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NAA: A14370, JH2000/131

Series number: A14370

Control symbol: JH2000/131

Barcode: 202981504

Number of pages: 13

Cabinet Memorandum JH00/0131 - Establishment of the Australian Strategic Policy Institute - Decision
JH00/0131/CAB

Copy No. 057

JH00/0131/CAB
18 April 2000

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CABINET MINUTE

Memorandum	JH00/0131	ESTABLISHMENT OF THE AUSTRALIAN STRATEGIC POLICY INSTITUTE
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1. The Cabinet agreed that the Minister for Defence bring forward a range of alternative structuring arrangements to those proposed in the Memorandum as part of the Cabinet's consideration of the Australian Strategic Policy Institute proposal.

original authorised by
Secretary to Cabinet



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CABINET MEMORANDUM

JH00/0131

ESTABLISHMENT OF THE AUSTRALIAN STRATEGIC POLICY INSTITUTE

DEPARTMENT(S): Department of Defence

DEPARTMENT'S EXECUTIVE SUMMARY

PURPOSE: To outline establishment of the Australian Strategic Policy Institute (ASPI), as a wholly Commonwealth owned Company Limited by Guarantee.

KEY ISSUES:

Establishment of the ASPI will satisfy a 1998 Coalition Defence Policy election commitment.

The ASPI will provide a centre of expertise of direct value to government by providing independent policy relevant research and analysis that will enhance the quality of policy making on Defence and strategic issues.

The credibility of the ASPI will be substantially determined by the reality and appearance of the independence of its operation and outputs from Government.

To ensure independence, it is propose that the ASPI be established as a wholly Commonwealth owned Company limited by Guarantee under the Corporations Law of the Australian Capital Territory. It will be managed by a Governing Board of eight to ten members and will have additional accountability and reporting responsibilities under the Commonwealth Authorities and Companies Act 1997.

The ASPI will be funded via a grant from Defence, managed through a funding agreement.

The conclusions contained in this memorandum will not significantly affect regional and rural services and jobs.

CONSULTATION: PM&C, Treasury, DoFA, DFAT. There is general agreement - see Attachment A.

FINANCIAL IMPLICATIONS: Annual funding of \$2.1m has been programmed and will be met from within the existing Defence budget.

	Fiscal balance (\$m)	Underlying cash balance (\$m)	Operating balance / Net assets (\$m)
1999/00	0	0	0
2000/01	0	0	0
2001/02	0	0	0
2002/03	0	0	0
2003/04	0	0	0

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CONCLUSIONS

1. Ministers may wish to consider:
 - (a) establishment of the Australian Strategic Policy Institute (ASPI) as an independent, non-partisan entity to provide research and public education on Australian strategic and defence policy issues;
 - (b) that the ASPI will be established as a wholly Commonwealth owned Company limited by Guarantee, managed by a Governing Board;
 - (c) that the Governing Board will be structured, with regard to appropriate gender and diversity requirements, to consist of:
 - (i) an independent Chairman of significant public standing, to be appointed by the Minister for Defence in consultation with the Prime Minister;
 - (ii) a nominee of the Prime Minister, envisaged as most probably a current or retired member of Parliament;
 - (iii) a nominee of the Leader of the Opposition, envisaged as most probably a current or retired member of Parliament;
 - (iv) Secretary of the Department of the Prime Minister and Cabinet *ex-officio*;
 - (v) Secretary of the Department of Defence *ex-officio*;
 - (vi) Chief of the Defence Force *ex-officio*; and
 - (vii) two to four members representing a range of backgrounds including business and the media, to be appointed by the Minister for Defence in consultation with the Prime Minister; and
 - (d) that Defence recommends that the Governing Board and Chief Executive Officer of the ASPI not be declared holders of Public Office for the purpose of Remuneration Tribunal involvement;
2. Ministers may wish to note that:
 - (a) funding of between \$2 million and \$3 million per annum will be provided by Defence from within existing appropriations, managed through a 7 year funding agreement between Defence and the ASPI;
 - (b) independence will be a central issue in determining the reputation and credibility of the outputs of the ASPI;
 - (c) the ASPI will be financially accountable to Government under the *Commonwealth Authorities and Companies Act (CAC Act) 1997* and through a funding agreement with the Department of Defence; and

CABINET - IN - CONFIDENCE

- (d) the ASPI Board will be encouraged to seek supplementary sources of income outside that provided from Defence and when appropriate to move from budget support to a payment for services arrangement with Defence.

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CABINET - IN - CONFIDENCE

BACKGROUND

In June 1998, the then Minister for Defence, the Hon Ian McLachlan AO announced the Government's intention to establish an Institute of Strategic Policy. This intention was embodied as an election commitment in the Coalition Defence Policy Building Combat Capability, for the 1998 General Election. That document stated that the Government would establish a new Institute of Strategic Policy as a way of promoting greater public debate and research on defence and security issues in Australia.

2. There are two key reasons to establish an independent institute to study strategic policy. The first is to encourage development of alternate sources of advice to Government on key strategic and defence policy issues. The principles of contestability have been central to our Government's philosophy and practice of public administration, but these principles have not yet been effectively implemented in relation to defence and strategic policy, despite the vital national interests and significant sums of money that are at stake. The Government has found in relation to the COLLINS Class Submarine project for instance, and more generally in relation to the White Paper process, that there are almost no sources of alternative information or analysis on key issues in defence policy, including the critical questions of our capability needs and how they can best be satisfied. The ASPI will be charged with providing an alternative source of expertise on such issues.

3. Second, public debate of defence policy is inhibited by a poor understanding of the choices and issues involved. The ASPI will be tasked to contribute an informed and independent voice to public discussion on these issues.

4. These roles will take some time to develop, but there are significant advantages to launching the ASPI now, at a time when public interest in defence issues is high. It is intended that the foundation of ASPI should be seen as a long-term investment by the Government in good strategic and defence policy, and as such it fits in well with the White Paper process. The proposal has been well received in the media. Institutes of this sort have also been established in the United States.

5. It is intended that the ASPI's research should be tightly focussed on strategic policy issues relevant to Australia, including:

- (a) the impact of global and regional development on Australia's security;
- (b) the extent and nature of our security interests;
- (c) the role and value of our alliances and other security arrangements;
- (d) the ways in which Australia might use armed force to support its interests;
- (e) options for the development of Australia's military capabilities; and
- (f) consideration of realistic resource constraints on Australia's options.

6. It is proposed that the ASPI would publish a series of papers on specific issues, arrange workshops and conferences to draw on expertise outside Government, and undertake specific studies contracted by the Government and other customers. The ASPI would also be available by mutual arrangement to support Commonwealth Departments other than Defence in providing information, analysis or reports on strategic and defence issues. It is envisaged that the ASPI would also undertake a range of activities to encourage and develop strategic policy studies in Universities and other institutes.

7. The Institute staff would be expected to contribute to public debate on defence issues, within guidelines, which would ensure that that role remained essentially non-partisan. The proposed composition of the Board is intended to ensure that the ASPI will carefully observe the need to avoid being drawn into partisan debates.

ISSUES

Independence and the Proposed Institute Structure

8. It is clear that independence will be a central issue in determining the reputation and credibility of the ASPI in meeting the purposes set out above. The advice of the Australian Government Solicitor has been sought on the most appropriate legal structure to achieve independence while meeting proper accountability. The Australian Government Solicitor recommends establishment of the ASPI as a wholly Commonwealth owned company limited by guarantee, to be managed by a Governing Board. The Commonwealth will be the sole member of the company, and would be responsible for the appointment of all directors (board members).

C A B I N E T - I N - C O N F I D E N C E

9. Various corporate structures were considered but deemed less appropriate in meeting the aims of the ASPI than the option presented by a company limited by guarantee. A company limited by shares would be an inappropriate vehicle for the ASPI, as its activities will not be commercial, and it is not intended that it will be required to raise capital or distribute profits to members. An incorporated association presents an appropriate model to provide legal capacity and autonomy to the ASPI given its likely scale, and non-commercial activity, however, this structure would impose less safeguards and accountability. Further, incorporated associations are most suited where bodies carry on activities only within an individual state or territory, a potential impediment to the opportunity for national operation of the APSI in the future. A statutory authority would require a legislative approach unnecessary for the scale and nature of the ASPI. Operating the Institute within the Department was also considered, but rejected on the basis of the perception and operation of the ASPI as independent from Government. For the same reason, establishing the ASPI as an Executive Agency by an instrument of the *Public Service Act 1999* was also rejected.

10. A company limited by guarantee typically operates as a non-profit institution, and Commonwealth membership of companies limited by guarantee usually applies in those vehicles where there is involvement or membership by other groups, for instance State Governments or peak private sector bodies. This is the case in the following companies with Commonwealth membership: The Australian Foundation for Culture and the Humanities Ltd, Open Learning Technology Corporation Ltd, Co-operation Curriculum Corporation, National Accreditation Authority for Translators and Interpreters Ltd, National Prescribing Service Ltd, and the Australian Housing and Urban Research Institute Ltd.

11. Sole Commonwealth membership or ownership is less common, but nonetheless considered the most appropriate option of ASPI membership for two reasons. First, planned funding will initially only be provided to the ASPI by the Commonwealth, via Defence. Second, this structure will not preclude expanded membership as the ASPI develops and pursues alternate sources of funding and growth.

Accountability

12. In addition to the normal Corporations Law statutory obligations, as a Commonwealth owned company the ASPI would have accountability and reporting requirements under the

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Commonwealth Authorities and Companies Act 1997 (CAC Act). This includes requirements to observe the general policies of the Government, as notified by the responsible Minister, to prepare budget estimates and annual reports and notification of significant events to the responsible Minister, and to keep the responsible Minister and Finance Minister informed of activities, as well as audit arrangements with the Auditor-General.

Board Structure

13. Under the proposed ASPI structure, the Governing Board would be responsible for all aspects of the Institute's management within the accountability framework outlined above. It would include between eight and ten members, to be drawn from the senior level of the bureaucracy, industry and academia, with regard to appropriate gender and other diversity requirements. This would include an independent Chairman of significant public standing, to be appointed by the Minister of Defence in conjunction with the Prime Minister; a nominee of the Prime Minister, envisaged as most probably a current or retired member of Parliament; a nominee of the Leader of the Opposition, likewise envisaged as most probably a current or retired member of Parliament; the Secretary of the Department of the Prime Minister and Cabinet ex-officio; the Secretary of the Department of Defence ex-officio; Chief of the Defence Force ex-officio; and two to four additional members to be selected from a range of backgrounds including business and the media to be appointed by the Minister in conjunction with the Prime Minister. It is intended that the Chief Executive Officer (CEO) will not be a Board member.

14. The *Remuneration Tribunal Act 1973* allows the Tribunal to inquire into and determine the remuneration to be paid to holders of 'public office'. Advice received from the Australian Government Solicitor suggests that based on the proposed structure of the ASPI, the Remuneration Tribunal would not have a role in setting the remuneration of Board members of the ASPI unless their appointment was specified as a public office by the Minister for Finance and Administration. Similarly, the CEO of the ASPI will not be the holder of a public office for the purpose of section 7 of the *Remuneration Tribunal Act 1973*, unless the position is specifically declared a public office. Given the non-profit making nature of the ASPI and the importance of independence of the ASPI, it is recommended that the ASPI Board members and CEO not be declared holders of Public Office.

15. The Minister for Defence has approached suitably qualified people to join the proposed Governing Board. In December, following consultation with the Prime Minister, Professor Robert O'Neill AO was invited to serve as the inaugural Chairman, and Dr J. Roland Williams CBE was also invited to join the Board. Professor O'Neill is currently the Chichele Professor of the History of War and Fellow of All Souls College, Oxford University and the Chairman and former Director of the International Institute of Strategic Studies. He has a long history of involvement in Australian Defence and Strategic issues, both in the Australian Army including service in the Vietnam War, and as the Head of the Strategic and Defence Studies Centre at ANU. He is very enthusiastic about the proposal to establish an Australian Strategic Policy Institute. Dr Williams is the former Chairman and CEO of Shell Australia, and will bring valuable strategic and business insight to the board. He is Chairman of the Institution for Chemical Engineers, Chairman of the Advisory Council to the Centre for Energy and Resources Law, University of Melbourne and President of the Business /Higher education round table.

16. Professor O'Neill met in February with Dr Williams, the Chief of the Defence Force and the then acting Secretary of Defence to hold preliminary discussions on a range of issues involved in the establishment of the ASPI. This included consideration of the appointment of a suitable CEO. Interviews were held of a short list of candidates derived from an executive search conducted by Morgan and Banks in late 1999. The candidates were Dr Ross Babbage, Corporate Executive Strategic Analysis with ADI Ltd; Dr Peter Edwards, an Honorary Professor at Deakin University; Dr Grant Wardlaw, former Director of the Office of Strategic Crime Assessments in the Attorney-General's Department; and Mr Hugh White, Deputy Secretary Strategy in the Department of Defence. While the selection committee have a preferred candidate from that process, no appointment will be made by the Board until establishment of the ASPI is complete.

Staffing

17. In line with the requirements of independence and the proposed company structure of the ASPI, staffing of the Institute, including the selection and appointment of a CEO, will be the responsibility of the Board. A research staff equivalent of up to eight full time analysts is envisaged, with a focus on using short term and other flexible employment arrangements

designed to maximise the efficient use of resources and to suit the ongoing research program of the Institute.

Funding Arrangements

18. Defence has programmed funding for the ASPI of \$1.7 million in the current financial year, rising to \$2.1 million per annum from 2000-01 to 2003-04. An increase up to a limit of \$3.0 million could be considered if demand for the ASPI's work increased and the results of its work were to warrant it. All proposed funding for the ASPI would be met from within existing budget allocations for Defence. In line with the proposed structure, it is intended that Defence would enter into a Funding Agreement with the ASPI.

19. The Australian Government Solicitor will be asked to advise and draft an appropriate funding agreement, to be implemented as the ASPI is established as a company. Specifically, the Funding Agreement will detail obligations on the part of the ASPI and Defence as the sponsor organisation, and include conditions such as:

- (a) the amount and timing of funding;
- (b) intellectual property ownership;
- (c) reporting requirements to the sponsor organisation and Government;
- (d) mechanisms to review the Institute's operation;
- (e) arrangements if the ASPI were to be dissolved;
- (f) methods of negotiating research priorities;
- (g) mechanisms for dispute resolution;
- (h) insurance requirements; and
- (i) transfer and ownership of assets provided by Defence.

20. In addition, the ASPI will be strongly encouraged to seek funds from additional sources. In time, Defence would expect to be able to move from direct budget funding to the ASPI, to a payment for services arrangement with Defence.

11 April 2000

COORDINATION COMMENTS

Prime Minister and Cabinet

The Department of the Prime Minister and Cabinet (PM&C) supports the establishment of the Australian Strategic Policy Institute (ASPI) proposed in Conclusion 1(a) of the Memorandum, as an independent source of research and analysis on defence and strategic policy matters.

PM&C believes that, of the options presented in paragraph 9 of the Memorandum, an incorporated association or a company limited by guarantee both present potentially viable structures for the proposed Institute. On balance, PM&C would be inclined to support the establishment of the ASPI as an incorporated association in the first instance, given the scale of its proposed activities and that it would operate initially only in the ACT. This would still allow the ASPI to become a company limited by guarantee at a later stage, should such a structure be necessary to support its activities.

Irrespective of the legal structure chosen for the ASPI, the organisation would, at least initially, be wholly owned and funded by the Commonwealth. With respect to Conclusion 1(d), therefore, and consistent with existing practice, PM&C believes that the Minister for Defence should seek the views of the Remuneration Tribunal in determining the remuneration of the Chairman, Members of the Governing Board and the Chief Executive Officer (CEO).

PM&C considers that the positions of Chairman and Members of the Governing Board, as well as the CEO position, are significant Government appointments. Accordingly, PM&C is of the view that these appointments should be brought to Cabinet for approval.

PM&C has no difficulties with the proposed structure of the Governing Board at Conclusion 1(c), although we believe the participation of the Secretary of the Department of Foreign Affairs and Trade would provide additional balance to the Board, given the need to encompass the intersection of strategic and foreign policy issues.

PM&C agrees that the independence of the ASPI will be important in determining the reputation and credibility of its outputs (Conclusion 2(b)). The ASPI's public profile and its

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approach to the appointment of permanent staff will have an important bearing on external perceptions of its independence. In this regard, PM&C considers that it would be most desirable for the inaugural CEO of the Institute to be drawn from outside the existing Defence framework.

Treasury

Treasury supports the recommendations in the Memorandum. We note that, if it was decided to implement legislation affecting the proposed company's operations in a way that impacted on the effect, scope or operation of the Corporations Law, the Treasury would need to be advised so that the Commonwealth could consult with the States and Northern Territory as required by the Corporations Agreement.

Finance and Administration

The Department of Finance and Administration strongly supports the proposal to establish the Australian Strategic Policy Institute. DOFA also notes that the proposal will have nil financial implications.

Foreign Affairs and Trade

The Department of Foreign Affairs and Trade supports in principle the development of an Institute capable of highly professional, expert analysis of strategic issues tightly focused on issues of direct concern to government. The Department supports the proposal that funding for the Australian Strategic Policy Institute be met from existing Department of Defence budget allocations.

The Department notes that the Memorandum suggests some ambiguity in the role of the Institute between an aim to create an independent instrument of public education on strategic issues and an aim to create a new source of strategic advice for government able to enhance policy making. The Department does not consider that the latter aim is necessarily best suited by complete independence from government. The Department suggests that the arrangements for the Institute would benefit from some further consideration, to include consultation by the

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ATTACHMENT A

Department of Defence with other government departments with a role in national security and strategic policy making.

The Department understands that, though not covered in the Memorandum, the Minister for Defence intends that the Secretary of the Department of Foreign Affairs and Trade will be an ex-officio member of the Board of the proposed Institute. Such an Institute will by its nature become part of the national foreign policy debate and its product will influence regional perceptions of Australia's strategic thinking. The presence on the Board of the Secretary of this Department would be a crucial source of advice on issues raised. Furthermore, the Department sees the establishment of the proposed Institute as an opportunity to promote convergence between foreign policy and strategic thinking through ensuring that global and regional trends in political and trade relations are properly factored into assessments of Australia's strategic and security outlook. The presence of the Secretary of this Department on the Board would contribute to such a balance in the strategic work of the Institute.