

## **Western Regional Fisheries Board - 2004**

### **Supplement to Audit Report**

The terms and conditions of employment of the Chief Executive Officer (CEO) of the Western Regional Fisheries Board are required by law to be determined by the Minister for Communications, Marine and Natural Resources with the concurrence of the Minister for Finance. In April 2001 the then CEO reached normal retirement age. The Minister for Finance approved two extensions of the retirement age, the second of which was granted to allow a successor to be appointed.

In November 2001, the Minister for Finance refused to approve a third extension. Notwithstanding this refusal, the Board continued to employ the CEO until January 2004. My audit examined the circumstances in which the CEO continued to be employed on terms that did not have the approval of the Minister for Finance.

Despite its failure to obtain the sanction of the Minister for Finance in 2001, the Board decided to extend the CEO's employment for an additional three years. In May 2002, following discussions with the Board's parent Department, the then Department of the Marine and Natural Resources (the Department) and the then Minister for the Marine and Natural Resources, the Board agreed a 'fixed term specific purpose contract' with the CEO for the period April 2001 to June 2003. At that time, the Department requested a copy of the CEO's contract and instructed the Board to proceed, without further delay, to request the Civil Service and Local Appointments Commissioners (CSLAC) to put in place a competition for appointing a new Chief Executive Officer.

In June 2002, the Minister for the Marine and Natural Resources wrote to the Board confirming his agreement to the continued employment of the CEO under the contract in question, the appointment to run for twelve months or until a new CEO was appointed. The Board wrote to the CSLAC in September 2002 to enquire about setting up a competition. It was advised that, to proceed, the CSLAC required Departmental clearance for the competition and detailed information on the post and the conditions of service. The Board submitted an application for clearance, and the CEO job description, to the Department for approval in December 2002. In the meantime the Board had received legal advice to the effect that the extension of the CEO's appointment on a fixed term/specified purpose contract was legitimate. In the event, the post was not advertised and the CEO remained in place.

In September 2003, the Department of Finance refused an application from the Department of Communications, Marine and Natural Resources for sanction in respect of payment by the Board of a temporary acting-up allowance to the Assistant CEO. The allowance was requested to allow the Assistant CEO to take over temporarily from the CEO, who was on sick leave for some months.

The Department of Finance drew attention to the Board's failure to implement its ruling in November 2001. It indicated that contracts entered into without the consent of the Minister, where such consent is a statutory requirement, had no legal standing. It also stated that the Board had no authority to continue to employ the CEO and should be instructed to end the arrangement forthwith. It advised the Department of Communications, Marine and Natural Resources that sanction for an acting-up allowance would be withheld while the Board continued to employ the CEO. The Board was advised of the Department of Finance's position in late September but continued to appeal the matter until December 2003. In early January 2004, the CEO retired and was replaced by an Acting CEO. The new CEO was appointed in an acting capacity pending the completion of the review of the fisheries service.

During the course of the audit, I became aware of three other staff members of the Board whose retirement dates had been extended without proper authorisation, by an average of a year, during the period from 2003 to 2004. The Acting CEO acknowledged that there had

been some slippage in respect of Board staff retiring on their 65<sup>th</sup> birthdays. He advised that, since taking up his post, it had taken him some considerable time to rectify these matters but the Board had now completed this process.

A handwritten signature in black ink, appearing to read 'John Purcell', with a stylized, flowing script.

**John Purcell**

**Comptroller and Auditor General**

**16 December 2005**