY DONALD FINCH</b>  |  |              |  |
|---|--|--------------|--|
| <b>EXTRACT FROM DIARY DURING THE PERIOD 2 JANUARY 1990 TO 30 MARCH 1990</b> |  |              |  |
| <b>CLIENT : DALLOWAY PTY. LTD.</b>  |  |              |  |
| <b>DATE</b>   | <b>NARRATION</b>   | <b>HOURS</b> | <b>COMMENTS</b>  |
| 9/03/90   | Prepare cash flow to 31/12/90 & P&L statement  | 3.50         | D Edwards requested the preparation of the trading projection and cash flow to Dec 90. |
| 10/03/90  | Review list of plant & equipment at DJFM premises  | 4.00         | Identification of DJFM assets as a date of sale to Dalloway                            |
| 15/03/90  | WIP stocktake  | 2.00         | Identification of DJFM assets as a date of sale to Dalloway                            |
| 16/03/92  | Complete inventory cost of plant & equipment   | 1.50         | Identification of DJFM assets as a date of sale to Dalloway                            |
| 17/02/90  | Stocktake of timber; discussion with Pastrikos family re: tax losses in DJFM   | 2.00         | Identification of DJFM assets as a date of sale to Dalloway                            |
| 19/03/90  | Meeting with Tony Watson, Peter Caldwell, Dennis Edwards to discuss the proposed agenda for the director's meeting       | 2.30         |  |
| 20/03/90  | Telephone Tony Watson re: additional entries for director's meeting  | 0.50         |  |
| 21/03/90  | Meeting of Directors, taking minutes etc   | 8.50         | Attendance a meeting to provide background to directors of Dalloway                    |
| 22/03/90  | Draft minuted of meeting of directors; telephone Tony Watson re: information for meeting; review schedule of assets.     | 5.40         |  |
| 27/03/90  | Telephone Tony Watson & Geoff James re: minutes & forms; telephone Dennis Edwards re: minutes & application of name etc. | 0.90         |  |
| 28/03/90  | Filing change of Directors & registered office; discussion with Dennis Edwards   | 2.00         |  |
| 29/03/90  | Draft statutory notices for change of registered office; telephone Tony Watson re: shares held in trust.                 | 0.80         |  |
|   |  | 33.40        |  |

G.L. MATTHEWS  
 COMMISSIONER FOR OATHS  
 35 VRD DRIVE  
 WOODLEIGH GARDENS NT  
 PH: 277829

This is the ANNEXURE marked D referred to in the Sworn Statement of Philip Ashleigh Dewsbury sworn on... day of ... 1992 before me...



TOUCHE ROSS SERVICES PTY. LTD.  
75 Woods Street  
Darwin NT 0800  
GPO Box 4146  
Darwin NT 0801  
Telephone (089) 81 5977  
Telex: AA85352  
Fax: (089) 81 3973

**TOUCHE ROSS**

This is the ANNEXURE marked E referred to  
in the Sworn Statement of Philip Ashleigh  
Dewsbury sworn on...19...day of...1992  
before me...

G.L. MATTHEWS  
COMMISSIONER FOR OATHS  
35 VRD DRIVE  
WOODLEIGH GARDENS NT  
PH: 277829

INVOICE NO. 7914

REFERENCE D075

30 March 1990

The Secretary  
The Department of Industry & Development  
GPO Box 4160  
DARWIN NT 0801

Attention Mr P Caldwell

RE: DALLOWAY PTY LIMITED

Attending to all matters in respect of providing  
financial advisory services; including preparation  
of revised cash flow and profit projections to  
31.12.90; review list of plant and equipment,  
stock work in progress, finished stock and conduct  
physical inspection prior to the acquisition of  
the business from Darwin Joinery & Furniture  
Manufacturing Pty Limited; attending meeting at  
DID to discuss meeting of Directors; attending  
Directors meeting and preparation of minutes;  
attending to statutory matters relating to change  
of registered office, change of  
directors/secretary, proposed change of name.



\$5481.00

To Disbursements

|                              |          |
|------------------------------|----------|
| Registration of Company Name | \$ 10.00 |
| Travelling                   | 14.80    |
| Photocopying and Fax         | 21.00    |
|                              | -----    |

45.80

OUR FEE

\$5526.80

=====

PAYMENT IS NETT 30 DAYS ON INVOICE  
STATEMENTS WILL NOT BE ISSUED

Touche Ross Services Pty. Limited  
GPO Box 4146  
Darwin NT 0801

**Touche Ross**

Name Dalloway Pty Limited

Date 30.03.90

Ref D075

Inv. No 7914

Amount \$5526.80



DATE : 30/03/90

TOUCHE ROSS SERVICES PTY. LIMITED  
WORK IN PROGRESS JOB SUMMARY - AS AT 30/03/90

FOR PHIL DEWSBURY'S TAX CLIENTS

| JOB NO | DESCRIPTION          | DEBTOR | START    | QUOTE | OP.BAL  | CURRENT | BALANCE | BILLED | TOTAL   |
|--------|----------------------|--------|----------|-------|---------|---------|---------|--------|---------|
| 0075   | /01 DALLOWAY PTY LTD | 0075   | 01/03/90 | 0.00  | 1480.00 | 4046.80 | 5526.80 | 0.00   | 5526.80 |

| TYPE  | CODE | NAME            | ACTIVITY        | DATE     | AGE | QTY    | RATE   | AMOUNT  |                      |
|-------|------|-----------------|-----------------|----------|-----|--------|--------|---------|----------------------|
| TIME  | 0012 | MICHAEL MITAROS | CA ACCOUNTING   | 15/03/90 | 1   | 10.00  | 75.00  | 150.00  |                      |
| TIME  | 0013 | GEOFF FINCH     | IS INSL         | 15/03/90 | 1   | 35.00  | 140.00 | 490.00  | CASH FLOW            |
| TIME  | 0013 | GEOFF FINCH     | IS INSL         | 15/03/90 | 1   | 60.00  | 140.00 | 840.00  | STOCKTAKE            |
| DISB. | 03   | MISCELLANEOUS   |                 | 29/03/90 | 0   | 1.00   | 14.80  | 14.80   | TAXI FARE COST CO    |
| DISB. | 03   | MISCELLANEOUS   |                 | 29/03/90 | 0   | 1.00   | 10.00  | 10.00   | FEDERAL RETURN COA   |
| DISB. | 15   | FAX             |                 | 27/03/90 | 0   | 1.00   | 1.00   | 1.00    | FAX TO D. FLEWELL    |
| DISB. | 04   | PHOTOCOPYING    |                 | 29/03/90 | 0   | 40.00  | 0.50   | 20.00   | COPIES TO D. FLEWELL |
| TIME  | 0001 | PHIL DEWSBURY   | CA ACCOUNTING   | 30/03/90 | 0   | 10.00  | 143.00 | 143.00  |                      |
| TIME  | 0028 | KIM GRENFELL    | WP WORD PROCESS | 30/03/90 | 0   | 33.00  | 45.00  | 148.50  | MINUTES RE DIRECTORS |
| TIME  | 0028 | KIM GRENFELL    | CT TYPING       | 30/03/90 | 0   | 3.00   | 45.00  | 13.50   | REG OFFICE FORTH     |
| TIME  | 0013 | GEOFF FINCH     | OT OTHER        | 30/03/90 | 0   | 55.00  | 140.00 | 770.00  | STOCKTAKE            |
| TIME  | 0013 | GEOFF FINCH     | OT OTHER        | 30/03/90 | 0   | 184.00 | 140.00 | 2576.00 | STAT MINUTES ETC     |
| TIME  | 0005 | PETER CHILMAN   | CA ACCOUNTING   | 30/03/90 | 0   | 25.00  | 140.00 | 350.00  | TAX LOSSES           |

|                 |         |         |         |
|-----------------|---------|---------|---------|
| ACCOUNTING      | 150.00  | 493.00  | 643.00  |
| INSL            | 1320.00 | 0.00    | 1320.00 |
| WORD PROCESSING | 0.00    | 148.50  | 148.50  |
| TYPING          | 0.00    | 13.50   | 13.50   |
| OTHER           | 0.00    | 3346.00 | 3346.00 |
| MISCELLANEOUS   | 0.00    | 24.80   | 24.80   |
| FAX             | 0.00    | 1.00    | 1.00    |
| PHOTOCOPYING    | 0.00    | 20.00   | 20.00   |

JOB TOTAL 1480.00 4046.80 5526.80

|      |                          |      |          |      |       |      |       |      |       |
|------|--------------------------|------|----------|------|-------|------|-------|------|-------|
| 0112 | /01 DANIELS, GUENDOLYN M | 0112 | 31/03/89 | 0.00 | 63.50 | 0.00 | 63.50 | 0.00 | 63.50 |
|------|--------------------------|------|----------|------|-------|------|-------|------|-------|

| TYPE  | CODE | NAME          | ACTIVITY        | DATE     | AGE | QTY  | RATE  | AMOUNT |  |
|-------|------|---------------|-----------------|----------|-----|------|-------|--------|--|
| DISB. | 04   | PHOTOCOPYING  |                 | 15/01/90 | 5   | 8.00 | 0.50  | 4.00   |  |
| TIME  | 0014 | CEPES, GEORGE | CD, TAX RETURNS | 15/01/90 | 5   | 7.00 | 50.00 | 350.00 |  |

G.L. MATTHEWS  
COMMISSIONER FOR OATHS  
35 VRD DRIVE  
WOODLEIGH GARDENS NT  
PH: 277829

This is the ANNEXURE marked F referred to  
in the Sworn Statement of Philip Ashleigh  
Dewsbury sworn on.....day of .....1992  
before me. *[Signature]*



## APPENDIX 2 - LIST OF WITNESSES

|          |                     |  |
|----------|---------------------|--|
| 17/09/01 | Mr. Jeff Todd       | Territory Cabinet                          |
| 17/09/01 | Mr. Allan Curran    | Professional Adviser to Territory Cabinet  |
| 17/09/01 | Mr. Peter Smith MHA | Minister for Transport & Works             |
| 17/09/01 | Mr. Peter Smith     | Ex-Jugur Journey                           |
| 17/09/01 | Mr. A. Geoff Jones  | Legal Practitioner/Director of Defence     |
| 17/09/01 | Mr. Adam Smith      | Consultant for Defence                     |
| 17/09/01 | Mr. Steve Morgan    | Director of Defence                        |
| 17/09/01 | Mr. John Smith      | Director of DPM/Director of Defence        |
| 17/09/01 | Mr. Steve Morgan    | Defence                                    |
| 17/09/01 | Mr. John Smith      | Defence                                    |
| 17/09/01 | Mr. Tony Smith      | Accountant to Defence                      |
| 17/09/01 | Mr. Tony Smith      | Accountant to Defence                      |
| 17/09/01 | Mr. Jeff Lewis      | Project Coordinator, Territory Development |
| 17/09/01 | Mr. John Smith      | Manager, Multiple Pty Ltd                  |
| 17/09/01 | Mr. Richard Smith   | Transport & Works                          |
| 17/09/01 | Mr. Ron Smith       | Chief Architect, State Square Project      |
| 17/09/01 | Mr. Peter Smith     | Transport & Works                          |
| 17/09/01 | Mr. Neil Smith      | Accountant to DPM                          |



THIS IS THE FOREWORD OF THE REPORT ON  
 THE SOUTH AFRICAN INQUIRY INTO THE  
 DEATH OF THE LATE PRESIDENT  
 NELSON MANDELA  
 THE REPORT IS AVAILABLE IN  
 THE FOLLOWING FORMS  
 1. HARDCOVERED BOOK  
 2. PAPERBACK BOOK  
 3. MICROFILM  
 4. MICROFICHE  
 5. CD-ROM  
 6. DVD  
 7. AUDIO CASSETTE  
 8. VIDEO CASSETTE  
 9. VIDEO DVD  
 10. VIDEO CD  
 11. VIDEO MINI-DISC  
 12. VIDEO SUPER-8  
 13. VIDEO 8MM  
 14. VIDEO 16MM  
 15. VIDEO 35MM  
 16. VIDEO 70MM  
 17. VIDEO 105MM  
 18. VIDEO 135MM  
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APPENDIX - LIST OF WITNESSES



## APPENDIX 2 - LIST OF WITNESSES

|          |                    |  |
|----------|--------------------|--|
| 27/8/92  | Mr Jeff Blake      | Territory Cabinets                             |
| 27/8/92  | Mr Allan Garraway  | Professional Adviser to<br>Territory Cabinets  |
| 27/8/92  | Hon Fred Finch MLA | Minister for Transport &<br>Works              |
| 28/8/92  | Mr Peter Mannion   | Ex-Jaguar Joinery                              |
| 2/9/92   | Mr A Geoff James   | Legal Practitioner/Director of<br>Dalway       |
| 2/9/92   | Mr Adam Gordon     | Consultant for Desliens                        |
| 7/9/92   | Mr Steve Margetic  | Director of Dalway                             |
| 7/9/92   | Mr John Pastrokos  | Owner of DJFM/Director of<br>Dalway            |
| 8/9/92   | Mr Adam Gordon     | Supra  |
| 8/9/92   | Mr Steve Margetic  | Supra  |
| 8/9/92   | Mr John Pastrokos  | Supra  |
| 9/9/92   | Mr Tony Cahill     | Accountant to Dalway                           |
| 9/9/92   | Mr Tony Pastrokos  | Accountant to Dalway                           |
| 19/10/92 | Mr Jack Linton     | Project Coordinator, Tipperary<br>Developments |
| 19/10/92 | Mr John Briers     | Manager, Multiplex Pty Ltd                     |
| 19/10/92 | Mr Richard Galton  | Transport & Works                              |
| 20/10/92 | Mr Ron Findlay     | Chief Architect, State Square<br>Project       |
| 20/10/92 | Mr Peter McGuin    | Transport & Works                              |
| 20/10/92 | Mr Mal Sciacca     | Accountant to DJFM                             |



|          |  |   |
|----------|--|---|
| 20/10/92 | Mr Warren Day  | Ex Department of Law  |
| 20/10/92 | Mr Perry Miller  | Kitchen Warehouse   |
| 20/10/92 | Mr Villy Olsen   | Danska Cabinets   |
| 21/10/92 | Mr Warren Day  | Supra   |
| 21/10/92 | Mr Geoff Brewster  | ANZ Capel Court   |
| 21/10/92 | Mr Tony Watson   | Ex DID  |
| 22/10/92 | Mr David McDougal  | ANZ Capel Court   |
| 22/10/92 | Mr Otto Alder  | Ex DID  |
| 22/10/92 | Mr Wayne Bastion   | Ernst & Young   |
| 22/10/92 | Mr Peter Caldwell  | Ex DID  |
| 27/10/92 | Mr David MacDougall  | Supra   |
| 27/10/92 | Mr Barry Fradkin   | Director, Dalway  |
| 27/10/92 | Mr Jim Bell  | Director/General Manager,<br>Dalway                                     |
| 28/10/92 | Mr Jim Bell  | Supra   |
| 28/10/92 | Mr Phil Dewsbury<br>Mr Geoff Finch   | Touche Ross<br>Touche Ross  |
| 29/10/92 | Mr S R Cavanagh  | DID   |
| 29/10/92 | Mr Graham Lucas  | DID   |
| 29/10/92 | Mr Alan Sprigg   | DID   |
| 29/10/92 | Mr Mick Palmer<br>Mr Robyn Chalker<br>Cdr Terry O'Brien<br>Sgt Matt Sodoli | Police Commissioner<br>Assistant Commissioner<br>NT Police<br>NT Police |
| 30/10/92 | Mr David Hunt  | DID   |



|          |                                  |  |
|----------|----------------------------------|--|
| 30/10/92 | Mr Neil Almond                   | DID  |
| 4/11/92  | Mr Phil Temple<br>Mr John Nayler | CEO, TIO<br>General Manager, Finance,<br>TIO         |
| 4/11/92  | Mr Phil Temple<br>Mr John Nayler | Supra<br>Supra                                       |
| 5/11/92  | Mr Phil Temple<br>Mr John Nayler | Supra<br>Supra                                       |
| 9/11/92  | Mr Peter Caldwell                | Ex DID   |
| 9/11/92  | Mr Colin James                   | Ernst & Young  |
| 9/11/92  | Mr Leo Venturin                  | Director CFM   |
| 9/11/92  | Mr Lyal Mackintosh               | Secretary, Department of<br>Industries & Development |
| 10/11/92 | Mr Terry Maddox                  | Tipperary Developments                               |
| 11/11/92 | Mr Tony Watson                   | Supra  |
| 11/11/92 | Hon Fred Finch MLA               | Supra  |
| 11/11/92 | Hon Max Ortmann MLA              | Minister for Lands & Housing                         |
| 12/11/92 | Hon Steve Hatton MLA             | Minister for Industries &<br>Development             |
| 12/11/92 | Hon Marshall Perron MLA          | Chief Minister                                       |
| 13/11/92 | Hon Barry Coulter MLA            | Deputy Chief Minister and<br>Treasurer               |







LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

## PUBLIC ACCOUNTS COMMITTEE

## INQUIRY INTO DARWAY PTY LTD

The NT Public Accounts Committee is currently conducting an inquiry into two matters referred to it by the Chief Minister, being:

The trading operations of Darway Pty Ltd and specifically:

- (a) the reasons for its continuing losses during the period of Government ownership;
- (b) the write down of the value of the assets from the time of purchase to the time of sale.

Whether the sale of Darway Pty Ltd was conducted in an appropriate manner.

## APPENDIX 3 - SELECTED DOCUMENTS

Persons or organisations who wish to make a submission should ensure they supply relevant information should contain:

The Secretary  
Public Accounts Committee  
G P O Box 2721  
DARWIN NT 0801

Phone: (089) 461 477 or 461 469  
Fax: (089) 462 528

on Friday 3 August 1992.

WILL PALMER

Chairman

The Public Accounts Committee is authorised by the Legislative Assembly to accept donations and any person who provides information to the Committee in confidence shall be treated as confidential.



APPENDIX 3 - SELECTED DOCUMENTS





LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

**PUBLIC ACCOUNTS COMMITTEE**

**INQUIRY INTO DALWAY PTY LTD**

The N.T. Public Accounts Committee is currently conducting an inquiry into two matters referred to it by the Chief Minister, being:

1.     **The trading operations of Dalway Pty Ltd and specifically**
  - (a)    **the reasons for its continuing losses during the period of Government ownership;**
  - (b)    **the write down of the value of the assets from the time of purchase to the time of sale.**
2.     **Whether the sale of Dalway Pty Ltd was conducted in an appropriate manner and in a manner which ensured the maximum amount of money was returned to the public account.**

Persons or organisations who wish to make a submission or who believe they may have any relevant information should contact:

The Secretary  
Public Accounts Committee  
G P O Box 3721  
DARWIN   NT   0801

Phone: (089) 461 427 or 461 459

Fax:   (089) 812 528

by Friday 7 August, 1992.

**MICK PALMER**  
Chairman

The Public Accounts Committee is authorised by the Legislative Assembly to conduct inquiries into any matters referred to it which could affect the keeping of accounts and expenditure of public monies on behalf of the Northern Territory Government.





# LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY PUBLIC ACCOUNTS COMMITTEE

## INQUIRY INTO DALWAY PTY LTD

The N.T. Public Accounts Committee is currently conducting an inquiry into two matters referred to it by the Chief Minister, being:

1. The trading operations of Dalway Pty Ltd and, specifically:

- (a) the reasons for its continuing losses during the period of Government ownership;
- (b) the extent of the value of its assets from the time of purchase to the time of sale.

2. Whether the sale of Dalway Pty Ltd was conducted in an appropriate manner and in a manner which ensured the maximum amount of money was returned to the public account.

Persons or organisations who wish to make a submission or who believe they can provide any relevant information should contact:

The Secretary  
Public Accounts Committee  
G P O Box 3721  
DARWIN NT 5801

Phone: (089) 461 427 or 461 432  
Fax: (089) 812 228

by Friday 7 August 1992

MICK PALMER  
Chairman

The Public Accounts Committee is established by the Legislative Assembly to conduct inquiries into any matters referred to it which could affect the integrity of accounts and expenditure of public monies on behalf of the Northern Territory Government.



To appear in the *NT News*:

Sat. 22nd August }  
 Sun. 23rd August }  
 Mon. 24th August }  
 Tues. 25th August }  
 Wed. 26th August }

Order No. 167783 - Classifieds  
 167804 - General

*Legislative Assembly of the Northern Territory*

*Public Accounts Committee*

## INQUIRY INTO DALWAY PTY LTD

As part of its inquiry into Dalway Pty Ltd, the Public Accounts Committee will be holding **Public Hearings** on **Thursday, 27th August** and **Friday, 28th August 1992** to take evidence into the trading operations of Dalway Pty Ltd and specifically

- (a) the reasons for its continuing losses during the period of Government ownership;
- (b) the write down of the value of the assets from the time of purchase to the time of sale; and

whether the sale of Dalway Pty Ltd was conducted in an appropriate manner and in a manner which ensured the maximum amount of money was returned to the public account.

The Hearings are open to the public and will be held in the **Legislative Assembly Chamber**, Chan Building commencing at **10.00 a.m.**

Persons wishing to give evidence should contact the **Committee Secretary, Ms Sue Lee** at:

GPO Box 3721                      Tel: (089) 461 459  
 DARWIN NT 0801              Fax: (089) 816 158

Further information can be obtained as above.

**MICK PALMER, MLA**  
 Chairman









NORTHERN TERRITORY OF AUSTRALIA

## DEPARTMENT OF LAW

Our Ref: A9107046

Telephone: (089) 89-7030

17 August 1992

Mr Mick Palmer MLA  
 Chairman  
 Public Accounts Committee  
 Legislative Assembly of the NT  
 GPO Box 3721  
 DARWIN NT 0801

Dear Mr Palmer

I refer to your request for legal advice dated 13 August 1992, in which you ask five questions.

I advise as follows:

1. Natural Justice

The Committee is not bound by the rules of natural justice.

The requirements of natural justice involve two elements: a fair hearing and impartiality (or the rule against bias). Exactly what fulfils these requirements varies from case to case.

In respect of the fair hearing obligation, this would involve -

- . an outline or substance of the information or statement on which the decision is proposed to be based (in particular, statements that are adverse to any witness);
- . an opportunity to comment on the information or statements, and to present the witness' case.

Procedure (b) [page 2 of your letter]

This is an appropriate procedure to accord natural justice.

The remedy for failing to accord natural justice to witnesses is political. It may bring the Committee into public disrepute or may lead to action by Parliament.



The Committee may choose to accord witnesses what it determines to be natural justice, as the immediate case before it requires.

Natural justice does not require an automatic right to legal representation.

(a) Legal counsel

It is well established that counsel may be present at a hearing conducted by a committee of Parliament. In the Senate, for example, a witness may consult counsel concerning his legal rights only with the permission of the Committee Chairman: see Odgers at 501.

A procedure or guideline enabling the Committee to permit or deny legal representation - as in House of Representative Procedure (12); Senate Resolution (14); and PAC Draft Guideline (16) - is within the prerogative of the Committee.

(b) Exercising the discretion to permit legal counsel to be present

Procedure (a) [page 1 of your letter]

This rule indicates that witnesses will be permitted legal counsel on request. This is a decision for the Committee. It is an appropriate rule for the Committee to adopt.

(c) The scope of legal counsel

The position adopted by the Senate Committee on Securities and Exchange is summarised below and is typical of Senate practice.

Since the Committee commenced public hearings in July 1970, it afforded witnesses the right to have counsel present to advise them. It readily granted adjournments to witnesses so that they could seek legal advice should the course of the inquiry cause the witness to wish it.

However, counsel was not permitted to examine the witness for whom he was acting nor to examine or cross-examine other witnesses. He was not permitted to give advice during the hearing unless the witness sought that advice after making application to the Chairman. The Committee emphasized, however, that counsel was not permitted to give evidence on behalf of the witness. Counsel's role was therefore that of adviser and he could be called upon by the witness. He could not of his own motion object to questions on behalf of the witness.

See Commonwealth Parliamentary Paper No. 168 (1972) - Parliamentary Committees: Powers Over and Protection



Afforded to Witnesses, at 20-21 (hereafter "Commonwealth Report").

Accordingly, the following statement should be read out or handed to witnesses:

- (1) A witness at a Committee hearing may, with the approval of the Chairman/Committee, be accompanied by his own counsel for the purpose of advising him as to his rights. We share the view, often expressed, that it is undesirable for witnesses to have the right to cross-examine other witnesses either themselves or through their counsel. As a general rule we think this would unnecessarily prolong investigations and would tend to formalise them.
- (2) On some occasions the witness is in a position where he is, in a sense, on trial, e.g. a charge of contempt. On these and perhaps other limited occasions, there may be good reason for the Committee allowing counsel for a witness to cross-examine other witnesses. The occasion for allowing cross-examination is, therefore, as we see it, a matter for the Chairman in the light of the particular circumstances. It should not be assumed, however, that cross-examination will be automatically allowed.
- (3) As a general rule, provided he shows due respect to the Committee and is restrained and proper in his interventions, counsel may interrupt the testimony of his client for the purpose of advising him. Counsel should not, of course, attempt to give the evidence for his client or tell the witness what to say. The advice he gives must be relevant to the answer which the witness is about to give.
- (4) If an objection is taken, it may save time for the Committee to adjourn so that the Chairman can discuss it with counsel or the Chairman might invite counsel to develop, shortly, the point involved. Generally speaking, however, we envisage that counsel's role will be confined to that of adviser to his client.

#### Procedures (c) and (d)

These rules are appropriate, but perhaps too general. Rules (1), (2), (3) and (4) above should supplement these rules.

#### Procedure (e)

This is an appropriate rule.



## 2. The Protection of Witnesses

Parliamentary privilege relates to the special rights and immunities which belong to the Parliament, its Members and others, which are considered essential for the operation of the Parliament. These rights and immunities allow the Parliament to meet and carry out its proper constitutional role, for Members to discharge their responsibilities to their constituents and for others properly involved in the parliamentary process to carry out their duties and responsibilities without obstruction or fear of prosecution.

### (a) Scope of statutory protection

Nothing a witness says in evidence before the Committee can be used against him or her in any subsequent criminal or civil proceeding.

All witnesses appearing before a committee enjoy all the privileges of Parliament: section 5 *Legislative Assembly (Powers and Privileges) Act*:

"(1) There shall be freedom of speech, debates and proceedings in the Assembly and that freedom shall not be impeached or questioned in any court or place outside the Assembly.

"(2) Neither a member nor any other person is liable in any action, suit or other legal proceeding (whether civil or criminal), for or in respect of any statement made or act done in the course of the conduct of the business of the Assembly during a meeting of the Assembly or by or on behalf of or with the authority of the Assembly or in the course of the conduct of the business of a committee during a meeting of that committee or by or on behalf of or with the authority of a committee."

Standing Order 290 confirms this position.

The "course of the conduct of the business of a committee" may be taken to include:

- . the giving of evidence before Parliament or a committee, and evidence so given;
- . the presentation or submission of a document to Parliament or a committee;
- . the preparation of a document for purposes of or incidental to the transacting of any such business; and
- . the formulation, making or publication of a document, including a report, by or pursuant to an order of the Assembly or a committee and the document so formulated, made or published.



See Erskine May at 689.

Insofar as this privilege exceeds that of the House of Representatives and its committees, it will to that extent at least be invalid (*Northern Territory (Self-Government) Act 1978*, section 12). The privileges relevant to the House of Representatives and its committees are set out in the *Parliamentary Privileges Act 1987*.

(b) Scope of common law protection

The statutory protection is consistent with the common law position: *R v Wainwright* (1899) 1 WALR 77; *Goffin v Donnelly* (1881) 50 LJQB 303 at 305; *Gatley on Libel and Slander* (8 ed) para 425; *Holding v Jennings* [1979] VF 289; *ABC v Chatterton* (1986) 46 SASR 1 at 18.

The privilege of freedom of speech includes:

- . immunity of Members from legal proceedings for anything said by them in the course of parliamentary proceedings (e.g. an action for defamation);
- . immunity of parliamentary witnesses from being questioned or impeached for evidence given before the Assembly or its Committees.

This privilege is discussed in Erskine May at 84-94 and Browning at 688-690.

(c) Objections to answering questions

Statutory provisions

Section 21 of the *Legislative Assembly (Powers and Privileges) Act* provides that where a witness appears pursuant to a summons issued under section 19, he/she "may not be compelled to answer a question except ... [by] leave of the ... Chairman of the Committee".

Section 22(2) provides that a witness who appears pursuant to a section 19 summons may refuse to answer a question if the answer -

- (a) would tend to incriminate him of an offence against a law of the Commonwealth or of a State or Territory; or
- (b) was irrelevant to the matter into which the Assembly was inquiring or into which the committee was authorized by the Assembly to inquire.

It is clear that this provision displaces the common law (see below) in respect of a witness who appears



in answer to a section 19 summons. The position might be summarised thus: The Act has created a privilege that does not exist at common law for a certain class of witness but not others. The basis of the distinction would seem arbitrary and illogical.

~~Let~~ ~~18~~

In four cases: Sorby v Commonwealth (1983) 152 CLR 281; Pyneboard v TPC (1983) 152 CLR 328; Controlled Consultants Pty Ltd v CSSR for Corporate Affairs (1984) 156 CLR 385; Corporate Affairs Commission v Yuill (1991) 172 CLR 319, the following issue was considered by the High Court of Australia.

The question was whether a statute had removed the common law privilege against self-incrimination that applied to a statutory (non-parliamentary) inquiry. The courts said that in deciding whether the common law privilege was excluded, one had to look at the language and purpose of the sections: Pyneboard at 341.

Using these cases, one could argue that the purpose of sections 21 and 22 is to take away the common law obligation to answer generally, not just for witnesses who are summoned.

My view is that this argument will fail as a matter of law. I consider sections 21 and 22 will be held to mean what they say, that is, that only a summoned witness has the statutory protection even though the distinction may be classed as arbitrary or illogical.

If errors are found in legislation, they must be corrected by Parliament. It is not the function of the courts to correct them: Bristol Guardians v Bristol Waterworks Co [1914] AC 379 at 388. Thus, while terms can be introduced into a statute to give effect to its clear intention by remedying mere defects of language and to rectify obvious misprints (R v Wilcock (1845) 7 QB 317) or misdescriptions (Oxford University (Chancellor, Masters and Scholars) Case (1613) 10 Co Rep 53b at 57b), no provision which is not in the statute can otherwise be implied to remedy an omission, even if it is evidently unintentional: Gladstone v Bower [1960] 2 QB 384 at 396.

Having concluded that, as a matter of law, voluntary witnesses enjoy no privilege against self-incrimination, it then becomes a policy decision for the Committee to decide whether, as a matter of practice, it would allow voluntary witnesses the privilege against self-incrimination.

Clearly, a refusal to allow the privilege will attract adverse comment. The question for the Committee is - In all the circumstances, does it think it a fair



thing to refuse the privilege? My opinion on this question is irrelevant to the Committee's decision.

#### Common law

It would seem that a person who appears voluntarily before the Committee would be subject to the more onerous common law provisions.

A witness must answer all questions relevant to the Committee's terms of inquiry or reference. The following extract from Erskine May, at 680, indicates the position:

"A witness is bound to answer all questions which the committee sees fit to put him, and cannot excuse himself, for example, on the ground that he may thereby subject himself to a civil action, or because he has taken an oath not to disclose the matter about which he is required to testify, or because the matter was a privileged communication to him, as where a solicitor is called upon to disclose the secrets of his client, or on the ground that he is advised by counsel that he cannot do so without incurring the risk of incriminating himself or exposing himself to a civil suit, or that it would prejudice him as defendant in litigation which is pending, some of which would be sufficient grounds of excuse in a court of law...

"However, a witness who is unwilling to answer a question, after stating why he desires to be excused from answering, may appeal to the Chair whether in the circumstances, or for the reason stated by him, he ought to answer. He may also request that the whole or part of his evidence should not be published...

"If a question should be objected to, or if any difference should arise in regard to the examination of a witness, that witness is directed by the chairman to withdraw, and the committee proceeds to consider the matter. When the committee has come to a decision the witness is again called in, and the examination proceeds."

If the Committee seeks to press the issue, the witness must answer or face the possibility of contempt proceedings: Commonwealth Report, para 78-80: see Appendix A.

#### Comment on Standing Order 1

In the absence of an order or practice of the Legislative Assembly, the Committee is required to follow the practice of the House of Representatives.



This Standing Order, of course, does not prevent the Assembly adopting an order or practice contrary to that of the House of Representatives.

3. Protection of Committee Members

There is no material difference in the protection afforded members of committees and witnesses before committees.

4. Deficiencies in Protection of Witnesses/Members

I am unable to identify any major deficiencies in the level of protection. However, it should be noted that Parliaments in Australia take the view that Parliament can waive the privilege that has attached to members or witnesses.

The Commonwealth Report, states, at paragraph 27:

"It has already been indicated that evidence given by a witness before a committee cannot be used against him in subsequent proceedings. Clearly his evidence could not, *without the consent of the House before whose committee it was given*, be used against him in subsequent civil or criminal proceedings to prove the commission of a crime or a civil wrong. There seems no reason to doubt that on the same basis it could not be used to prove an admission by him to challenge his credit or to rebut denials in cross-examination."

5. Questioning of Witnesses

It is clear that the Legislative Assembly has power, by reference to the powers of the House of Representatives (*Legislative Assembly (Powers and Privileges) Act*, section 4(1)) to protect witnesses appearing before the Assembly or a committee of the Assembly.

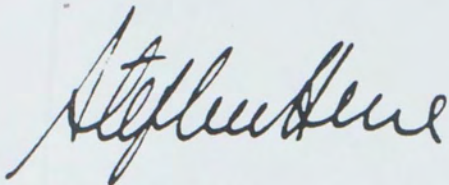
Any act which operates to the disadvantage of a witness who has so appeared, being action taken on account of evidence given by that witness, will be a breach of privilege. This could include violence or threats of violence or other punitive action or the bringing of legal proceedings.

The questioning of a witness by the media would not necessarily constitute such a breach unless it was of such a nature and degree to constitute a significant disadvantage to the witness. If the questioning took place within the precincts of the Assembly, then providing the questioner had legal authority to be present within those precincts, the position would be the same.

A person may be asked a question about his/her evidence to the Committee and may respond. Such questioning is permissible. The only limit is where the questioning constitutes a contempt of the Assembly under section 9 of the *Legislative Assembly (Powers and Privileges) Act*.



Yours sincerely



STEPHEN HERNE  
A/ASSISTANT SECRETARY  
EXECUTIVE AND POLICY



the Secretary for each country is invited to submit a report to the Secretary of the Committee on the progress of the work of the Committee in the year 1954.

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# TIO TERRITORY INSURANCE OFFICE

## MINUTE PAPER

### 2.3 Special Board Meeting held on 7th April 1988

104/5 The Board confirmed the minutes subject to changing the last paragraph to read as follows -

Accordingly, the Board had no option but to allow the programme to proceed but, because the Board's position had been compromised, it could not retrospectively endorse management's action.

104/6 These Minutes were then confirmed as amended.

### 2.4 102nd Board Meeting held on 25th/26th February 1988

104/7 The Board RESOLVED to include the following additional Minute, which had been omitted, for this meeting -

The Board RESOLVED that TIO would regard its loan to Hungerfords in the nature of subordinate loan capital until further notice. TIO will maintain an ongoing interest calculation in its books (currently 10% p.a.) accrued but not due item. TIO will not expect cash payments unless at some time in the future, depending upon the success of the company, TIO exercises its option to call up either the interest or the loan plus outstanding interest if it so desires. TIO also has the right to convert these amounts to equity capital.

### ITEM 3 ACTION LIST

104/8 - The Board noted the Action List and requested the following item be added -

N.T. House - Entry Design 101/30 June 1988

### 3(a)1 Local Investment Policy

104/9 The Board again considered the discussion paper distributed as Agenda Item No. 7.1 at the February 1988 Meeting. The following resolutions were then taken -

104/10 (a) Investment in this area would be limited to 7.5% of TIO's total investment portfolio.

104/11 (b) The maximum amount for any one investment be limited to \$1m with a proviso that this may be increased in special cases.



# **TIO** TERRITORY INSURANCE OFFICE

## MINUTE PAPER

- 104/12 (c) Involvement to be on the basis of a minority shareholder.
- 104/13 (d) Board representation: TIO would normally require representation on Boards on the basis of its share of equity in the company.
- 104/14 (e) Expected return: As a general target to be the bond rate plus 3% to be achieved in three years.
- 104/15 (f) Preferred industries: These would be N.T. industries with good prospects and which do not represent an unacceptable compounding of risk for the TIO in the event of a major cyclone or other disaster.
- 104/16 (g) Gearing Ratio: Should be in line with the industry standard after equity participation.
- 104/17 (h) Management: TIO must be satisfied that the management of the company is qualified, experienced and reputable and is generally competent to manage the business profitably and in compliance with the company's code.
- 104/18 (i) Business Plan and P. & L. Projections: TIO will require a detailed Business Plan and P. & L. Projections for at least a five year period. Both the Plan and Projections must be supportable by reference to past results of the applicant company, other companies or by market surveys, or statistical analysis of official or otherwise verifiable data.
- 104/19 (j) Past Results: Trading, P. & L. and Balance Sheet data for the last three years must be provided, preferably audited. An audit of the company's books may, in any case, be required.
- 104/20 (k) Company Accounts & Financial Controls: The audit will be used to assess the adequacy of the company's accounting system and its financial controls. Changes to these may be required as a condition for TIO equity.
- 104/21 (l) Labour & Other Resources: A satisfactory labour supply, both as to quantity and quality, and the availability of other necessary resources will need to be demonstrated.



# TIO TERRITORY INSURANCE OFFICE

## MINUTE PAPER

104/22 (m) Genuine N.T. Companies: Applicant companies must be able to show that they are genuine N.T. companies, registered in the N.T. and controlled in the N.T. Companies with operations interstate must show that these are controlled from the N.T. and not vice versa.

### ITEM 4 BOARD

Nil

### ITEM 5 PERFORMANCE REPORTS

#### 5.1 Overview - TIO Operations Summary March 1988

104/23 The Board noted this report and the Deputy General Manager's and General Manager's comments re profitability trends.

#### 5.2 Individual Classes/Budget/Previous Year

104/24 The Board noted this report.

#### 5.3 General Insurance Profitability Report

104/25 The Board noted this report together with the General Manager's comments regarding an emerging profit in Motor but potential downward vulnerability in Workers Compensation.

#### 5.4 Motor Class Performance Report

104/26 The Board noted the improved performance of this class of business and the continuing initiatives of management to further improve profitability.

104/27 With regard to the relatively high lapse rates, the Board asked if a schedule of characteristics of the types/categories of lapses could be conducted to see if a particular trend emerged.

104/28 The Board RESOLVED that management review Motor Vehicle premiums quarterly but that implementation of the quarterly increases be a decision of management in the future in light of market conditions and that the Board be informed of the actions taken from time to time.

104/29 The Board again stressed that the primary concern must be profitability.

#### 5.5 R/I Problem Schedule

104/30 Noted.







SUMMARY

PUBLIC

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- . DJFM will not survive, even in the short term, unless additional funding is provided.

- . Cash will be exhausted by early February.

- . Financial projections indicate that the business can be viable in the long term subject to certain short term risks.

- . The key risk areas are:

- . sales projection/mix not achieved
- . productivity problems result in gross profit margins below budget
- . recruitment plan not achieved (management problems not overcome)
- . key people resign
- . overhead blow out (unlikely)
- . timing - can efficiencies be achieved before the money runs out.
- . Debt forgiveness by DID/TIO could not be supported, there are no debt servicing costs (in the short term) on this debt.
- . The only reason why the Pastrokos family should forgive its loan to DJFM is to improve the quality of DJFM's balance sheet with a view to attracting additional private equity - an unlikely situation.
- . Request made of the TIO to commit now that it will convert \$2M of its convertible notes in 1992 is unreasonable.
- . The Pastrokos family must sell its property portfolio quickly to liquidate its debt (\$2M) to the ANZ - the family has been hedging on this.
- . A formal Board needs to be established.
- . The Pastrokos family will need to pass management authority to the General Manager (within strategies/parameters approved by the Board).
- . Funding request of \$1.5M, if agreed to, would need to be arranged on non-commercial terms:
  - . it would be unsecured
  - . no return at least until late 1992.

ACCOUNTS

COMMITTEE

DOCUMENTS



14  
3  
Because of the non-commercial nature of the proposed additional funding, it would seem inappropriate to have this advanced by the TIO (\$1.5M would represent approx. 1.5% of TIO's assets).

ACCOUNTS

Attraction of an additional equity partner in the short term would seem unlikely.

COMMITTEE

If it were agreed that the additional funding be provided, then the preferred method of doing so would be as a straight forward loan with a fourth change taken over the assets of DJFM (for appearances).

DOCUMENTS

Unfortunately time has not enabled more sophisticated funding techniques to be explored/discussed with the TIO.

Money alone will not correct the problems of DJFM - all it will do is provide some time for management and advisors to address the underlying problems.

With the losses historically running at the rate of \$200,000 pm, \$1.5M does not buy very much time, particularly when several people need to be recruited for key positions.



DARWIN JOINERY & FURNITURE MANUFACTURING P/L MAJOR

PUBLIC

STAKEHOLDERS AS AT 31.12.89

ACCOUNTS

COMMITTEE

DOCUMENTS

- Employees - 70+ people including 12 apprentices  
- holiday pay/L.S.L. approx. \$190,000  
(preferred creditors)
- Trade Creditors - \$495,000
- TIO - \$2.8M debt outstanding against specialised security (construction cost \$3.4) plus mortgage debt. Security value also limited by second charge security taken by ANZ.
- \$0.3M debt against third charge security with DID/ANZ.
- ANZ - \$2.0M debt to Pastrokos family against property portfolio with approximately M.V. of \$2.7M maximum (not family homes)
- \$0.5M debt to DJFM against second charge security after TIO
- \$650,000 debt to old Darwin Joinery/K P Builders (Security unknown)
- third charge security with TIO/DID covering overdraft excess.
- Esanda - leasing of \$1.1M against machinery and second charge over Pastrokos real estate portfolio.
- Pastrokos Family - \$2M debt to ANZ (of which \$1.5M on lent to DJFM)
- personal guarantees to ANZ and Esanda
- \$800,000 assets transferred from the old business to DJFM
- \$650,000 debt to ANZ via old Darwin Joinery/K P Builders
- D I D - \$200,000 debt to DJFM secured by third charge security with TIO/ANZ
- Other preferred creditors - Taxation Department  
\$130,000







DARWIN JOINERY & FURNITURE MANUFACTURING PTY LTD

PUBLIC

DARWIN JOINERY & FURNITURE MANUFACTURING UNIT TRUSTDRAFT ARRANGEMENTS AND CONDITIONS ACCOUNTS

## COMMITTEE

A. INVESTMENT

1. The Government to take such a financial interest (equity and/or debt) in the Company and or Trust as to be in a position to control the business as share/unit holders and through the Board.
2. The Pastrikos family to have first right of refusal to buy back the Government's interest in the business up until 30.6.92.
3. Should the Government choose to transfer any of its interest in the business to a third party prior to 30.6.92, it will not transfer effective control to the third party without the consent of the Pastrikos family interest.
4. After 30.6.92 the Government will be empowered to transfer its interest in the business, including control, to any party.
5. After 30.6.92, the Government is to receive a premium return on its investment in the business above that to be received by the Pastrikos family and any other investors until such time as the Government's interest is taken out in full by the Pastrikos family or a third party.



B. THE COMPANY - DJFM

1. Conditions precedent of the Government's investment will be that the Company provide documentation to the Government from the ANZ Bank and Esanda confirming:

. That any past events of default in respect of facilities provided by the ANZ and Esanda to the Company will be forgiven.

. That the ANZ will convert the Company's existing overdraft/loan facilities to a term facility of \$600,000 on an interest only basis for a period to 30.6.92 with subsequent extensions of terms to be subject to annual review.

. That the ANZ and Esanda will not take legal action against the Company to recover their facilities whilst they are conducted within arrangements.

. That the ANZ will not exercise any right of set off in respect to any credit funds held in any account in the name of the Company/Trust.

2. All documentation and legal requirements are to be in place to the satisfaction of the Government before any Government funds are made available to the Company.



75  
106  
PUBLIC

C. PASTRIKOS FAMILY

ACCOUNTS

1. Loans made by NJ Pastroikos and Sons P/L and Fresarn P/L to DJFM are to be forgiven before or at the same time that the Government makes its investment in the business.

COMMITTEE

2. The interest rate subsidy presently made available by Department of Industries and Development to NJ Pastroikos & Sons P/L through the ANZ is to cease within 90 days of the Government making its investment in the business.

DOCUMENTS

3. Any balance of funds held on deposit by the ANZ in respect of the interest rate subsidy may, at the Governments discretion be paid to DJFM as an interest rate subsidy in respect to the proposed term facility of \$600,000 with the ANZ.



C. PASTRIKOS FAMILY

## ACCOUNTS

## COMMITTEE

## DOCUMENTS

1. Loans made by NJ Pastrikos and Sons P/L and Fresarn P/L to DJFM are to be forgiven before or at the same time that the Government makes its investment in the business.
2. The interest rate subsidy presently made available by Department of Industries and Development to NJ Pastrikos & Sons P/L through the ANZ is to be repaid within 90 days of the Government making its investment in the business.
3. Any balance of funds held on deposit by the ANZ in respect of the interest rate subsidy may, at the Governments discretion be paid to DJFM as an interest rate subsidy in respect to the proposed term facility of \$600,000 with the ANZ.



D. BOARD OF DIRECTORS

PUBLIC

1. The Government to have the right to appoint a majority of Directors to sit on the Board of the Company and there would be no quorum without a majority of appointed Directors.

2. The General Manager is not to be a Director of the Company but is to attend Board meetings at the discretion of the Board.

3. Government nominated Directors to report on a basis to be determined, to the Minister for Industries and Development or its delegate.







DARWIN JOINERY & FURNITURE MANUFACTURING (DJFM)

PUBLIC

ACCOUNTS

COMMITTEE

DOCUMENTS

- . Company's original funding request for Government assistance of \$1.5M.
- . Company's financial projections were amended to allow take out of ANZ/Esanda resulting in total funding requirement of \$2M.
- . Following Cabinets approval of assistance up to \$2M (subject to acceptance of conditions by the Pastore family) the family was asked to confirm that the business could operate effectively with the approved level of funding.
- . As a result, revised projections were tendered by the company seeking funding of \$3.5M (+\$1.5M).
- . The Department of Industries and Development with assistance from Touche Ross has examined the latest projections and has confirmed the requirement for funding at \$3.5M.
- . Increase in funding can be reconciled as follows:
 

|  |        |
|--|--------|
| . reduced sales projections/more conservative timing of debtor collections (period to 30.6.93) | \$1.8M |
| . increase in overheads over the same period   | \$0.1M |
|  | \$1.9M |
| . reduction in repayments on Government funding  | \$0.4M |
|  | \$1.5M |
- . Sales in five months to 30.6.90 have been reduced by \$0.7M to \$2.3M.
- . Debtor collection policy was to receive cash in the month sales occurred.
- . New debtor collection and creditor payment policies are more conservative and should be achieved or bettered.
- . Funding is scheduled to be provided progressively up to November 1990 (\$2.85M by June 1990) and because of conservative cash flow assumptions may not need to be fully drawn.



- PUBLIC  
ACCOUNTS  
COMMITTEE  
DOCUMENTS
- . Cash flow projection indicates a gradual repayment of Government assistance down to \$1.8M by 30.6.93.
  - . The business will require the first drawing against Government assistance (if approved) of \$100,000 by 14 February 1990, which would need to be made available initially on an unsecured basis.
  - . Commercial solicitors are preparing documentation with target date for completion of 15 February 1990.
  - . Critical date for completion is prior to 23.2.90 - expiry date of Tax Commissioner's demand for payment of group tax.



DARWIN JOINERY & FURNITURE MANUFACTURING (Pty) Ltd

Company's original funding request for Government assistance of \$1.5M.

Company's financial projections were amended to allow take out of ANC/Esanda resulting in total requirement of \$2M.

Following Cabinet's approval of assistance up to \$2M (subject to acceptance of conditions by family) the family was asked to confirm business could operate effectively with the approved level of funding.

As a result, revised projections were tendered by the company seeking funding of \$3.5M (-\$1.5M).

The Department of Industries and Development with assistance from Touche Ross has examined the latest projections and has confirmed the requirement for funding at \$3.5M.

Increase in funding can be reconciled as follows:

|  |              |
|--|--------------|
| reduced sales projections/more conservative timing of debtor collections (period to 30.6.93) | \$1.5M       |
| increase in overheads over the same period   | \$0.1M       |
|  | <hr/> \$1.9M |
| reduction in repayments on Government funding  | \$0.4M       |
|  | <hr/>        |
| increased working capital requirement  | \$1.5M       |
|  | <hr/>        |

Sales in five months to 30.6.90 have been reduced by \$0.7M to \$2.3M.

Debtor collection policy was to receive cash in the month sales occurred.

New debtor collection and creditor payment policies are more conservative and should be achieved or bettered.

Funding is scheduled to be provided progressively up to November 1990 (\$2.85M by June 1990) and because of conservative cash flow assumptions may not need to be fully drawn.



- Cash flow projection indicates a gradual ~~reduction~~ of Government assistance down to \$1.3M by 30.6.93.
- The business will require the first ~~drawing~~ against Government assistance (if approved) of \$100,000 by February 1990, which would need to be made available initially on an unsecured basis.
- Commercial solicitors are preparing ~~documentation~~ with target date for completion of 15 February 1990.
- Critical date for completion is prior to 23.2.90 - expiry date of Tax Commissioner's demand for payment of group tax.



## Appendix 5.5

## DISBURSMENT AND DRAWDOWN OF GOVERNMENT FUNDING

## INITIAL INJECTION \$2,000,000

|                             | \$,000's     |
|-----------------------------|--------------|
| ANZ Bank                    | 108          |
| Esanda                      | 810          |
| Australian Taxation Office  | 130          |
| Employees                   | 90           |
| Supplier (major)            | 40           |
| Unsecured Trade Creditors   | 622          |
| Unexpired Performance Bonds | 150          |
| Initial Working Capital     | <u>50</u>    |
|                             | <u>2,000</u> |

## WORKING CAPITAL INJECTION DRAWDOWN \$1,500.000

|                  |              |
|------------------|--------------|
| 2 August 1990    | 100          |
| 23 August 1990   | 175          |
| 12 November 1990 | 225          |
| 20 December 1990 | <u>1,000</u> |
|                  | <u>1,500</u> |



Appendix A

OF THE

REPORT OF THE

COMMISSIONER OF THE

INITIAL INJECTION

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WORKING CAPITAL INJECTION

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~~Isanda Finance has obtained personal guarantees and registered mortgages over the land & buildings owned by the Pastrikos Family in respect of these leased assets.~~

#### 6. ADDITIONAL FUNDING REQUIRED

The budgeted cash flow for the continuation of the proposed joinery & furniture manufacturing (as detailed in section 3.2) estimates additional funding of \$700,000 is required for DUTM to satisfy its obligations, if the trading expectations are achieved.

These funds are required immediately in order that credit facilities can be re-established with the major suppliers and for the bank account to operate within its approved limit of \$500,000.

We suggest that these funds be set aside in a separate account under the control of the contributing financiers which can then be drawn down as required. The cost of these funds has been included in the budgets at a rate of 12% per annum. Any surplus funds (funds in excess of what is expected for the current month's requirements) would be paid back into that account. Details of the funds required for each month would need to be presented in order that the drawn down can be approved.

These advances would be required to be secured by way of a floating charge over all of DUTM assets, in order that a priority over other unsecured non preferential creditors would exist.

DUTM will require assistance from a professional adviser to monitor the performance of management and the use of the funds for the sole benefit of DUTM to trade out of its present situation.

~~If at any stage the objectives of the further funding of DUTM were not being achieved, the financial support could be terminated.~~

#### 7. SUMMARY & RECOMMENDATIONS

- (a) The Pastrikos Family have successfully operated a contract joinery business during the six years prior to DUTM acquiring the business.
- (b) The business has significantly changed by the acquisition of new premises and sophisticated manufacturing plant, from being a jobbing contract joinery to a joinery & furniture manufacturer capable of high volume production.
- (c) The present management skills are either not adequate or directed in the right areas to meet critical needs in the following areas:

- \* Production: The implementation of the CIM system into the production facilities to achieve maximum efficiencies/economies of scale.



- \* Financial: the preparation of timely financial management information to monitor the performance of the business and the effectiveness of managements decisions.
- \* Marketing: The business is dependent on large one off contracts to achieve its level of production volume required. Other markets for its product need to be developed to ensure maximum utilisation of available capacity.
- \* Estimation and Performance Control: Mr John Pasterikos has been busy dealing with day to day crises caused by DJFM liquidity problems rather than concentrating on estimating and ensuring a quality performance.
- \* General: The DJFM liquidity and production implementation problems have caused a management by crises style to develop. This style must change towards a more objective, goal achievement with defined action and responsibilities approach which can be measured by the financial performance of the business.

(d) The volume of contract joinery available in the next 18 months is likely to be sufficient for the level of sales required to break even.

DJFM maintains an advantage in the Northern Territory as it is the largest contract joinery and there is a preference for Northern Territory Government projects to be performed by Northern Territory contractors.

(e) The gross profit of the business is dependent upon the production efficiencies expected by the implementation of the CIM system and the maximisation of the use of the manufacturing facilities which are available. DJFM presently does not have sufficiently skilled employees to successfully implement the CIM system.

Any additional requirement of sub-contractors to complete projects will have a direct effect on the profitability of the business.

(f) DJFM is unlikely to realise the potential benefits from its manufacturing facility to produce furniture on a production process while the CIM system is not operating.

(g) DJFM will have significant surplus manufacturing capabilities once the CIM system is operating at its designed efficiency levels and accordingly effective marketing strategies will be required.

(h) The trading, profit & loss budget for the next 10 months to 30 June 1990 show that DJFM is capable of operating at a marginal profit so long as its gross profit margins can be achieved. This performance



is contingent on an improvement of the existing management ability to properly manage their business and complete the projects on their due times and with minimal resort to the use of sub-contractors to achieve this.

- (i) DUTM will require additional funding for working capital to survive in the short term and to re-establish credit facilities with its key suppliers. It is estimated the amount required will be at least \$700,000. Further funding will be required if the profit anticipated or the realisation from debtors/sales are not achieved.
- (j) Continued support is essential from the existing financiers, TIO, ANI Banking Group Ltd and Esanda Finance in order that the business can survive in the short term.

The business is too highly geared and is thus now totally dependent upon extended support from the TIO, ANI Banking Group and Esanda Finance.

- (k) DUTM must immediately consider its options for the introduction of Equity or Long Term finance in order to achieve the long term survival of the business. If DUTM experiences continued trading losses, additional funds will be required in order for the business to continue.
- (l) Due to the lack of proper financial information the management has not anticipated the additional funding it now urgently requires for working capital as a consequence of trading losses during the period to 31 August 1989.
- (m) The security available to the Secured Creditors will improve as the business continues to operate successfully.

We recommend the following matters be considered and the appropriate course of action be implemented -

- \* It is essential for the CIM system to become integrated into the manufacturing processes and the appropriate training given to change existing work habits in order that production efficiencies and profit margins can be achieved at the earliest opportunity.
- \* It is imperative that a suitable financial management information system be developed to enable preparation of regular timely financial reports in order that the business performance can be assessed on an informed basis and the effect of managements decisions can be measured.
- \* It is critical that the management skills be improved and supplemented to ensure the business is being managed properly in all respects. In the longer term it is necessary for the management to develop to a sufficient level whereby management may not be totally dependent on outside experts.



- \* Immediate funding in the order of \$700,000 is required in order to meet commitments to overdue creditors so that materials can again be purchased on a credit basis and future obligations can be met as and when they become due.
- \* A longer term business plan (3-5 years) should be professionally prepared in order that strategic issues are addressed to assure the business survival.
- \* Additional funds be introduced by way of equity rather than borrowing to enable the continued survival of the business during the term of the development of the production facilities to achieve its designed efficiency levels.
- \* Additional markets need to be established to ensure the achievement of production volumes necessary to maximise efficiency and profitability.

This report has been discussed with the DJFM management and consideration has been given to their comments prior to the completion of this report.





## MINISTER FOR INDUSTRIES AND DEVELOPMENT

NT HOUSE, MITCHELL STREET  
DARWIN NT 0800  
TELEPHONE (089) 49 5311

G P O BOX 3146 DARWIN NT 0801  
TELEX AAS5253  
FACSIMILE (089) 41 1524

Mr J H B Bell MBE  
Chairman of Directors  
Dalway Pty Ltd  
PO Box 38371  
WINNELLIE NT 0821

Dear Mr Bell

Your letter dated 12 December 1991, addressed to the Secretary, Department of Industries and Development, refers.

The contents of your letter, and the facts relating to the Company's present situation, and the Directors responsibilities and potential liabilities in relation thereto, have been considered.

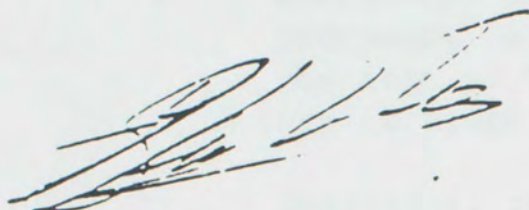
I advise you that the Northern Territory Government agrees to underwrite the operating expenses of Dalway Pty Ltd whilst ever the Government is the sole owner of the Company, provided such expenses are incurred in the normal course of prudent business. That is to say, that should Dalway Pty Ltd, or its assets, be sold at some future time, this undertaking would not extend to a subsequent owner.

It is also advised that our intention is to continue with the proposal to dispose of the business, in an orderly fashion, at the earliest opportunity.



I trust that the Directors shall consider this undertaking as sufficient to enable them to continue to execute their duties in relation to the ongoing operations of the Company.

Yours sincerely



STEVE HATTON



# REPORT

&

## RECOMMENDATIONS

### ON THE SALE OF

### DALWAY PTY. LTD.

May 1992



## CONTENTS

### Executive Summary

1. Introduction
2. Background
3. Offers Received
4. Liquidation

Attachments 1 - 7



## Executive Summary

Desliens Business Consultants and ANZ Capel Court Corporate Services was appointed in late November, 1992 to prepare and execute a plan of action for the disposal of Dalway Pty. Ltd. achieving, et al:

to obtain the best possible selling price, with maximum benefit to the Northern Territory community.

to seek to ensure that the business can remain based in Darwin as a viable business.

After advertising locally, nationally and internationally throughout February and March the consultants received indications from 15 prospective parties of their interest in purchasing Dalway Pty. Ltd. and/or its assets. Of these, three parties eventually confirmed their intentions of submitting firm proposals. One subsequently withdrew. Final offers were received from Territory Cabinets Pty. Ltd. and a consortium of local businessmen including the Venturin and Sitzler Groups together with a minority position held by Mr. John Pastrikos.

Extensive negotiations and discussions were required to substantiate the two offers to establish the basis of their financial offer including their ability to acquire funding and operate the business in a viable manner.

The alternative of liquidation was also evaluated.

The final position is set out below.

|                     | The Consortium | Estimated<br>Liquidation | Territory<br>Cabinets |
|---------------------|----------------|--------------------------|-----------------------|
| Land & Buildings    |                | \$1,100,000              | \$1,250,000           |
| Plant & Equipment   |                | \$ 200,000               | \$ 310,000            |
| Debtors             |                | \$ 135,000               | \$ 270,000            |
| Stock               |                | \$ 143,500               | \$ 287,000            |
| Work in Progress    |                | <u>\$ 17,600</u>         | <u>\$ 176,000</u>     |
|                     | \$1,750,000    | \$1,596,100              | \$2,293,000           |
| Less:               |                |                          |                       |
| Employee Claims     |                | \$ 69,000                | \$ 69,000             |
| Unsecured Creditors | \$ 372,000     | \$ 372,000               | \$ 372,000            |
| Nett Assets         | \$1,378,000    | \$1,155,100              | \$1,852,000           |
| Less:               |                |                          |                       |



|  |             |             |              |
|--|-------------|-------------|--------------|
| Future Losses on committed forward contracts |             |             | \$ 350,000   |
| General Contracts                            |             |             | \$ 400,000   |
| Parliament House                             |             |             | \$ 1,102,000 |
|  | \$1,378,000 | \$1,155,100 |              |

In addition the offer from Territory Cabinets contained extensive and onerous conditions of sale whereas those from The Consortium are commercial in nature.

### Recommendations

The recommendation from Desliens Business Consultants and ANZ Capel Court Corporate Services is to accept the offer from The Consortium. This recommendation is based upon the following assessments:

1. The offer from The Consortium, after allowance for the payment of external and trade creditors is \$276,000 in excess of that provided by Territory Cabinets Pty. Ltd. and \$273,000 in excess of estimated liquidation returns;
2. the indemnity and warranty requirements requested in Territory Cabinets' Conditions of Sale were particularly onerous when compared to those required in the offer from The Consortium;
3. the structure of the offer from The Consortium was clean and left no requirement to settle substantial issues relating to the value of stock, work in progress etc. which had the potential for extensive on-going negotiation and the likelihood of a reduced dollar amount at settlement;
4. the majority shareholders in The Consortium are of substance and held in high regard in the financial community;
5. The Consortium shareholders have the business capacity to ensure the on-going financial stability of the company.
6. liquidation would result in the loss of employee positions and a potentially lengthy period for the recovery of funds.



## 1. Introduction

Desliens Business Consultants and ANZ Capel Court Corporate Services is pleased to submit its report and recommendations in respect of the sales of Dalway Pty. Ltd. (Dalway).

In so doing the consultants wish to highlight certain aspects which have arisen since the awarding of our mandate which have created obstacles in the bringing together of a suitable purchaser through the protracted negotiation stages. Specifically these relate to undertakings apparently given to Mr. John Pastrokos to hold a final right of refusal to match or better the highest offer and which were not made known until late in the proceedings of negotiations and the open and damaging political discussions surrounding Dalway and its financial position. It should also be said that the financial position at the time of being awarded the consultancy was in fact far worse than we had expected and did not improve despite the consultants bringing a number of issues to the attention of our client.

Notwithstanding these complications we have been able to table for your consideration an offer to purchase which is acceptable given the problems which have arisen and provides a return to the vendors which is the best that can be achieved given the circumstances of the company and the difficult economic times at hand.



## 2. Background

Desliens Business Consultants and ANZ Capel Court Corporate Services were appointed by the Department of Industries and Development (DID) on 21st November, 1991 (with formal terms and conditions provided 2nd December, 1991) to prepare and execute a plan for the disposal of Dalway Pty. Ltd.

On-going reports were submitted to DID as follows:

- Preliminary Report and action plan - 6th December, 1991
- Projected Monthly Cash flow and funding requirements - 3rd February, 1992
- Information Memorandum and Progress Report - 20th February, 1992
- Progress Report on Sale - 30th March, 1992

Advertisements for the sale of Dalway commenced in February 1992 and were placed in local, national and international (Hong Kong, Singapore and Malaysia) newspapers. The possibility of sale into the Asian market was further explored through the distribution of Synopses and Information Memoranda to ANZ Group offices in the Tokyo, Hong Kong, Singapore, Taipei, Kuala Lumpur and Jakarta with subsequent follow up communication to provide further background and emphasis on the attractiveness of the acquisition opportunity.

Associates of Desliens Business Consultants were also canvassed with Synopses and/or Information Memoranda being distributed to over 80 furniture manufacturers and timber businesses throughout Malaysia and to a manufacturers association in Hong Kong.

Through the above process some 15 expressions of interest in various forms were received and this resulted in several requests for the Information Memorandum and Business Synopsis. (refer our Progress Report dated 30th March, 1992).

Following further discussions with the above parties, two initial potential purchasers came forward expressing definite interest in acquiring Dalway, namely the Pastrikos Family and MODE Pty. Ltd.

The Pastrikos Family lodged a formal Expression of Interest on 21st April, 1992. At a meeting on the 6th May, 1992 Mr. John Pastrikos was advised that this would not be acceptable in terms of price and structure and was requested to bring forward a firm proposal, including projected cash flows and balance sheets and formal evidence of the availability of funding.



On 8th May, 1992 we were contacted by Territory Cabinets Pty. Ltd. requesting copies of the Information Memorandum. They subsequently advised that they would be submitting a formal offer for the purchase of Dalway.

In order to expedite the sale of the business, MODE Pty. Ltd., Mr. Pastrokos and Territory Cabinets Pty. Ltd. were requested to submit offers by the close of business on 15th May, 1992. On the day MODE advised that they had decided not to proceed.



### 3. Offers Received

Both the Pastrokos Family and Territory Cabinets submitted offers which were discussed at length. Additional detail and consideration was requested of both parties to be supplied by the close of business on 21st May, 1992.

These offers may be summarised as follows:

#### The Consortium

The Pastrokos Family offered an amount of \$1,750,000 for Dalway on a "walk-in, walk-out" basis for the company and its present assets (Attachment 1). Conditions of the offer specify:

- 3.1 the liabilities of DID, the Territory Insurance Office and all other external and trade creditors will become the responsibility of the Northern Territory Government (NTG);
- 3.2 the NTG is to indemnify Dalway in respect of contingent liabilities - specifically covering any action brought by a former General Manager, Mr. Dennis Edwards and any future claims which may arise in relation to work performance completed by the company prior to acquisition;
- 3.3 funding of \$1,250,000 to be provided by the National Australia Bank (to a maximum of 50% of valuation of land and buildings) and subject to certain terms and conditions, the majority of which are deemed standard for a commercial loan of this nature.

The balance of funding, viz. \$500,000 is to be provided by shareholders loans.

The nett bottom line is an amount of \$1,377, 906, viz. acquisition price of \$1,750,000 less external creditors of \$372,094 (as at 15th May, 1992).

In the opinion of the consultants there were a number of weaknesses to this offer. :

- a valuation of the land and buildings was unlikely to reach the specified \$2,500,000 necessary to provide bank funding of \$1,250,000;
- no evidence was provided of the existence or availability of share holders to provide the necessary shareholders funding;
- projected cash flows and a projected balance sheet were not available until later in the week.



As a result of the discussions in which these issues and other matters of clarification were sought, a letter of confirmation was sent to the Pastrokos Family (Attachment 2). A response was requested by 4.30 pm on Thursday 21st, 1992.

On that date a letter was received (Attachment 3) advising that the necessary funding of \$1.75 million to purchase would be supplied by a group of Territory businessmen (The Consortium) consisting of Mr. Leo Venturin (representing the Venturin Group), Mr. Michael Sitzler (representing Sitzler Bros. Pty. Ltd.), Mr. SJ (Steve) Margetic (representing Sitzler Bros. (Darwin) Pty. Ltd.) and Mr. John Pastrokos (representing the Pastrokos Family).

This was confirmed by their letter of 22nd May, 1992, (Attachment 4) enclosing details of the make-up of this funding, budget profit and loss and cash flows and other details. The profit projections show a small operating profit at the end of the first year based on debt funding. However, we are informed that it is likely that the purchase will be totally equity funded.

#### Territory Cabinets Pty. Ltd.

An offer was received to acquire the business of Dalway on a "walk-in, walk-out" basis which valued the various assets of the company at \$1,891,000. Against this amount the proponents provided for deductions (\$478,000) to cover unsecured creditors and employee claims. A further deduction (\$750,000) was made to cover their assessment of forward losses on contracts in hand. Essential elements of the proposal are given in Attachment 5. including an extensive list of conditions of sale to which the offer was subject.

The nett offer was \$663,000 .

The consultants reviewed the proposal and after extensive investigation and enquires submitted an evaluation of the Territory Cabinets proposal (Attachment 6.). Territory Cabinets were then advised that their final offer should be in place no later than 21st May, 1992 as a result off which a proposal was received which, on the surface, appeared to improve the original offer (Attachment 7). A comparison of the Territory Cabinets offers is as follows:

|                   | Original Offer | Revised Offer |
|-------------------|----------------|---------------|
| Land & Buildings  | \$1,250,000    | \$1,250,000   |
| Plant & Equipment | \$ 310,000     | \$ 310,000    |
| Debtors           | \$ 211,000     | \$ 270,000    |
| Stock             | \$ 100,000     | \$ 287,000    |
| Work in Progress  | \$ 20,000      | \$ 176,000    |
|                   | \$1,891,000    | \$2,293,000   |

Less:



|  |             |              |
|--|-------------|--------------|
| Employee Claims                              | \$ 70,000   | \$ 69,000    |
| Unsecured Creditors                          | \$ 408,000  | \$ 372,000   |
| Nett Assets                                  | \$1,413,000 | \$1,852,000  |
| Less:  |             |              |
| Future Losses on committed forward contracts |             |              |
| General Contracts                            | \$ 350,000  | \$ 350,000   |
| Parliament House                             | \$ 400,000  | \$ 400,000   |
|  | \$ 663,000  | \$ 1,102,000 |

The revised offer contained a number of qualifications in respect of Debtors, Work in Progress and Stock which in the opinion of the consultants, would result in the Government recovering an amount (potentially) substantially less than that offered and made the improvement more apparent than real. It was also still subject to the extensive list of conditions of sale.



#### 4. Liquidation

The possibility of a liquidation of Dalway and its assets has been considered as an alternative to the above offers.

Having regard to the current depressed economic situation and more particularly the state of the commercial property market and increased sales activity anticipated through general Bank foreclosures, consideration was given to likely realisable values.

Our estimates of amounts receivable are:

|  |                  |
|--|------------------|
| Land & Buildings                               | \$1,100,000      |
| Plant & Equipment                              | \$ 200,000       |
| Debtors (recovered at 50c in the dollar)       | \$ 135,000       |
| Stock (realised at 50c in the dollar)          | \$ 143,500       |
| Work in Progress (valued at 10c in the dollar) | <u>\$ 17,600</u> |
|  | \$1,596,100      |
| Less:  |                  |
| Employee Claims                                | \$ 69,000        |
| Unsecured Creditors                            | \$ 372,000       |
| Nett Assets                                    | \$1,155,100      |

Additional costs would be required in the form of appointment of Receivers, real estate agents and auction fees, conservatively as \$50,000.

Clearly the returns associated with this course of action, the additional time for recovery, coupled with loss of employee positions and other issues do not make liquidation an appropriate option.



|                   |            |            |
|-------------------|------------|------------|
| Estimated Costs   | \$ 600,000 | \$ 600,000 |
| Estimated Credits | \$ 600,000 | \$ 600,000 |

The present value of the property is \$1,000,000 and its value has been estimated at \$1,000,000.

Being added to the current depreciation expense of \$1,000,000, the total depreciation expense is \$1,000,000.

The amount of amounts receivable are:

|                     |            |
|---------------------|------------|
| Receivables         | \$ 100,000 |
| Accounts receivable | \$ 100,000 |
| Notes receivable    | \$ 100,000 |
| Other receivables   | \$ 100,000 |
| Total               | \$ 400,000 |

|                   |              |
|-------------------|--------------|
| Estimated Costs   | \$ 600,000   |
| Estimated Credits | \$ 600,000   |
| Total             | \$ 1,200,000 |

Additional costs would be required in the form of payment of \$1,000,000.

Clearly the amount associated with the purchase of the property is \$1,000,000.



## ATTACHMENT 1

### Initial Offer - Pastrokos Family



The Pastrokos Family  
PO Box 37444  
Winnellie NT 0821  
Phone 089 470994  
Fax 089 470205

15 May 1992

Desliens  
Business Consultants  
GPO Box 2455  
DARWIN NT 0801

Dear Sirs

OFFER FOR DALWAY PTY LTD

Further to our Expression of Interest lodged with your office at 10.00am on 21 April 1992 and on the basis that options one and two as set out in paragraph 2.2 of that offer are not acceptable to your office we now submit the following formal offer.

The Pastrokos Family will offer an amount of \$1,750,000 for Dalway Pty Ltd, being a one off payment on a walk in walk out basis for the company with its present assets as at this date.. The liability of the Department of Industries and Development, Territory Insurance Office and all other external and trade creditors will become the responsibility of the Northern Territory Government. The Government on sale would also indemnify Dalway Pty Ltd in respect of contingent liabilities. This offer is also subject to the critical factors as set out in paragraph 2.1 of our original offer handed to you on 21 April 1992.

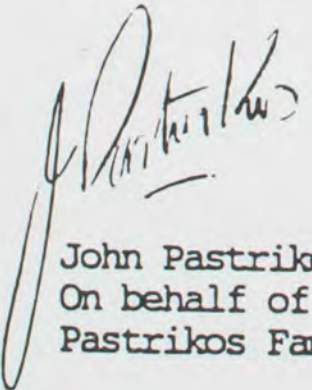
A letter from the National Australia Bank dated 15 May 1992 is attached showing approval of funding of \$1,250,000. The balance of funds, namely \$500,000, will be raised by way of share capital.

The National Australia Bank has fully analysed the cash flows and other financial information pertaining to the business supplied by the Pastrokos Family and have satisfied themselves as to the viability of the business prior to approval of the loan funds.

We also refer to the letter sent to your office by Waters James McCormack dated 14 May 1992 and reiterate the request contained therein, that if any offers are submitted at or above the level of our offer of \$1,750,000, that John Pastrokos be given full details of those offers so that he may submit a revised proposal by 29 May 1992.

Should you require any further information please do not hesitate to contact Mr John Pastrokos on 470994. Settlement could be speedily achieved.

Yours faithfully



John Pastrokos  
On behalf of the  
Pastrokos Family



# National Australia Bank

National Australia  
Bank Limited

A.C.N. 004 044 937

82 Mitchell Street  
(PO Box 4321)  
DARWIN NT 0801

Our ref: PO:MDH

PHONE: (089) 46 7511

15th May 1992

Mr John Pastrokos  
PO BOX 37444  
WINNELLIE NT 0821

Dear Tony

RE: INDICATIVE LETTER OF OFFER

We refer to our recent discussions and are pleased to advise the Bank's willingness to approve finance for the acquisition of all the shares in Dalway Pty Ltd subject to the following terms and conditions:

|                   |  |
|-------------------|--|
| BORROWER          | : PASTRIKOS GROUP  |
| FACILITY          | : Fully Drawn Advance  |
| AMOUNT            | : Up to \$1,250,000.00 (One Million, Two Hundred and Fifty Thousand Dollars)   |
| TERM              | : Initially 12 Months Interest Only, then amortising over 5 Years.   |
| APPLICATION FEE   | : 1% (\$17,500.00)   |
| INTEREST RATE     | : The Bank's Base Rate, currently 12% pa (variable) for the first 12 months, then plus a margin of 1.5% pa thereafter. (Subject to confirmation).  |
| LINE FEE          | : 0.4% pa charged half yearly in arrears.  |
| STAMP DUTY/LEGALS | : All Stamp Duty/Legal Costs will be for the account of the borrower.  |
| SECURITY          | : First Registered Mortgage Debenture over the assets of Dalway Pty Ltd.<br>Guarantee and Indemnity for \$1,250,000 from Dalway Pty Ltd in favour of the borrower.<br>First Registered Mortgage over the Coonawarra Road property.<br>Guarantee and Indemnity for \$1,250,000 from Shareholders/Directors. |

.../2



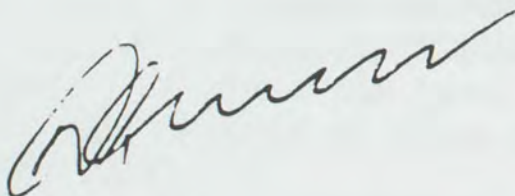
Approval of the proposed facility is further subject to the following terms/conditions/requirements:

- Shareholders injecting \$500,000.00 by way of paid up capital. Shareholding structure to be acceptable to the Bank
- Fresh Valuation at the borrower's expense to be addressed to the Bank for Mortgagee purposes. Valuer is to be acceptable to the Bank and Valuation should show a value of not less than \$2,500,000 for land and buildings only.
- Provision of quarterly trading results.
- Undertaking to sell other assets if additional funds are required.
- Provision of copy of executed purchase agreement with terms and conditions acceptable to the Bank. In particular all debts and creditors to be taken out prior to settlement.
- Provision of subsequent mortgages on properties owned by the Pastrokos family.
- Parliament House contract in favour of Dalway to be in place prior to purchase.

Should you wish to proceed on the basis outlined above, please contact the Bank at your earliest opportunity.

On advice that your offer to purchase is accepted by the NT Government, we would then proceed to formalise an application for finance.

Yours faithfully



PETER OWEN  
SENIOR COMMERCIAL MANAGER



ATTACHMENT 2

Letter of Confirmation

Mr. John Patterson  
P.O. Box 17444  
Winnipeg, N.T. 0621

Dear Sir,

CONFIRMATION OF DISCUSSION

We refer to our letter of 15th May 1992 and your letter of 17th May 1992 in relation to your offer of 15th May 1992 for the purchase of the shares of the company. We are pleased to hear that you are in receipt of our letter of 15th May 1992.

1. Proposed cash flow and balance sheet will be provided by 15th May 1992.
2. The names of shareholders and confirmation of their shares will be provided by 15th May 1992.
3. A formal valuation is being undertaken by the company's valuer. You will ensure that, if the valuation is completed by 15th May 1992, a letter from the valuer stating the value of the shares will be provided to the company by 15th May 1992.
4. If there is any gap between the value of the shares and the cash available, any shortfall in debt funding can be met by the company's bank facilities.
5. Working capital will be provided by the company's bank facilities. If there is any shortfall in working capital, the company's bank facilities will be used to bring in extra funding from its bank facilities.
6. The offer for Delivery Pty Ltd, includes the company's assets, liabilities, employees, debtors, WIP, stock, plant & equipment, and all other assets and liabilities. It specifically excludes the company's bank facilities and external and trade credits.
7. Information is sought from the Government to ensure that no legal or other issues might arise in relation to work performed by the company in the past. A further information is sought from the Government to ensure that the company's General Manager, Mr. David Edgar, is not a disqualified person. If the company is disqualified, the offer is subject to the company's bank facilities and your Expression of Interest of 15th May 1992.







20 May, 1992  
Ref: DES/051/92

Mr. John Pastrokos  
P.O. Box 37444  
Winnellie N.T. 0821

Dear Sir,

### CONFIRMATION OF DISCUSSIONS

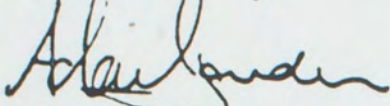
We refer to and wish to confirm our understanding of our discussions of this morning in relation to your offer of 15th May, 1992 for Dalway Pty. Ltd. and the information sought in our letter of 18 th May, 1992 as follows:

1. Projected cash flows and balance sheets will be available by midday, Friday 22nd May, 1992;
2. The names of shareholders and confirmation of their ability and willingness in this capacity available by midday, Friday 22nd May, 1992;
3. A formal valuation to meet the requirements of your bankers is being prepared and you will ensure that, if the complete valuation documentation is not available by Friday, a letter from the valuer stating his valuation will be available. The valuer has been selected from the bank's list of approved valuers;
4. If there is any gap between the valuation and that required by your bankers then any shortfall in debt funding can and will be made up by your shareholders;
5. Working capital will mostly come from within the assets of the business. However if there is any shortfall in working capital the Pastrokos family has the ability to bring in extra funding from its shareholders;
6. The offer for Dalway Pty. Ltd. includes the following assets; employee entitlements, debtors, WIP, stock, plant & equipment, land and buildings, and leases. It specifically excludes the Northern Territory Government funds, TIO loan and external and trade creditors;
7. Indemnification is sought from the Government in respect to any future claims that might arise in relation to work performance completed by the company prior to acquisition. A further indemnification is sought covering the action of a former General Manager, Mr. Dennis Edwards against the company. By way of clarification the offer is subject to specifically paragraph two of Section 2.1 of your Expression of Interest of 21 April, 1992.



8. If the Pastrikos offer is accepted a Heads of Agreement will be executed within seven days and deposit money equal to 10% of the purchase price paid;
9. Settlement by 20th June, 1992 is acceptable to you.

Yours Faithfully,



Adam Gordon  
Principal



ATTACHMENT 3

Advice of The Consortium

21 May 1972

Charles  
Business Consultants  
200 West 74th  
New York, NY 10023

Dear Sir:

RE: YOUR DRAFT OF 120

Under to our letter of 15 May 1972 we advise that the amount of \$10,000.00  
to purchase will be equalled by a group of shareholders representing the following:

Mr. Leo Vitarin (representing the Vitarin Group)

Mr. Michael Stulman (representing Stulman Group, Inc.)

Mr. H. (Hans) Margolis (representing Margolis Group, Inc., and  
Mr. John Pasternak (representing the Pasternak Group)

Should you require any further information, please contact any of the  
above-named parties.

Yours faithfully

Leo Vitarin

Michael Stulman

Hans Margolis

John Pasternak







21 May 1992

Desliens  
Business Consultants  
GPO Box 2455  
DARWIN NT 0801

Dear Sir

OFFER FOR DALWAY PTY LTD

Further to our letter of 15 May 1992 we advise that the funds of \$1.75 million to purchase will be supplied by a group of Territory businessmen consisting of the following:

Mr Leo Venturin (representing the Venturin Group)

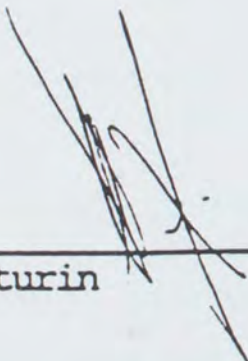
Mr Michael Sitzler (representing Sitzler Bros Pty Ltd)

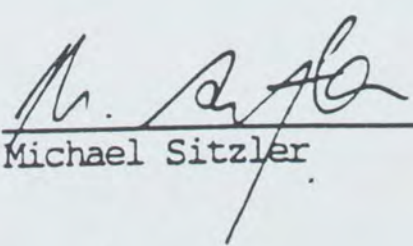
Mr SJ (Steve) Margetic (representing Sitzler Bros (Darwin) Pty Ltd), and

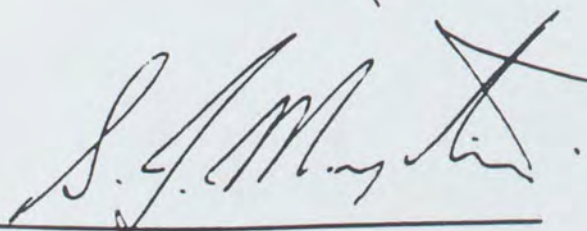
Mr John Pastrokos (representing the Pastrokos Family).

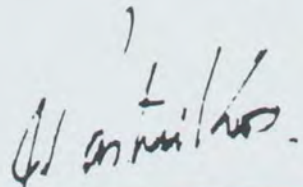
Should you require any further information please contact any of the abovementioned parties.

Yours faithfully

  
\_\_\_\_\_  
Leo Venturin

  
\_\_\_\_\_  
Michael Sitzler

  
\_\_\_\_\_  
Steve Margetic

  
\_\_\_\_\_  
John Pastrokos







# Confirmation of Consortium Offer

Dear Sirs,

Reference is made to your letter dated 27 May 1992 and advice as follows:

Our group will acquire the total share capital of [Company Name] and will continue to trade through that entity.

We confirm that the funding for the purchase will be provided by the following Consortium members:

- Mr [Name] (representing the [Company Name])
- Mr [Name] (representing [Company Name])
- Mr [Name] (representing [Company Name])

We confirm your understanding of the above funding is that the [Company Name] will hold 10% of the capital at the outset with an additional 90% to be provided by the Consortium. The 10% held by the [Company Name] will be increased to 20% of the total capital at the end of the first year.

The remaining shareholders will at acquisition hold the balance of 10% of the equity.

The 10% shareholders will be held by Mr [Name] and will be funded by [Company Name] and their associated companies. In order to fund the following items of expenditure are also required:

- Working capital
- Staff costs
- Plant & machinery
- Trade Debtors
- Stock
- Stock in progress

We are unable to provide a precise estimate of the value of assets at acquisition as we are in the process of valuing the assets at the time of acquisition. However, we estimate that the value of the assets at acquisition will be around £1.5 million. The 10% held by the [Company Name] will be increased to 20% of the total capital at the end of the first year.







The Pastrokos Family  
PO Box 37444  
Winnellie NT 0821  
Phone 089 470994  
Fax 089 470205

22 May 1992

Desliens  
Business Consultants  
GPO Box 2455  
DARWIN NT 0801

Dear Sirs

OFFER FOR DALWAY PTY LTD

We refer to your letter dated 21 May 1992 and advise as follows:

1. Our group will acquire the total share capital of Dalway Pty Ltd and will continue to trade through that entity.
2. We confirm that the funding for the purchase will be provided by the following Territorian businessmen:

Mr Leo Venturin (representing the Venturin Group)

Mr Michael Sitzler (representing Sitzler Bros Pty Ltd)

Mr SJ (Steve) Margetic (representing Sitzler Bros (Darwin) Pty Ltd)

3. We confirm your understanding of the share holding in that Mr John Pastrokos will hold 10% of the capital at the outset with an ability to acquire up to 25% of total capital over the following three years. Thereafter the 25% may be increased through a sell down of the remaining shareholders equity.

The remaining shareholders will at settlement hold the balance of 90% of the equity.

4. The 10% shareholding will be held by Mr J Pastrokos and will be funded by the businessmen and their associated businesses listed in point 2 above.

5. The following information is also supplied:

- Projected cash flows

- We are unable to prepare a balance sheet at acquisition date at this stage due to the uncertainty of the value of assets at acquisition date. However, as discussed at our meeting at around 5.00pm Thursday 21 May 1992 we will be acquiring the business of Dalway Pty Ltd together with the following assets:

- \* Land & Buildings
- \* Plant & Machinery
- \* Trade Debtors
- \* Stock
- \* Work in progress

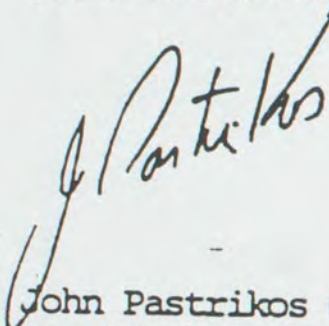


...These assets should be subject to an audit review by the company's auditors prior to date of acquisition.

- Agreed with Point 6 of your letter dated 20 May 1992 (ref DES/051/92).
- Agreed with Point 7 of your letter dated 20 May 1992 (ref DES/051/92) and includes contingent liabilities for workers compensation claims.
- Heads of Agreement, which is to be prepared by the Government's Solicitor, will be signed within seven days after receipt of agreement of our offer at which time deposit money equal to 10% of the purchase price will be paid. Our legal representative will require at least 48 hours to review the Heads of Agreement, so receipt of the draft Heads of Agreement is requested within 5 days from the Government's Solicitor.
- Settlement by 20 June 1992 is acceptable to us.

Should you require any further information please contact either John Pastrikos, the businessmen listed in Point 2 or our financial advisor, Mr Colin James of Ernst & Young.

Yours faithfully



John Pastrikos On behalf of  
myself, Leo Venturin,  
Michael Sitzler and  
Steve Margetic



**ATTACHMENT 5**

**Territory Cabinets Pty. Ltd.  
Initial Proposal**

TERRITORY CABINETS  
PTY LTD







**TERRITORY CABINETS  
PTY LTD**



# TABLE OF CONTENTS

1. Executive Summary
2. Background of Applicant
  - The Directors of Territory Cabinets Pty Ltd
  - Jeffrey William Dennis Blake
  - The Blake Group
  - Richard Pius Crambook
  - The Crambrook Group
  - The Blake/Crambrook Group
3. Territory Cabinets Operations & Methods
  - Manufacturing Process
  - Design
  - Marketing
  - Export
4. Merger of Dalway & Jaguar Kitchen & Future Business Plan
  - Market Analysis
  - Cash Flow
  - Staffing
  - Design and R & D Expertise
  - Contracts
  - New Name
5. Offer



## APPENDICES

Current Financial Position of Dalway Pty Ltd and Critique of Management

Funding Proposal and Cash Flow

Conditions of Sale

) Resume - Jeffrey W D Blake.

, Resume - Richard P Crambrook

Manufacturing Process

Design

h) Marketing



## EXECUTIVE SUMMARY

The directors and shareholders of Territory Cabinets Pty Ltd are competent, experienced industry operators capable of rationalising and managing the business of Dalway Pty Ltd.

The merger of the businesses of Jaguar and Dalway provides the best prospects for the retention and success of a large scale joinery in Darwin. The combined operation gives a market share of 51% and compliments the existing strengths and weakness including the strong Jaguar computer design techniques (both companys use the CAD CAM computer system).

Territory Cabinets Pty Ltd firmly believes that Dalway Pty Ltd can not commercially survive as a separate business as evidenced by the massive losses that have been incurred and are still being incurred.

The worth of the Dalway acquisition is the realisable asset value less the losses to be incurred on Dalway's future committed contracts.

---



## TERRITORY CABINETS PTY LTD TRADING AS JAGUAR KITCHENS

### BACKGROUND

Territory Cabinets was established to take over the existing business of Jaguar Joinery Pty Ltd.

The Directors of Territory Cabinets Pty Ltd through their operation of Budget Homes Pty Ltd had been dealing with Jaguar Joinery Pty Ltd since 1983 as their major supplier of high quality and durable kitchens and built-in furniture for their houses.

However, when they became aware that Jaguar Joinery Pty Ltd was in financial difficulty it became imperative for Budget Homes to find an alternative supplier to continue to maintain the standard and quality of kitchens for their houses.

After market research and a feasibility study they decided to acquire the business of Jaguar Joinery Pty Ltd and rationalise its operation so that it would minimise the economic effect of Dalway's pricing policy, and at the same time continue the supply of kitchens for their houses.



# THE MERGER OF DALWAY AND TERRITORY CABINETS PTY LTD BUSINESS PLAN

## MARKET ANALYSIS

According to the information contained in the Information Memorandum for the Sale of Dalway Pty Ltd the total market for Joinery is estimated to be approximately \$9,000,000.00. Of this Dalway Pty Ltd was budgeted to secure 40% of the market namely \$3,600,000.00. Territory Cabinets Pty Ltd has budgeted for a conservative \$1,000,000.00 in sales making total sale of \$4,600,000.00 for the combined operation. This will be just over 50% of the total market. The other 38 Joinery workshop share the balance of the market between them. They would not have the capacity to handle the large contracts that the new operation will undertake. As a result of this there will be no further impact on the existing market of joinery in the Northern Territory.

## CASH FLOW

Cash flow has been prepared on the basis of merging the two factories under the one roof at the Dalway premises.

The cash flow indicates a cash surplus of approximately \$17,928, after allowing for all operational and funding costs. (See Appendix b).

## STAFFING

The organisational structure of Dalway has been examined and initially this structure will remain in place until a full assessment has been made. It is envisaged that most of the employees of both companies will be employed by the new operator, however, it is envisaged that some rationalisation will be made within the first twelve months of operation.



## DESIGN AND R & D EXPERTISE

The new entity will have the inhouse design capability for developing new concepts and products that were not previously available to Dalway Pty Ltd. Its fully tested and operational CAD System and the experience of current Jaguar Kitchens staff has the ability to greatly increase the product range.

## CONTRACTS

It is envisaged that the new operation will be able to handle any large joinery and furniture contracts that may arise in the foreseeable future, including such contracts as Parliament House. The company also proposes to undertake and complete existing work in progress.

## NEW NAME

The Directors consider that a new marketing strategy will involve the renaming of both operations.



## OFFER TO PURCHASE

We submit our offer to purchase Dalway Pty Ltd and continue the business. The offer is subject to the various conditions of sale as detailed in appendix (c).

The composition of our offer is:

|       |  |               |           |
|-------|--|---------------|-----------|
| (a)   | Land and buildings                           |               | \$1250000 |
| (b)   | Plant and equipment                          |               | 310000    |
| (c)   | Debtors                                      |               | 211000    |
| (d)   | Stock  |               | 100000    |
| (e)   | Work in progress                             |               | 20000     |
|       |  |               | -----     |
|       |  |               | 1891000   |
| Less: | Employee claims                              | 70000         |           |
|       | Unsecured creditors                          | <u>408000</u> | 478000    |
|       |  |               | -----     |
|       | Net Assets                                   |               | 1413000   |
| Less: | Future losses on committed forward contracts |               |           |
| -     | General contracts                            | 350000        |           |
| -     | Parliament                                   | <u>400000</u> | 750000    |
|       |  |               | -----     |
|       |  |               | \$ 663000 |
|       |  |               | =====     |



Appendix (a)

CURRENT FINANCIAL POSITION

OF DALWAY PTY LTD AND BUSINESS

and

CRITIQUE OF MANAGEMENT



## CRITIQUE OF MANAGEMENT

The business of the company has been conducted by:

- (a) Darwin Joinery and Furniture Manufacturing Pty Ltd until it went into liquidation in 1990.
- (b) Dalway Pty Ltd from 1990 to date.

What is apparent is that under both administrations the owners have not priced and quoted work in accordance with industry standards and accordingly have both suffered massive financial losses.

The foregoing statement is supported by the information provided to support the assessment of losses on forward contracts contained in this appendix. Further information is available if required.



ASSESSMENT OF LOSSES ON  
FORWARD CONTRACTS

Forward contracts comprise:

|                     |        |
|---------------------|--------|
| - General Contracts | 1.0m   |
| - Parliament House  | 1.5m   |
|                     | -----  |
| TOTAL               | \$2.5m |
|                     | =====  |

Our assessment of the loss factor is as follows:

|                               |          |
|-------------------------------|----------|
| General contracts 35% of \$1m | 350000   |
| Parliament House \$1.5m       | 400000   |
|                               | -----    |
|                               | \$750000 |
|                               | =====    |

The basis of our assessment is as follows:

(a) Determination of 35% Write-off

The following is a random sample of contracts won by Dalway which were also quoted by Jaguar Joinery using accepted industry standards.

| <u>CONTRACT</u>    | <u>DALWAY</u><br><u>PRICE</u><br>\$ | <u>JAGUAR</u><br><u>PRICE</u><br>\$ | <u>DIFFERENCE</u><br>\$ |
|--------------------|-------------------------------------|-------------------------------------|-------------------------|
| PARAP VILLAGE      | 203000                              | 300000                              | 97000                   |
| HAWKINS & CLEMENTS | 24090                               | 32000                               | 7910                    |
| LATIFE             | 10979                               | 18500                               | 7521                    |
| CARINYA FLATS      | 165600                              | 290000                              | 124400                  |
| BARCLAYS 37 HOUSES | 300000                              | 440000                              | 140000                  |
| ASC FITOUT         | 105000                              | 130000                              | 25000                   |
|                    | -----                               | -----                               | -----                   |
| TOTAL VALUE        | 808669                              | 1210500                             | 401831                  |
|                    | =====                               | =====                               | =====                   |



|                    |          |
|--------------------|----------|
| ie. Jaguar price   | 1210500  |
| Less: Profit 10%   | 121050   |
|                    | -----    |
|                    | 1089450  |
| Less: Dalway price | 808700   |
|                    | -----    |
| LOSS               | \$280750 |
|                    | =====    |

$$\frac{280750}{808700} \times \frac{100}{1} = 34.72\%$$

The foregoing is supported by the company's 1991 Audited Financial Statements.

|                          |           |         |       |
|--------------------------|-----------|---------|-------|
| Sales                    |           | \$4.353 | 100%  |
|                          |           | =====   | ===== |
| Cost of sales            |           | \$3.575 | 82%   |
| Overheads                |           |         |       |
| Per profit and loss      | \$2.120   |         |       |
| Abnormal items           | \$0.85    | \$2.205 | 51%   |
|                          | -----     | -----   | ----- |
|                          |           | \$5.780 | 133%  |
| Loss                     | \$1.295   |         |       |
| Add back                 |           |         |       |
| Rent & interest received | \$0.132   |         |       |
| TRADING LOSS             | \$(1.427) | \$1.427 | 33%   |
|                          | =====     | -----   | ----- |
|                          |           | \$4.353 | 100%  |
|                          |           | =====   | ===== |



(b) Parliament House

|                         |        |
|-------------------------|--------|
| Jaguar tendered price   | 1.9m   |
| Dalway's accepted price | 1.5m   |
|                         | -----  |
|                         | \$0.4m |
|                         | =====  |



AUSTRALIAN SECURITIES COMMISSION

Form 107 (cont)

SCHEDULE A<sup>(2)</sup>

INTERESTS IN LAND

| Address and<br>description of<br>property | (1) Valua-<br>tion | Estimated<br>realisable<br>value | Valuation Particulars<br>for rating of tenancy<br>purposes | Where<br>possession<br>of deeds<br>may be<br>obtained | Short<br>particulars<br>of title |
|---|--------------------|----------------------------------|--|---|----------------------------------|
|   | \$                 | \$                               | \$   |   |                                  |

Valuation of property per Australian Valuation Office

Valuation of 5/12/91

\$1,900,000

Quick sale value and recognition of weakness of other

tenancies - 2/3

\$1,250,000



AUSTRALIAN SECURITIES COMMISSION

Form 507

REPORT AS TO AFFAIRS

Australian Company No.: 009 650 417

Paragraph 147(2)(b),  
Subsections 430(1),  
436(4), 448(5), 475(1)  
475(2), 497(5)

DALWAY PTY LTD

Assets and Liabilities as at 14th May 1992

|   | (1) Valuation | Estimated  |
|---|---------------|------------|
|   |               | realisabl. |
|   |               | values     |
|   | 000's         | 000's      |
|   | \$            | \$         |
| 1. Assets not specifically charged -                        |               |            |
| (a) Interests in land as detailed in Schedule A             | 1900          | 1250       |
| (b) Sundry debtors as detailed in Schedule B                | 211           | 211        |
| (c) Cash on hand B1   | Nil           | Nil        |
| (d) Cash at bank B1   | Nil           | Nil        |
| (e) Stock as detailed in annexed inventory B2               | 160           | 100        |
| (f) Work in progress as detailed in annexed inventory B3    | 156           | 20         |
| (g) Plant and equipment as detailed in annexed inventory B4 | 465           | 310        |
| (h) Other assets as detailed in Schedule C                  | Nil           | Nil        |
|   | -----         | -----      |
| 2. Assets subject to specific charges, as detailed          | 2892          | 1891       |
| in Schedule D   | \$            |            |
| Less: Amounts owing as detailed in Schedule D               |               |            |
|   | -----         | -----      |
| Total assets  | 2892          | 1891       |
|   | -----         | -----      |

REGISTERED AGENT NO.

LODGED WITH THE COMMISSION ON:

LODGED BY:

ADDRESS:

PHONE No.



AUSTRALIAN SECURITIES COMMISSION

Form 507 (cont)

|  |     |         |
|--|-----|---------|
|  |     | 000's   |
|  |     | \$      |
| Total estimated realisable values  |     | 1891    |
| 3. Less claims by employees as detailed in Schedule E  |     | 70      |
|  |     | 1821    |
| 4. Less amounts owing and secured by debenture or floating charge over assets (June 1991 Balance - Accrual of interest to be added). |     | 7508    |
|  |     | (5687)  |
| 5. Less preferential creditors, other than employees, as detailed in Schedule F  |     | -       |
| Estimated amount available for unsecured creditors   |     | (5687)  |
| 6. Balances owing to partly secured creditors as detailed in Schedule G  |     | -       |
| Total claims (\$ )   |     |         |
| Security held (\$ )  |     |         |
| 7. Creditors (unsecured) as detailed in Schedule H   |     |         |
| Amount claimed (\$ )   | 408 | 408     |
| 8. Contingent assets \$  |     | (6095)  |
| Estimated to produce (\$ ) as detailed in Schedule I   |     | Unknown |
| 9. Contingent liabilities \$   |     |         |
| Estimated to rank for (\$ ) as detailed in Schedule J  |     | Unknown |
| Estimated *deficiency/*surplus   |     |         |
| (Subject to costs of *administration/*liquidator)  |     | Unknown |
| Share capital  |     |         |
| Issued \$2.00  |     | -       |
| Paid up \$2.00   |     | -       |



AUSTRALIAN SECURITIES COMMISSION  
Form 507 (cont)  
SCHEDULE B<sup>(2)</sup>  
SUNDRY DEBTORS (INCLUDING LOAN DEBTORS)

| Name and address of debtor | Amount owing | Amount realisable | Deficiency | Particulars of security (if any) held | Explanation of deficiency |
|----------------------------|--------------|-------------------|------------|---------------------------------------|---------------------------|
|                            | \$           | \$                | \$         |                                       |                           |

As per attached listing at 14/5/92 provided by Dalway staff.

3351549

Less:

Amounts which after enquiry of Dalway staff, considered unrecoverable:

|                             |                 |   |        |
|-----------------------------|-----------------|---|--------|
| Affordable office furniture | 2450            | ✓ |        |
| A.P.G.                      | 280             | ✓ |        |
| Cash sales                  | 66              | ✓ |        |
| Oakhill                     | 482             | ✓ |        |
| Fairweather                 | 299             | ✓ |        |
| Holand Stolte               | 2000            | ✓ |        |
| Jaguar Joinery              | 320             | ✓ |        |
| Marble and Ceramic          | 120             | ✓ |        |
| Multiplex                   | 54957           | ✓ |        |
| Nighthcliff Builders        | 3000            | ✓ |        |
| Baxter                      | 10395           | ✓ |        |
| Retentions                  | 7163            | ✓ |        |
| United Constructions        | <del>3519</del> |   |        |
| Universal Carpets           | <del>1092</del> |   |        |
|                             |                 |   | 86743  |
|                             |                 |   | 264806 |

Less:

Amounts invoiced in advance of work being performed

|                        | INVOICED<br>AMOUNT | ESTIMATED<br>PRODUCTION<br>COST |        |
|------------------------|--------------------|---------------------------------|--------|
| A.C.S.                 | 5000               | 6750                            |        |
| Dept. of Defence       | 35000              | 47250                           | 54000  |
|                        | 40000              |                                 |        |
|                        |                    |                                 | 210806 |
| NET RECOVERABLE AMOUNT |                    |                                 |        |



SCHEDULE P1  
CASH ON HAND AND BANK

Cash on Hand

Cash float held on premises

\$600

\*\*\*\*\*

Cash at Bank

Term deposit with Westpac

\$300,000

Less:

Overdraft secured against deposit - Approximately

\$300,000

-----

NIL

\*\*\*\*\*



SCHEDULE B2

STOCK

Finished Goods

|  |          | <u>Valuation</u> | <u>Realisable Value</u> |
|--|----------|------------------|-------------------------|
| Actual stocktake February 1992               | \$202237 |                  |                         |
| Computer generated theoretical stock 31/3/92 | \$187000 | 50% 93500        | 93500                   |

Raw Materials

|  |          |            |          |
|--|----------|------------|----------|
| Actual stocktake February 1992               | \$256333 |            |          |
| Computer generated theoretical stock 31/3/92 | \$258000 | Our 66500  | 6500     |
|  |          | Assessment |          |
|  |          | -----      | -----    |
|  |          | \$160,000  | \$100000 |
|  |          | =====      | =====    |



SCHEDULE B3  
WORK IN PROGRESS

W.I.P. value as per attached list at 14/5/92

278867

Less:

Unrecoverable amounts relating to completed/unchargeable  
jobs as highlighted on listing

122852

NET REALISABLE VALUE

\$156015



SCHEDULE B4  
PLANT AND EQUIPMENT

|  |        |
|--|--------|
| Plant and equipment at WDV per attached list | 608121 |
| Motor vehicles at WDV per attached list      | 54317  |
| Office equipment at WDV per attached list    | 216216 |
| Storage equipment at WDV per attached list   | 30309  |
| Computer equipment at WDV per attached list  | 133918 |
| Loose tools at WDV per attached list         | 18742  |
| Fencing at WDV per attached list             | 6204   |

-----  
\$1067827  
=====

Valuation of plant and equipment, fixtures and fittings per  
Australian Valuation Office valuation of 5/12/91

\$465000  
=====

Quick sale value and recognition of specialised nature of  
bulk of plant and equipment and computer equipment - 2/3

\$310000  
=====



AUSTRALIAN SECURITIES COMMISSION

Form 301 (cont)

SCHEDULE E

CLAIMS BY EMPLOYEES

| Employee's name and address | Wages | Holiday pay | Long service leave | Estimated liability |
|-----------------------------|-------|-------------|--------------------|---------------------|
|                             | \$    | \$          | \$                 | \$                  |

Employees as per attached schedule

- Estimated entitlement by Dalway Pty Ltd

Holiday Pay

65

Long service leave

5

70



AUSTRALIAN SECURITIES COMMISSION

Form 507 (cont)

SCHEDULE H

UNSECURED CREDITORS

| Name and address of creditor | Amount claimed<br>by creditor | Amount admitted<br>as owing | Reasons for<br>difference between<br>amount claimed and<br>admitted (if any) |
|------------------------------|-------------------------------|-----------------------------|--|
|------------------------------|-------------------------------|-----------------------------|--|

\$

\$

As per attached listing

350594

Add:

Accrual of accounting, audit and other administrative  
fees and costs

57000

\$407594



## Appendix (b)

### 1. Cash Flow

A projected cash flow of the merged Dalway/Jaguar business for the period 1st July 1992 to 30th June 1993 is attached.

### 2. Equity/Bank Funding

Correspondence from the National Australia Bank expressing interest in providing finance is attached. We are satisfied that the lending criteria of the bank can be met. Additional equity in the form of assets from the Jaguar business and the funding of the future Dalway trading losses will be provided by Territory Cabinets Pty Ltd.



## DALWAY/JAGUAR AMALGAMATED CASH FLOW 1/7/92 TO 30/6/93

## DALWAY/JAGUAR CASH FLOW

|                          | JUL<br>\$ | AUG<br>\$ | SEP<br>\$ | OCT<br>\$ | NOV<br>\$ | DEC<br>\$ | JAN<br>\$ | FEB<br>\$ | MAR<br>\$ | APR<br>\$ | MAY<br>\$ | JUN<br>\$ | TOTAL<br>\$ |
|--------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------|
| SALES                    | 368000    | 368000    | 414000    | 414000    | 552000    | 483000    | 322000    | 368000    | 368000    | 276000    | 322000    | 345000    | 4600000     |
| LESS: COST OF SALES      |           |           |           |           |           |           |           |           |           |           |           |           |             |
| Opening stock            | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000      |
| Opening WIP              | 20000     | 220800    | 220800    | 220800    | 248400    | 248400    | 331200    | 289800    | 193200    | 220800    | 220800    | 165600    | 20000       |
| Materials                | 110400    | 110400    | 124200    | 124200    | 165600    | 144900    | 96600     | 110400    | 110400    | 82800     | 96600     | 103500    | 1380000     |
| Direct labour            | 73600     | 73600     | 82800     | 82800     | 110400    | 96600     | 64400     | 73600     | 73600     | 55200     | 64400     | 69000     | 920000      |
| Subcontractors           | 36800     | 36800     | 41400     | 41400     | 55200     | 48300     | 32200     | 36800     | 36800     | 27600     | 32200     | 34500     | 460000      |
| Consumables              | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 6000        |
| Freight                  | 1840      | 1840      | 2070      | 2070      | 2760      | 2415      | 1610      | 1840      | 1840      | 1380      | 1610      | 1725      | 23000       |
| Dalway contract losses   | 125000    | 100000    | 100000    | 100000    | 100000    | 90000     | 50000     | 35000     | 25000     | 15000     | 5000      | 5000      | 750000      |
|                          | 468140    | 643940    | 671770    | 671770    | 782860    | 731115    | 676510    | 647940    | 541340    | 503280    | 521110    | 479825    | 7339600     |
| LESS: Closing stock      | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000    | 100000      |
| WIP                      | 220800    | 220800    | 220800    | 248400    | 248400    | 331200    | 289800    | 193200    | 220800    | 220800    | 165600    | 193200    | 193200      |
| COST OF SALES            | 147340    | 323140    | 350970    | 323370    | 434460    | 299915    | 286710    | 354740    | 220540    | 182480    | 255510    | 186625    | 3365800     |
| GROSS PROFIT(LOSS)       | 220660    | 44860     | 63030     | 90630     | 117540    | 183085    | 35290     | 13260     | 147460    | 93520     | 66490     | 158375    | 1234200     |
| LESS: Operating expenses |           |           |           |           |           |           |           |           |           |           |           |           |             |
| Accounting               | 2000      | 2000      | 2000      | 2000      | 2000      | 2000      | 2000      | 2000      | 2000      | 2000      | 2000      | 2000      | 24000       |
| Advertising              | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 60000       |
| Bank fees                | 1500      | 1500      | 1500      | 1500      | 1500      | 1500      | 1500      | 1500      | 1500      | 1500      | 1500      | 1500      | 18000       |
| Cleaning                 | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 6000        |
| Depreciation             | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 360000      |
| Electricity              | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 60000       |
| Insurance                | 8000      | 8000      | 8000      | 8000      | 8000      | 8000      | 8000      | 8000      | 8000      | 8000      | 8000      | 8000      | 96000       |
| Interest                 | 9000      | 9000      | 9000      | 9000      | 9000      | 9000      | 9000      | 9000      | 9000      | 9000      | 9000      | 9000      | 108000      |
| Leasing charges          | 1248      | 1248      | 1248      | 1248      | 1248      | 1248      | 1248      | 1248      | 1248      | 1248      | 1248      | 1248      | 14976       |
| Legal fees & stamp duty  | 120000    | 10000     |           |           |           |           |           |           |           |           |           |           | 130000      |
| Motor vehicle costs      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 60000       |
| Payroll tax              | 5430      | 5430      | 5890      | 5890      | 7270      | 6580      | 4970      | 5430      | 5430      | 4510      | 4970      | 5200      | 67000       |
| Printing post & stat     | 3000      | 3000      | 3000      | 3000      | 3000      | 3000      | 3000      | 3000      | 3000      | 3000      | 3000      | 3000      | 36000       |
| Rates                    |           |           | 6000      |           |           | 1000      |           |           | 1000      |           |           | 1000      | 9000        |
| Repairs & Maintenance    | 15000     | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 5000      | 70000       |
| Salaries                 | 35000     | 35000     | 35000     | 35000     | 35000     | 35000     | 35000     | 35000     | 35000     | 35000     | 35000     | 35000     | 420000      |
| Staff amenities          | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 6000        |
| Security                 | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 6000        |
| Subscriptions            | 500       | 500       | 1500      | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 1500      | 8000        |
| Superannuation           | 3258      | 3258      | 3534      | 3534      | 4362      | 3948      | 2982      | 3258      | 3258      | 2706      | 2982      | 3120      | 40200       |
| Training costs           | 1086      | 1086      | 1178      | 1178      | 1454      | 1316      | 994       | 1086      | 1086      | 902       | 994       | 1040      | 13400       |
| Telephone                |           |           | 3500      |           |           | 3500      |           |           | 3500      |           |           | 3500      | 14000       |
| Travel & accommodation   |           | 1000      |           | 1000      |           | 1000      |           | 1000      |           | 1000      |           | 1000      | 6000        |
| Waste disposal           | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 500       | 6000        |
|                          | 252022    | 133022    | 133350    | 123850    | 125334    | 129592    | 121194    | 123022    | 126522    | 121366    | 121194    | 128108    | 1638576     |
| Operating profit(loss)   | (31362)   | (88162)   | (70320)   | (33220)   | (7794)    | 53493     | (85904)   | (109762)  | 20938     | (27846)   | (54704)   | 30267     | (404376)    |
| ADD: Other income        |           |           |           |           |           |           |           |           |           |           |           |           |             |
| Rent received            | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 62304       |
| Interest received        |           |           |           |           |           |           |           |           |           |           |           |           |             |
|                          | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 5192      | 62304       |
| NET PROFIT(LOSS)         | (26170)   | (82970)   | (65128)   | (28028)   | (2602)    | 58685     | (80712)   | (104570)  | 26130     | (22654)   | (49512)   | 35459     | (342076)    |
| ADD: Non cash items      |           |           |           |           |           |           |           |           |           |           |           |           |             |
| Depreciation             | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 30000     | 360000      |
| CASH SURPLUS(DEFICIT)    | 3830      | (52970)   | (35128)   | 1972      | 27398     | 88685     | (50712)   | (74570)   | 56130     | 7346      | (19512)   | 65459     | 17921       |



**National Australia Bank**

National Australia  
Bank Limited

A.C.N. 004 044 937

82 Mitchell Street  
(PO Box 4321)  
DARWIN NT 0801

PHONE: (089) 46 7511

Our ref: PO:MDH

15th May 1992

Mr Alan Garraway  
84 Smith Street  
DARWIN NT 0801

Dear Alan

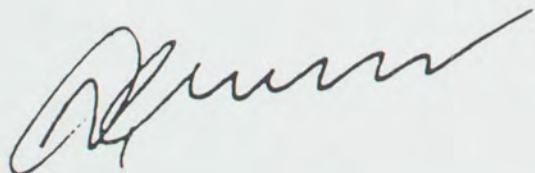
RE: TERRITORY CABINETS PTY LTD

I refer to our discussions with yourself and your clients regarding the aquisition of Dalway Pty Ltd.

In terms of those discussions I advise that the Bank would be interested in providing loan funds to finance the purchase. Our normal lending criterion would need to be met including servicing and provision of adequate security. In this regard we would look to see a debt/security ratio of no more than 80% of satisfactory property security.

I look forward to your response in due course.

Yours faithfully



PETER OWEN  
SENIOR COMMERCIAL MANAGER



Appendix (c)

CONDITIONS OF SALE

Indemnity and warranty is required in respect of:

1. Contract claims and damages.
2. Unpaid taxes including income tax, payroll tax, sales tax and any other tax including any penalties or fines.
3. Directors and employees benefits including wages and salaries, long service leave, annual leave, superannuation.
4. Award conditions.
5. Work health.
6. Safety standards.
7. Building regulations.
8. Relevant Government regulations and requirements.
9. Litigation relating to events prior to purchase.
10. Winding up proceedings.
11. Accounting records are complete and correct.
12. Corporations Law and Taxation Law requirements met.
13. Options or other grant for issue of further shares.
14. Shares purchased are completely unencumbered.
15. Cost of audit of 1992 Financial Statements if required.
16. That all assets with exception of the leases of the Holden Vacationer and Mitsubishi truck, are completely unencumbered.



## CONTENTS

1. Revised offer to Purchase
2. Original offer to Purchase
3. Real Position as assessed by ANZ Capel Court Corporate Services and Desliens Business Consultants
4. Supporting Commentary & Conditions
  - (a) Land & Buildings
  - (b) Plant & Equipment
  - (c) Debtors
  - (d) Stock
  - (e) Work in Progress
  - (f) Employee Claims
  - (g) Unsecured Creditors
  - (h) Future Losses on Committed Forward Contracts
    - (i) General Contracts
    - (ii) Parliament House



TERRITORY CABINETS PTY. LTD

REVISED OFFER

TO PURCHASE

DALWAY PTY. LTD.







## ATTACHMENT 7

### Territory Cabinets Revised Proposal

We submit our revised offer in accordance with the terms of the original offer to purchase and the attached conditions.

The composition of our offer is:

- (a) Land and buildings
- (b) Plant and equipment
- (c) Debtors
- (d) Stock
- (e) Work in progress

Less: Employed capital  
Unsecured liabilities

Net Assets

Less: Future losses to be provided  
forward contracts  
- General contracts -  
- Insurance losses

200,000  
400,000

150,000  
750,000  
900,000







## REVISED OFFER TO PURCHASE

We submit our revised offer to purchase Dalway Pty Ltd and continue the business. The revised offer is subject to the various conditions of sale as detailed in appendix (c) of our original offer to purchase and the attached commentary & conditions.

The composition of our offer is:

|            |                     |         |             |
|------------|---------------------|---------|-------------|
| (a)        | Land and buildings  |         | \$1,250,000 |
| (b)        | Plant and equipment |         | 310,000     |
| (c)        | Debtors             |         | 270,000 x   |
| (d)        | Stock               |         | 287,000 x   |
| (e)        | Work in progress    |         | 176,000 x   |
|            |                     |         | -----       |
|            |                     |         | 2,293,000   |
| Less:      | Employee claims     | 69,000  |             |
|            | Unsecured creditors | 372,000 |             |
|            |                     | -----   | 441,000 x   |
|            |                     |         | -----       |
| Net Assets |                     |         | 1,852,000 x |

Less: Future losses on committed forward contracts

|                      |         |             |
|----------------------|---------|-------------|
| -General contracts-- | 350,000 |             |
| -Parliament House    | 400,000 |             |
|                      | -----   | 750,000     |
|                      |         | -----       |
|                      |         | \$1,102,000 |
|                      |         | =====       |



## OFFER TO PURCHASE

We submit our offer to purchase Dalway Pty Ltd and continue the business.

The offer is subject to the various conditions of sale as detailed in appendix (c).

The composition of our offer is:

|   |        |           |
|---|--------|-----------|
| (a) Land and buildings                                |        | \$1250000 |
| (b) Plant and equipment                               |        | 310000    |
| (c) Debtors   |        | 211000    |
| (d) Stock   |        | 100000    |
| e) Work in progress                                   |        | 20000     |
|   |        | -----     |
|   |        | 1891000   |
| Less: Employee claims                                 | 70000  |           |
| Unsecured creditors                                   | 408000 | 478000    |
|   | -----  | -----     |
| <u>Net Assets</u>                                     |        | 1413000   |
| Less: Future losses on committed<br>forward contracts |        |           |
| - General contracts                                   | 350000 |           |
| Parliament House                                      | 400000 | 750000    |
|   | -----  | -----     |
|   |        | \$663000  |
|   |        | =====     |



# SUMMARY

|  | Territory Cabinets | Real Position     |
|--|--------------------|-------------------|
| Land & Buildings                             | \$1,250,000        | \$1,900,000       |
| Plant & Equipment                            | \$ 310,000         | \$ 465,000        |
| Debtors                                      | \$ 211,000         | \$ 270,000        |
| Stock  | \$ 100,000         | \$ 325,000        |
| Work in Progress                             | <u>\$ 20,000</u>   | <u>\$ 176,000</u> |
|  | \$1,891,000        | \$3,136,000       |
| Less:  |                    |                   |
| Employee Claims                              | \$ 70,000          | \$ 69,000         |
| Unsecured Creditors                          | \$ 408,000         | \$ 372,000        |
| Net Assets                                   | \$1,413,000        | \$2,695,000       |
| Less:  |                    |                   |
| Future Losses on committed forward contracts |                    |                   |
| General Contracts                            | \$ 350,000         |                   |
| Parliament House                             | <u>\$ 400,000</u>  |                   |
|  | \$ 663,000         | \$2,695,000       |



4(a) - LAND & BUILDINGS - \$1,250,000

With the limited time available we have only been able to discuss the Australian Valuation Office valuation with Mr. M. Mooney (Sworn Valuer) and have not commissioned a formal valuation of the property. We are of the opinion that Mr. M. Mooney would value the property for considerably less than the Australian Valuation Office and we have not changed our assessment of \$1,250,000.



4(b) - PLANT & EQUIPMENT - \$310,000

We have reviewed the valuation by the Australian Valuation Office of the plant & equipment, fixtures and fittings.

The valuation is a single line assesment . with no supporting information, qualification and expertise of the valuer (of specialised equipment) and has no reference to recent sales.

We believe our assessment of \$310,000 is the current market value.



4(c) - DEBTORS - \$270,017

Debtors are a constantly changing position and the amount will not be able to be quantified until the actual date & time of settlement.

We do not take issue with your assessment of \$270,017. (which is based on a point in time after our assessment).

Our offer is to purchase the debtors with the vendor to warrant the amount and collectability within 45 days.

Balance not collected back to Coast.

Possible 60 days



4(d) - STOCK - \$287,000

Stock is a constantly changing position and the amount will not be able to be quantified until the actual date and time of settlement.

Stock of Finished Goods

We note the purported value of the stock of finished goods is 75% of manufactured cost.

We have reviewed our assessment and do not concur.

We leave our offer for Finished Goods at 50% of  
Cost i.e. \$93500

Raw Materials

We note your advice that Dalway management are of the opinion that very little of the raw material stock is not of full value.

Our offer is to purchase the raw material stock usable within 45 days at cost and the usable stock that will not be consumed within 45 days at 25% of cost.

On that basis the vendor should be able to warrant \$193500  
-----  
\$287000  
=====



4(e) - WORK IN PROGRESS - \$176,000

Work in Progress is a constantly changing position and the amount will not be able to be quantified until the actual date and time of settlement.

We do not take issue with your assessment of \$176,000.

Our offer is to purchase the work in progress at the lower of cost or net realizable value as assessed on the day of the settlement. 5



4(f) - EMPLOYEE CLAIMS - \$69,000

Employee claims is a constantly changing position and the amount will not be able to be quantified until the actual date and time of settlement.

We do not take issue with your assessment of \$69,000 and our offer is to accept the liability with the vendor warranting that the amount is correct and all liability disclosed.



4(g) - UNSECURED CREDITORS - \$372,000.

Unsecured Creditors is a constantly changing position and the amount will not be able to be quantified until the actual date and time of settlement.

We do not take issue with your assessment of \$372,000 and our offer is to accept the unsecured creditors with the vendor warranting the amount is correct and all liabilities are disclosed.



#### 4(h) - FUTURE LOSSES ON COMMITTED FORWARD CONTRACTS

##### (i) General Contracts - \$350,000

No criticism has been made of our assessment and methodology used with the exception of the questioning of the random sample of contracts used.

We are satisfied that the particulars of the John Holland contract raised in discussion does not change our concern as to Dalway's underpricing.

##### (ii) Parliament House - \$400,000

We stand by our assessment and do not believe we can revise our assessment without completing a full costing of the contract. (Note we do not know the final particulars of the contract)... We reiterate that we would be prepared to enter into an arrangement to complete the contract on a cost plus basis if you believe our assessment is incorrect.







Indemnity and warranty is required in respect of:

1. Contract claims and damages.
2. Unpaid taxes including income tax, payroll tax, sales tax and any other tax including any penalties or fines.
3. Directors and employees benefits including wages and salaries, long service leave, annual leave, superannuation.
4. Award conditions.
5. Work health.
6. Safety standards.
7. Building regulations.
8. Relevant Government regulations and requirements.
9. Litigation relating to events prior to purchase.
10. Winding up proceedings.
11. Accounting records are complete and correct.
12. Corporations Law and Taxation Law requirements met.
13. Options or other grant for issue of further shares.
14. Shares purchased are completely unencumbered.
15. Cost of audit of 1992 Financial Statements if required.



16. That all assets with exception of the leases of the Holden Vacationer and Mitsubishi truck, are completely unencumbered.
17. Any costs incurred after purchased (sic) date in respect of rental of Albatross Street shed.
18. Liabilities:
  - (a) Creditors and accrued expenses to be no more than \$408000.
  - (b) Wages and leave entitlements to be no more than \$70000.
  - (c) No other liabilities.
19. Assets to be physically present and value to be not less than as contained in this offer.
20. Caveat on title to be discharged.
21. J. Pastrokos to stand down immediately upon acceptance of offer.
22. Satisfactory answers to our letter of 13/5/92 (copy attached).
23. Other conditions and warranties in accordance with the normal legal contracts regarding sale of companies.



NORTHERN TERRITORY OF AUSTRALIADEED OF INDEMNITY

THIS DEED is made the 10 day of ~~March~~ 1991  
BETWEEN THE NORTHERN TERRITORY OF AUSTRALIA  
(hereinafter called "the Territory") of the one part  
and JAMES HUSBAND BARR BELL (hereinafter called "the  
Director") of the other part.

WHEREAS

- A. The Territory has requested the Director to:
- (i) accept appointment as a Director of  
DALWAY PTY LTD
  - (ii) carry out certain duties and functions and to  
exercise certain powers in his capacity as  
Director of the Company.
- B. The Director has agreed to the aforesaid requests  
on the basis that the Territory indemnifies and  
holds the Director harmless pursuant to the term of  
this Deed.

NOW THIS DEED WITNESSETH AS FOLLOWS:

That the Territory hereby irrevocably and  
unconditionally agrees to indemnify and keep  
indemnified the Director from and against all  
actions, proceedings, claims, demands, liabilities,  
losses, expenses (legal or otherwise) and payments  
whatsoever arising out of any act or omission by  
him in good faith as Director of the Company or in  
any way done or omitted to be done arising out of  
his holding of the office of Director of the  
Company.

IN WITNESS WHEREOF the Territory has executed this  
indemnity on the day and year first hereinbefore written.

SIGNED for and on behalf of  
THE NORTHERN TERRITORY OF  
AUSTRALIA pursuant to the  
Contracts Act in the presence  
of:

)  
)  
)  
)  
)



*My 22.10.91*



16 That an agent with exception of those in the  
Territory of the Northern Territory of Australia

17 Any person in the Territory of the Northern Territory of Australia  
who is not a citizen of the Territory of the Northern Territory of Australia  
and who is not a citizen of the Territory of the Northern Territory of Australia  
and who is not a citizen of the Territory of the Northern Territory of Australia

18 The Territory has requested the Director of the Territory of the Northern Territory of Australia  
to appoint a person as a Director of the Territory of the Northern Territory of Australia  
and to carry out certain duties and functions and to  
exercise certain powers in his capacity as  
Director of the Territory of the Northern Territory of Australia  
The Director has agreed to the appointment and  
on the basis that the Territory of the Northern Territory of Australia  
will be a Territory of the Northern Territory of Australia

19 The Territory of the Northern Territory of Australia  
unconditionally agrees to indemnify the Territory of the Northern Territory of Australia  
in respect of all claims, damages, losses, expenses, costs, and expenses  
incurred by the Territory of the Northern Territory of Australia  
in connection with the Territory of the Northern Territory of Australia  
and in connection with the Territory of the Northern Territory of Australia  
and in connection with the Territory of the Northern Territory of Australia

20 The Territory of the Northern Territory of Australia  
has requested the Territory of the Northern Territory of Australia  
to appoint a person as a Director of the Territory of the Northern Territory of Australia

21 The Territory of the Northern Territory of Australia  
has requested the Territory of the Northern Territory of Australia  
to appoint a person as a Director of the Territory of the Northern Territory of Australia



## APPENDIX 4 - LIST OF TABLED DOCUMENTS



APPENDIX 4 - LIST OF TABLED DOCUMENTS



## DALWAY INQUIRY - TABLED DOCUMENTS

| DESCRIPTION  | TENDERER           | DATE    | NO. |
|--|--------------------|---------|-----|
| Note - Mr J Blake to Desliens/Capel Court requesting additional information dated 12/5   | Blake              | 27/8/92 |     |
| Letter to Marshall Perron, Chief Minister from Mr Blake dated 25/5/92 - Dalway Pty Ltd ('Dalway')  | Parish<br>(Blake)  | 27/8/92 |     |
| Department of Transport & Works ('T & W') Ministerial Briefing re State Square - Parliament House - Joinery Package dated 28/1/92  | Finch              | 27/8/92 |     |
| Supreme Court: Packages undertaken by Dalway - Information supplied to JK dated 4/6/92   | Finch              | 27/8/92 |     |
| Letter from Mr Bell, Chairman, Dalway dated 8/5/92 to Mr Hatton, Minister for Industries & Development, re concern operations of Dalway  | James              | 2/9/92  |     |
| Adam Gordon - Opening Statement  | Gordon             | 2/9/92  |     |
| Comments on Liquidation Values dated fax date 21/8/92  | Gordon             | 2/9/92  |     |
| Written Submission prepared by Mr Steve Margetic to Committee dated 6/9/92   | Margetic           | 7/9/92  |     |
| Letter to Contracts Manager, Multiplex Constructions Pty Ltd from Mr Bell, Dalway re State Square Development - Tender for Joinery dated 17/9/90   |                    | 7/9/92  |     |
| Document headed Darwin Joinery and Furniture Manufacturing Pty Ltd, Darwin Joinery and Furniture Manufacturing Unit - Arrangements and Conditions - Given by Mr Perron, Chief Minister to J Pastrikos dated 2/2/90 | Pastrikos          | 7/9/92  |     |
| Letter to Waters James & O'Neil from Mr Caldwell, Department of Industries & Development (DID), dated 15/3/90 re Purchase of Darwin Joinery and Furniture Manufacturing Pty Ltd (DJFM)                             | Pastrikos          | 7/9/92  |     |
| Letter from Mr Bell, Chairman of the Dalway Board to Mr Pastrikos of 11/9/91 re Your Employment  | Pastrikos          | 7/9/92  |     |
| Letter dated 30/9/91 from Mr G James of Mildrens to the Secretary, DID re J N Pastrikos  | Parish             | 7/9/92  |     |
| Advice from Mr W Day for Solicitor for the Northern Territory dated 14/1/92 to Secretary, DID re Application for interim injunction, Dalway  | Parish<br>(Gordon) | 8/9/92  |     |
| Advice from Mr W Day for Solicitor for the Northern Territory dated 27/2/92 to Secretary, DID re Caveat  | Parish<br>(Gordon) | 8/9/92  |     |



| DESCRIPTION   | TENDERER             | DATE     | NO.       |
|---|----------------------|----------|-----------|
| File Note - Re Darwin Joinery dated 18/9/89 from Watson, DID  |                      | 8/9/92   | See<br>17 |
| Statement of Colin James dated 3/6/92   |                      | 8/9/92   |           |
| Memorandum dated 29/1/90 to Chief Minister from Minister for Industries and Development re Darwin Joinery and Furniture Manufacture Pty Ltd.                                    | Parish<br>(Patrikos) | 8/9/92   |           |
| Organisational Chart of Dalway Pty Ltd  | Parish<br>(Patrikos) | 8/9/92   |           |
| Contract Manager, Dalway, job description   | Parish<br>(Patrikos) | 8/9/92   |           |
| Memorandum to the Treasurer from Minister for Industries & Development re Dalway Pty Ltd dated 6/6/91   | Parish<br>(Patrikos) | 8/9/92   |           |
| File Note by Mr Watson, Business Analyst, DID re Darwin Joinery and Furniture Manufacturing dated 9/8/89  | Bailey<br>(Patrikos) | 8/9/92   |           |
| Letter to Principal, State Square Project from Mr J Linton, Tipperary Development Pty Ltd re Supreme Court - Joinery dated 10/8/89  | Bailey<br>(Patrikos) | 8/9/92   | See<br>1  |
| Memorandum to Minister from Secretary, DID re Sale of Dalway Pty Ltd dated 29/5/92  |                      | 9/9/92   |           |
| Letter from Mr Linton, Tipperary Developments Pty Ltd to Principal, State Square Project re Supreme Court Joinery dated 10/8/89<br>Tabled 8/9/92                                | Parish<br>(Linton)   | 19/10/92 | 1         |
| Letter from Mr Galton, T & W, to Mr Linton, Tipperary Developments re State Square - Supreme Court Joinery dated 14/8/89  | Parish<br>(Linton)   | 19/10/92 | 2         |
| File Note by A R Watson, Business Analyst re Darwin Joinery & Furniture Manufacturing Pty Ltd dated 27/9/89   | Parish<br>(Linton)   | 19/10/92 | 3         |
| Letter from Mr Linton, Tipperary to Mr Watson, DID re State Square - Darwin Joinery dated 4/10/89   | Parish<br>(Linton)   | 19/10/92 | 4         |
| Document titled State Square Development - Parliament House - Tender for Joinery; P20 Sub Packages (a) to (t) - Addendum 1, 2, 3  | Brears               | 19/10/92 | 5         |
| Letter to Multiplex from Mr Maddox, Project Manager, Tipperary re State Square Development - Parliament House - P20 Joinery Package dated 30/4/92                               | Brears               | 19/10/92 | 6         |
| Letter from Mr Cosgrove, Multiplex to Dalway re State Square Development, Parliament House Joinery Works, Letter of Intent dated 13/5/92: Unsigned See No. 10 for signed letter | Brears               | 19/10/92 | 7         |



| DESCRIPTION   | TENDERER           | DATE     | NO. |
|---|--------------------|----------|-----|
| Memo to Minister for Industries & Development from Mr Cavanagh, Acting Secretary re DJFM dated 14/2/90  | Findlay            | 20/10/92 | 8   |
| Statement by Terry Cosgrove - Joinery dated 8/9/92  | McGuin             | 20/10/92 | 9   |
| Signed letter from Mr Cosgrove, Multiplex to Dalway re Letter of Intent dated 13/5/92                   | McGuin             | 20/10/92 | 10  |
| Letter from Mr James, Mildrens to Waters James re Pastrokos v NT & Dalway dated 19/5/92                 | Bailey<br>(Day)    | 21/10/92 | 11  |
| Affidavit - Nectarios Pastrokos v NT & Dalway dated 18/12/91  | Bailey<br>(Day)    | 21/10/92 | 12  |
| Letter to Graham Lucas from J Pastrokos dated 26/11/91 re request for meeting                           | Bailey<br>(Lucas)  | 21/10/92 | 13  |
| Letter to Geoff Finch, Touche Ross from Mr Watson, DID re DJFM dated 25/9/89                            | Parish<br>(Watson) | 21/10/92 | 14  |
| Touche Ross Report - DJFM - Investigation Report  | Parish<br>(Watson) | 21/10/92 | 15  |
| Touche Ross Report - DJFM: Undated approx. Jan/Feb 1990   | Parish<br>(Watson) | 21/10/92 | 16  |
| File Note from Mr Watson, DID re Darwin Joinery dated 18/9/89   | Bailey<br>(Watson) | 21/10/92 | 17  |
| Memorandum from Mr Watson, DID to Assistant Secretary re DJFM dated 25/9/89                             | Bailey<br>(Watson) | 21/10/92 | 18  |
| Memorandum from Mr Alder, Secretary, DID to Minister for Industries & Development dated 24/1/90 re DJFM | Bailey<br>(Watson) | 21/10/92 | 19  |
| Memorandum from Mr Alder, Secretary, DID to Minister for Industries & Development re DJFM dated 29/1/90 | Bailey<br>(Watson) | 21/10/92 | 20  |
| Letter from Mr Slade, ANZ Bank to Mr Watson, DID re DJFM dated 1/2/90                                   | Bailey<br>(Watson) | 21/10/92 | 21  |
| Cabinet Decision 6338 - DJFM dated 30/1/90  | Parish<br>(Watson) | 21/10/92 | 22  |
| Extract from 29/1/90 Memorandum - DJFM ref TW 29003   | Bailey<br>(Watson) | 21/10/92 | 23  |
| Memorandum from Secretary, D.I.D. to Minister for Industries & Development re DJFM undated              | Parish<br>(Watson) | 21/10/92 | 24  |



| DESCRIPTION  | TENDERER             | DATE     | NO. |
|--|----------------------|----------|-----|
| a) Memorandum from Secretary, DID to Minister for Industries & Development dated 9/2/90 re DJFM<br>b) Memorandum from Minister for Industries & Development to Chief Minister re DJFM dated 9/2/90 | Bailey<br>(Watson)   | 21/10/92 | 25  |
| Memorandum from Mr M Lewis (Capel Court) to Mr N. Almond, DID dated re DJFM 15/12/89   | Bailey<br>(Watson)   | 21/10/92 | 26  |
| Memorandum from Mr M Lewis (Capel Court) to Mr N. Almond, DID re DJFM dated 19/12/89   | Bailey<br>(Watson)   | 21/10/92 | 27  |
| Memorandum to Chief Minister from Minister for Industries & Development re Jaguar Kitchens dated 29/5/92   | Bailey<br>(Watson)   | 21/10/92 | 28  |
| Notes - Financial Assistance to DJFM   | Bailey<br>(Alder)    | 22/10/92 | 29  |
| Letter from Mr J Pastrokos, DJFM to Mr Perron, Chief Minister re Report on current financial situation dated 20/1/90   | Parish<br>(Alder)    | 22/10/92 | 30  |
| File Note by Dennis Robertson and David Hunt re Dalway - Meeting with Mr Pastrokos dated 29/1/91   | Parish<br>(Caldwell) | 22/10/92 | 31  |
| Memorandum to Minister for Industries & Development from Mr Alder, Secretary re DJFM dated 22/2/90   | Parish<br>(Caldwell) | 22/10/92 | 32  |
| Memorandum to Minister for Industries & Development from Mr D Robertson, Acting Secretary re Dalway dated 5/12/90  | Parish<br>(Caldwell) | 22/10/92 | 33  |
| Letter from Mr P Caldwell to Mr J Bell re Dalloway Pty Ltd dated 18/4/92 attaching letter from Mr Pastrokos re Kneal Factory)  | Bailey<br>(Caldwell) | 22/10/92 | 34  |
| DID Summary of Terms of Territory's Loan Agreement with Dalloway dated 20/3/90   | Fradkin              | 27/10/92 | 35  |
| File Note from MR D Hunt, DID re Dalway Pty Ltd dated 20/3/91  | Bailey<br>(Fradkin)  | 27/10/92 | 36  |
| Memorandum from the Board of Directors to Mr J Yeudall and Mr J Pastrokos re Assessment dated 5/7/91   | Parish<br>(Fradkin)  | 27/10/92 | 37  |
| Curriculum Vitae of Mr Jim Bell as at 27/10/92   | Bell                 | 27/10/92 | 38  |
| Letter from Mr Bastion, Ernst & Young to Mr Bell, Dalway, re Stock Report dated 25/3/92  | Parish               | 27/10/92 | 39  |
| Letter to Mr Bell, Dalway, from Mr Danny Fuller, CSR re Deliveries to Lot 1626 dated 12/2/92   | Bell                 | 27/10/92 | 40  |



| DESCRIPTION   | TENDERER             | DATE     | NO. |
|---|----------------------|----------|-----|
| Job Running for 2 Months or more - Extract  | Bell                 | 27/10/92 | 41  |
| Extract headed 1. Security from Mr Bell's Board Meeting Minutes   | Bell                 | 27/10/92 | 42  |
| Submission for 123rd Board Meeting of TIO held on 20/1/90 - DJFM  | Bailey<br>(Dewsbury) | 28/10/92 | 43  |
| Letter to Chairman, Territory Insurance Office (TIO) from Mr J Pastrokos enclosing Report on Current Financial Position dated 20/1/90 | Bailey<br>(Dewsbury) | 28/10/92 | 44  |
| Fax to DID re Periods Mr Cavanagh acted as CEO, DID   | Cavanagh             | 29/10/92 | 45  |
| Letter to Secretary, Dalloway Pty Ltd from Mr Cavanagh, A/Secretary, DID re Approval of Loan dated 4/4/90                             | Cavanagh             | 29/10/92 | 46  |
| File Note re Dalway from Graham Lucas, Ministerial Adviser, Office of Minister for Industries & Development dated 3/6/92              | Parish<br>(Lucas)    | 29/10/92 | 47  |
| Note to Fred from Lucas dated 25/5/92 re Terms of Employment of John Pastrokos  | Parish<br>(Lucas)    | 29/10/92 | 48  |
| Press Interview - B. Coulter, Darwin Joinery dated 13/6/90  | Parish<br>(Sprigg)   | 29/10/92 | 49  |
| File Note from Mr Watson re Dalway Pty Ltd received DID Secretariat 24/7/90   | Parish<br>(Sprigg)   | 29/10/92 | 50  |
| Statement by Sodoli on Police Investigation <b>NOT TO BE COPIED OR RELEASED</b>   | Commiss.<br>Palmer   | 29/10/92 | 51  |
| CSR Invoices - Processed 28/1/92  | Commiss.<br>Palmer   | 29/10/92 | 52  |
| Cabinet Submission - Dalway Pty Ltd - Minister for Industries & Development - dated 6/9/91  | Bailey<br>(Hunt)     | 30/11/92 | 53  |
| Letter from Mr James to Waters James McCormack re N. Pastrokos v NT of A and Dalway Pty Ltd dated 15/5/92                             | Parish               | 30/11/92 | 54  |
| Letter from Mr James, Mildrens to Waters James re Pastrokos v NT & Dalway dated 19/5/92   | Parish               | 30/11/92 | 55  |
| Memorandum to Minister for Industries & Development from Mr C Fuller, Secretary, DID re DJFM dated 27/6/88                            | Parish               | 30/10/92 | 56  |
| Memorandum to Minister for Industries & Development from Mr Fuller, Secretary re DJFM application for Assistance dated 15/4/88        | Parish               | 30/10/92 | 57  |



| DESCRIPTION  | TENDERER            | DATE     | NO.     |
|--|---------------------|----------|---------|
| Memorandum to Secretary, DID from Assistant Secretary, Business Development, DID re Application for Financial Assistance dated 15/4/88 | Parish              | 30/10/92 | 58      |
| Unsigned letter from Touche Ross to Mr V Hawke, TIO re Darwin Joinery: Commercial Joinery Market dated 30/6/88                         | Parish<br>(Temple)  | 4/11/92  | 59      |
| Letter from Mr P Temple, TIO to Mr J Pastrikos re Marketing Survey dated 16/5/88   | Parish<br>(Temple)  | 4/11/92  | 60      |
| Handwritten notes of TIO Meeting 3/3/88 - J Pastrikos, P.T., V.H.  | Bailey<br>(Temple)  | 4/11/92  | 61      |
| Report on Darwin Joinery Pty Ltd from Mr P Pledge, Ernst & Whinney to Mr V Hawke, TIO dated 22/3/88                                    | Parish<br>(Temple)  | 4/11/92  | 62      |
| Minutes of TIO Meeting of 26/4/88 with Ernst & Whinney & Darwin Joinery  | Parish<br>(Temple)  | 4/11/92  | 63      |
| McGregor Marketing Report on Darwin Joinery Research prepared for Ernst & Whinney on behalf of TIO dated 9/5/88                        | Parish<br>(Temple)  | 4/11/92  | 64      |
| Darwin Joinery - Market Survey Study for Timber based Furniture by Touche Ross dated June 1988   | Parish<br>(Temple)  | 4/11/92  | 65      |
| Minutes of TIO 106th Board Meeting dated 30/6 - 1/7/88   | Parish<br>(Temple)  | 4/11/92  | 66      |
| Note to BARRY from Mr Perron dated 15/6  | Parish<br>(Temple)  | 4/11/92  | 67      |
| Minutes of TIO 107th Board Meeting dated 28-29/7/88  | Parish<br>(Temple)  | 4/11/92  | 68      |
| Memorandum to Manager, Financial Services, TIO from Property Manager re Building Contract for New D.J.'s Factory dated 8/11/88         | Parish<br>(Temple)  | 4/11/92  | 69      |
| Letter from Mr I Summers, Pannell Kerr Forster to Mr Temple, TIO dated 13/7/88 re D.J. Furniture Manufacturing Pty Limited             | Parish<br>(Temple)  | 4/11/92  | 70      |
| File Note from Mr Watson, DID re Dalloway Pty Ltd dated 11/5/88  | Bailey<br>(Edwards) | 5/11/92  | 71      |
| Fax from Mr D Edwards re Revised Budget - Part of Board Papers of 23/4/90  | Edwards             | 5/11/92  | 71<br>A |
| Minutes of TIO 106th Board Meeting held 30/6 - 1/7/88  | Temple              | 5/11/92  | 72      |



| DESCRIPTION  | TENDERER               | DATE    | NO. |
|--|------------------------|---------|-----|
| Certificate of Occupancy for Lot 3283 Coonawarra Road, Winnellie dated 2/5/89  | Temple                 | 5/11/92 | 73  |
| Letter to Mr Pastrikos, Darwin Joinery from Mr V Hawke, TIO re TIO - NT Government House Fitout Works dated 10/1/89              | Parish<br>(Temple)     | 5/11/92 | 74  |
| Memorandum to K. Cooke, TIO from VVGH re Darwin Joinery dated 5/6/87   | Parish<br>(Temple)     | 5/11/92 | 75  |
| Memorandum to Mr V Hawke, General Manager, TIO from K Cooke re DJFM dated 3/4/89   | Parish<br>(Temple)     | 5/11/92 | 76  |
| Darwin Land Services Report & Valuation of DJFM dated 23/5/89  | Temple                 | 5/11/92 | 77  |
| Submission for TIO 120th Board Meeting re DJFM dated 28-29/9/89<br>(See also 98)   | Parish<br>(Temple)     | 5/11/92 | 78  |
| Memorandum to Mr Temple, TIO from Mr J Nayler, General Manager re DJFM dated 23/1/90   | Parish<br>(Temple)     | 5/11/92 | 79  |
| TIO Minute paper of 123/38 re DJFM   | Parish<br>(Temple)     | 5/11/92 | 80  |
| Fax to Mr J Nayler, TIO from Mr Watson, DID re Proposed Rescue Package dated 8/2/90  | Parish<br>(Temple)     | 5/11/92 | 81  |
| Letter to DID from Mr J Nayler, TIO re DJFM dated 14/2/90  | Parish<br>(Temple)     | 5/11/92 | 82  |
| TIO Minute Paper of Meeting 124/44   | Parish<br>(Temple)     | 5/11/92 | 83  |
| Minutes of TIO 124th Board Meeting re DJFM held on 22-23/2/90  | Parish<br>(Temple)     | 5/11/92 | 84  |
| Letter to Mr Alder, Secretary, DID from Mr Temple, TIO re DJFM dated 23/2/90   | Parish<br>(Temple)     | 5/11/92 | 85  |
| Submission for TIO 125th Board Meeting held on 29-30/3/90 re DJFM - Developments following the February Meeting of the TIO Board | Parish<br>(Temple)     | 5/11/92 | 86  |
| Submission for TIO 141st Board Meeting held on 28-29/8/90 re Dalway Pty Ltd - TIO Future Strategies                              | Parish<br>(Temple)     | 5/11/92 | 87  |
| Letter from Mr Bell, Dalway to Mr L Mackintosh, DID re Dalway: Information Memorandum dated 21/2/92                              | Bailey<br>(Mackintosh) | 9/11/92 | 88  |
| Memorandum to Secretary, DID from Mr D Hunt, Business Analyst re Dalway dated 10/1/92  | Bailey<br>(Mackintosh) | 9/11/92 | 89  |



| DESCRIPTION  | TENDERER               | DATE     | NO. |
|--|------------------------|----------|-----|
| Fax from Mr James, Mildrens to Mr A Gordon dated 14/5/92 re approach from Mr Pastrikos   | Bailey<br>(Mackintosh) | 9/11/92  | 90  |
| Memorandum to Minister for Industries & Development from Mr Robertson, Acting Secretary re Dalway Pty Ltd dated 15/9/91                          | Parish<br>(Caldwell)   | 9/11/92  | 91  |
| Memorandum to Minister for Industries & Development from Mr Alder, Secretary re Dalway dated 12/8/91   | Parish<br>(Caldwell)   | 9/11/92  | 92  |
| Memorandum to Steve (Mr Hatton) from G. (Mr Lucas) re Dalway Pty Ltd dated 23/4/91   | Parish<br>(Caldwell)   | 9/11/92  | 93  |
| Letter to Mr Maddox, Tipperary Developments from Mr Cosgrove, Multiplex re State Square Development - Parliament House Joinery P20 dated 29/8/91 | Maddox                 | 10/11/92 | 94  |
| Letter to Mr McGuinn, T & W from Mr Maddox, Tipperary re State Square - Parliament House - P20 Joinery Package Tender Report dated 21/1/92       | Parish<br>(Maddox)     | 10/11/92 | 95  |
| Letter to Mr Maddox, Tipperary from Mr Brears, Multiplex re State Square - Parliament House Award of P20 Joinery Package dated 18/2/92           | Parish<br>(Maddox)     | 10/11/92 | 96  |
| Letter to Manager, Multiplex from Mr Maddox, Tipperary re State Square - Parliament House - P20 Joinery Package dated 19/2/92                    | Parish<br>(Maddox)     | 10/11/92 | 97  |
| Minutes of TIO 120th Meeting held on 28-29/9/89 - DJFM (See 78)  | Bailey<br>(Finch)      | 11/11/92 | 98  |
| Letter to Mr P Temple, TIO from Mr Alder, Secretary, DID re DJFM dated 22/2/90   | Parish<br>(Watson)     | 11/11/92 | 99  |
| File Note from Mr Watson re DJFM dated 5/2/90  | Bailey<br>(Watson)     | 11/11/92 | 100 |
| Submission for TIO 121st Meeting held on 26-27/10/90 - DJFM  | Bailey<br>(Finch)      | 11/11/92 | 101 |
| Minutes of DJFM Steering Committee Meeting - 5/10/89   | Bailey<br>(Finch)      | 11/11/92 | 102 |
| Memorandum to Noel Crehan, T & W re State Square - Supreme Court - Furniture & Fitout dated 14/12/89   | Parish<br>(Finch)      | 11/11/92 | 103 |
| Media Release from Transports and Works Minister Fred Finch dated 15/3/90 re Darwin Joinery  | Parish<br>(Finch)      | 11/11/92 | 104 |



| DESCRIPTION   | TENDERER          | DATE     | NO. |
|---|-------------------|----------|-----|
| T & W Ministerial Briefing - State Square - FF & E plus Joinery dated 14/3/90   | Bailey<br>(Finch) | 11/11/92 | 105 |
| <i>Sunday Territorian</i> News item "Dalway Reaps Benefits" dated 30/6/91   | Bailey<br>(Finch) | 11/11/92 | 106 |
| Internal Minute to Richard Galton re State Square - Supreme Court - FF & E dated 15/2/90  | Parish<br>(Finch) | 11/11/92 | 107 |
| Letter to Mr Linton, Tipperary from Mr Galton, T & W re State Square - Supreme Court - FF & E dated 15/2/90                               | Parish<br>(Finch) | 11/11/92 | 108 |
| Letter to Dalway from Mr Brears, Project Manager re State Square Development - Supreme Court Sub-Let Works Contract SOD.037 dated 24/7/90 | Parish<br>(Finch) | 11/11/92 | 109 |
| Memorandum to Mr Brears, Multiplex from Bob Britton, Ralph & Beattie, Bosworth Pty Ltd re Supreme Court dated 10/8/90                     | Parish<br>(Finch) | 11/11/92 | 110 |
| Letter to Tipperary from Mr Galton, T & W re State Square - Supreme Court - Loose Furniture dated 8/2/91                                  | Parish<br>(Finch) | 11/11/92 | 111 |
| Letter to Tipperary from Mr Galton, T & W re State Square - Supreme Court - Loose Furniture dated 25/1/91                                 | Parish<br>(Finch) | 11/11/92 | 112 |
| Letter from Mr Linton, Tipperary to Mr Galton, T & W re Supreme Court - FF & E dated 24/1/90  | Parish<br>(Finch) | 11/11/92 | 113 |
| Letter from Mr Norris, T & W to Tipperary re State Square - Supreme Court - FF & E dated 3/1/90   | Parish<br>(Finch) | 11/11/92 | 114 |
| Internal Minute re Supreme Court - Tiling and FF&E - Meeting of 29/12/89  | Parish<br>(Finch) | 11/11/92 | 115 |
| Letter to Tipperary from Mr Galton, T & W re State Square - FF & E dated 20/12/89   | Parish<br>(Finch) | 11/11/92 | 116 |
| Minute from Mr Crehan, T & W to Director, Projects Branch re State Square - Supreme Court - FF & E dated 19/12/89                         | Parish<br>(Finch) | 11/11/92 | 117 |
| T & W Ministerial Briefing from Mr Norris re State Square - Supreme Court - FF&E dated 15/12/89   | Parish<br>(Finch) | 11/11/92 | 118 |
| Fax from Tipperary to Mr Crehan, T & W re Supreme Court - FF & E dated 15/12/89   | Parish<br>(Finch) | 11/11/92 | 119 |
| Letter to Mr Crehan, T & W from Mr Linton, Tipperary re Supreme Court - FF & E dated 14/12/89   | Parish<br>(Finch) | 11/11/92 | 120 |



| DESCRIPTION   | TENDERER            | DATE     | NO. |
|---|---------------------|----------|-----|
| DID Statement headed "Dalway Pty Ltd - Cash Flow" dated 13/9/91   | Bailey<br>(Ortmann) | 11/11/92 | 121 |
| Memorandum to Minister for Industries & Development from Mr Alder, Secretary re Loan Agreement with Dalloway dated 19/3/90  | Bailey<br>(Hatton)  | 12/11/92 | 122 |
| Statement to PAC by Chief Minister, Marshall Perron handed down 12/11/92  | Perron              | 12/11/92 | 123 |
| File Note - Meeting between Mr Chard, DID and Mr Hawke, TIO on 23/5/88 re Darwin Joinery  | Parish<br>(Perron)  | 12/11/92 | 124 |
| Summary of Proceedings between Darwin Joinery & TIO to enter into financial arrangements for the establishment of a new Furniture Manufacturing Industry from John Pastrokos, Darwin Joinery to Chief Minister, Marshall Perron undated | Bailey<br>(Perron)  | 12/11/92 | 125 |
| File Note to Marshall Perron, Chief Minister re TIO visit to Darwin Joinery dated 5/1/89  | Parish<br>(Perron)  | 12/11/92 | 126 |
| File Note re Meeting with TIO, Woods Bagot & TIO re Darwin Joinery dated 9/1/89   | Poole<br>(Perron)   | 12/11/92 | 127 |
| Touche Ross Report extract - Attitudes to Darwin Joinery  | Poole<br>(Perron)   | 12/11/92 | 128 |
| Extract TIO Minutes re DJFM - Developments following the February Board Meeting   | Parish<br>(Perron)  | 12/11/92 | 129 |
| PAC Hearings - Opening Statement by Treasurer, Barry Coulter handed down 13/11/92   | Coulter             | 13/11/92 | 130 |
| Extract of TIO Meeting re Darwin Joinery - Investment Proposal 104/112  | Parish<br>(Coulter) | 13/11/92 | 131 |
| Letter to DID from Touche Ross - Invoice re DJFM - Preparation of Investigation Report dated 28/9/89  | Coulter             | 13/11/92 | 132 |
| Letter to Secretary, DID from Touche Ross - Invoice re Dalloway Pty Limited - Attending to all matters of providing financial advisory services dated 30/3/90   | Coulter             | 13/11/92 | 133 |
| Darwin Joinery & Furniture Manufacturing Pty Ltd - Attachment B - Touche Ross Report  | Coulter             | 13/11/92 | 134 |
| Letter to Mr D Edwards, Dalloway from Mr Watson, DID re Application for Finance dated 6/4/90  | Parish<br>(Coulter) | 13/11/92 | 135 |



## ABBREVIATIONS

|                |  |
|----------------|--|
| AVO            | Australian Valuation Office                        |
| CAD/CAM        | Computer Aided Design/Computer Aided Manufacturing |
| CD             | Cabinet Decision                                   |
| CIM            | Computer Integrated Manufacturing                  |
| Dalloway       | Dalloway Pty Ltd                                   |
| Dalway         | Dalway Pty Ltd                                     |
| Danksa         | Danksa Cabinet Making                              |
| DID            | Department of Industries & Development             |
| DJFM           | Darwin Joinery & Furniture Manufacturing Pty Ltd   |
| F F & E        | furniture, fittings and equipment                  |
| Jaguar Joinery | Jaguar Joinery Pty Ltd                             |
| NIES           | National Industries Extension Scheme               |
| Mr Pastrikos   | Mr John Pastrikos                                  |
| PCG            | Project Control Group for the State Square Project |
| T & W          | Department of Transport & Works                    |
| TIO            | Territory Insurance Office                         |







