

The Senate

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Finance and Public Administration  
Legislation Committee

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Department of Parliamentary Services

Interim report

April 2015

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# Membership of the Committee

## Members

Senator Cory Bernardi (Chair)	LP, SA
Senator the Hon Kate Lundy (Deputy Chair) (until 23 March 2015)	ALP, ACT
Senator Katy Gallagher (Deputy Chair) (from 26 March 2015)	ALP, ACT
Senator John Faulkner (until 6 February 2015)	ALP, NSW
Senator the Hon Joseph Ludwig (From 12 February 2015)	ALP, QLD
Senator Bridget McKenzie	NAT, VIC
Senator Dean Smith	LP, WA
Senator Janet Rice	AG, VIC

## Participating Members

Senator Nick Xenophon	IND, SA
Senator John Madigan	IND, VIC
Senator Lee Rhiannon	AG, NSW



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# CHAPTER 1

1.1 On 26 June 2014, the Senate referred the following matters to the Finance and Public Administration Legislation Committee (committee) for inquiry and report by the 7<sup>th</sup> sitting day in March 2015:

- (a) progress in implementing the recommendations of the committee's 2012 reports into the performance of the Department of Parliamentary Services (DPS), with particular reference to:
  - (i) workplace culture and employment issues,
  - (ii) heritage management, building maintenance and asset management issues, and
  - (iii) contract management;
- (b) the senior management structure of DPS and arrangements to maintain the independence of the Parliamentary Librarian;
- (c) oversight arrangements for security in the parliamentary precincts and security policies;
- (d) progress in consolidating Information and Communication Technology services and future directions;
- (e) the future of Hansard within DPS;
- (f) the use of Parliament House as a commercial venue;
- (g) further consideration of budget-setting processes for the Parliament and the merits of distinguishing the operating costs of the parliamentary institution and such direct support services such as Hansard, Broadcasting and the Parliamentary Library, from the operations and maintenance of the parliamentary estate;
- (h) consideration of whether the distinction between the operations of the parliamentary institution and its direct support services, and the operations and maintenance of the parliamentary estate, is a more effective and useful foundation for future administrative support arrangements, taking into account the need for the Houses to be independent of one another and of the executive government; and
- (i) any related matters.<sup>1</sup>

1.2 The Senate also agreed that, in undertaking the inquiry, the committee have access to relevant records and evidence of the committee in the previous Parliament.<sup>2</sup>

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1 *Journals of the Senate*, No. 37 – 26 June 2014, p. 1019.

2 *Journals of the Senate*, No. 37 – 26 June 2014, p. 1019.

1.3 On 2 March 2015 the Senate extended the committee's reporting date until 25 June 2015.<sup>3</sup>

### **Conduct of the inquiry**

1.4 The inquiry was advertised in *The Australian* newspaper and on the committee's website. The committee invited submissions from interested individuals, organisations and DPS by 5 September 2014.

1.5 The committee received eight public submission as well as confidential submissions. A list of individuals and organisations which made public submissions, together with other information authorised for publication by the committee, is at Appendix 1. The committee held public hearings in Canberra on 17 November 2014 and 2 and 16 March 2015. A list of the witnesses who gave evidence at the public hearings is available at Appendix 2.

1.6 Submissions, additional information and the Hansard transcript of evidence may be accessed through the committee website at: [www.aph.gov.au/senate\\_fpa](http://www.aph.gov.au/senate_fpa).

### **Background to the inquiry**

1.7 In 2011-2012 the committee undertook a comprehensive inquiry into the performance of DPS. During that inquiry the committee considered a wide range of matters in relation to the performance of DPS, including employment issues, asset and heritage management, security and information technology (IT). The full terms of reference for that inquiry are set out at Appendix 3.

1.8 In its final report the committee acknowledged the contribution made by the vast majority of DPS staff. However, the committee concluded:

[It] is obvious that some decisions made since the establishment of DPS have not provided a sound, long-term strategic approach to the management of Parliament House. In addition, the committee considers that the department has lacked strong leadership and vision. Poor employment practices have been allowed to flourish and become entrenched and projects have been undertaken which have threatened the design integrity and heritage values of Parliament House.<sup>4</sup>

1.9 The committee made a total of 24 recommendations: one recommendation in an interim report in June 2012 and 23 recommendations in the final report. Those recommendations were broad-ranging and addressed a range of issues including recruitment practices, workplace culture, asset and heritage management and contract development and management. A list of all the recommendations from the committee's previous inquiry are set out at Appendix 4.

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3 *Journals of the Senate*, No. 79 – 2 March 2015, p. 2203.

4 Senate Finance and Public Administration Legislation Committee, *Inquiry into the performance of the Department of Parliamentary Services – Final Report*, November 2012, p. 207.

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1.10 DPS agreed to the majority of the committee's recommendations.<sup>5</sup>

1.11 At the time its final report was tabled in November 2012, the committee understood that the implementation of the recommendations would take a period of time. In particular, the nature of a number of the recommendations required that DPS undertake reviews, audits, provide training, and establish new work practices. The committee's intention was to continue to scrutinise the performance of DPS and to oversee the implementation of those recommendations through the mechanisms available in Standing Order 25(20) (the examination of Annual Reports) and Standing Order 26 (estimates hearings).

1.12 The committee was also cognisant of the fact that, pursuant to Recommendation 20 of its final report, the Australian National Audit Office (ANAO) would be undertaking an audit of DPS' contract development and management. The tabling of the ANAO's report, once completed, would also provide a further means of assessing DPS' progress in implementing the committee's recommendations from its 2011-12 inquiry.<sup>6</sup>

1.13 However, evidence received during the course of the Budget Estimates hearing on 26 May 2014 on several matters renewed the committee's concern about the ongoing management and operations of DPS.

1.14 At that hearing the committee received evidence in relation to:

- the trial of new security arrangements involving the reduced screening of certain parliamentary pass holders;<sup>7</sup>

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5 See Department of Parliamentary Services (DPS), *Response to the Senate Finance and Public Administration Legislation Committee report: The performance of the Department of Parliamentary Services*, available on the committee's website at: [www.aph.gov.au/~media/wopapub/senate/committee/fapa\\_ctte/completed\\_inquiries/2010-13/dept\\_parliamentary\\_services/SPOS\\_response.ashx](http://www.aph.gov.au/~media/wopapub/senate/committee/fapa_ctte/completed_inquiries/2010-13/dept_parliamentary_services/SPOS_response.ashx). DPS agreed to recommendations 2-19 and 21-22 of the committee's final report. DPS noted that Recommendation 1 of the interim report (funding for the completion of the Central Reference Document) and Recommendation 23 of the final report (an exemption for DPS from future one-off, additional efficiency dividends) were matters for Government. In response to Recommendation 1 of the final report (that the funding and administration of DPS be overseen by the Senate Appropriations and Staffing Committee and the House Appropriations and Administration Committee meeting jointly for that purpose), DPS indicated that it supported an appropriate level of scrutiny and advocacy for its role within the parliamentary system and noted that there were currently four main layers of Parliamentary accountability for DPS. In relation to Recommendation 20 of the final report (that DPS consider approaching the Auditor-General to undertake an audit by arrangement of DPS contract management and development), DPS stated that it would approach the Auditor-General to seek his views on the best way to undertake an evaluation of DPS contract development and management, including a potential timetable for the evaluation.

6 The Australian National Audit Office (ANAO) subsequently tabled a report, *Managing Assets and Contracts at Parliament House: Department of Parliamentary Services*, Audit Report No. 24, 2014-15 (ANAO Report), in the House of Representatives on 26 February 2015.

7 *Estimates Hansard*, 26 May 2014, pp 42-48, 78-85.

- renovations to create offices for the DPS executive;<sup>8</sup>
- turnover and suspensions of Hansard staff;<sup>9</sup>
- procurement processes for the Australian flag for Parliament House;<sup>10</sup> and
- fundraising events in Parliament House, including use of Presiding Officers' suites.<sup>11</sup>

1.15 In addition, the committee was also told of an investigation of a DPS staff member for a potential breach of the code of conduct. During the course of that investigation, DPS accessed closed circuit television (CCTV) footage which showed the DPS staff member delivering an envelope to the office of Senator Faulkner. That footage was subsequently referred to in a draft code of conduct report.<sup>12</sup>

1.16 The Secretary of DPS, Ms Carol Mills, informed the committee of the matter during the course of questioning about the Parliament House CCTV Code of Practice. Ms Mills advised the committee the matter had only come to her attention that morning.<sup>13</sup> Ms Mills stated that CCTV footage had been used to 'gather evidence in a potential code of conduct case around an individual', but that it 'is certainly not the case' that CCTV footage was being used for a more 'broad-brushed approach' to monitor DPS staff.<sup>14</sup>

1.17 The committee sought an assurance from Ms Mills that in accessing the CCTV footage for this purpose, DPS had not affected the work of either members of the House of Representatives or senators. Ms Mills was unable to provide such an assurance:

The department understands the principles, understands the guidelines and believes, in acting on a code of conduct matter against a staff member, that it had followed the principles and guidelines appropriately. It would appear in the course of that action, following access of the CCTV footage, another issue may have occurred which is in conflict with the principles, which we are now investigating.<sup>15</sup>

1.18 Later in the hearing excerpts were read from a draft report for the investigation into the code of conduct matter which confirmed that the CCTV footage accessed had captured vision of the DPS staff member under investigation placing an envelope under the door of suite 42 of the Senate side of Parliament House.

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8 *Estimates Hansard*, 26 May 2014, p. 45.

9 *Estimates Hansard*, 26 May 2014, pp 48-51.

10 *Estimates Hansard*, 26 May 2014, pp 66-68.

11 *Estimates Hansard*, 26 May 2014, pp 52-59.

12 *Estimates Hansard*, 26 May 2014, pp 33-42, 74-78.

13 *Estimates Hansard*, 26 May 2014, p. 33.

14 *Estimates Hansard*, 26 May 2014, p. 33.

15 *Estimates Hansard*, 26 May 2014, p. 37.

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Senator Faulkner advised the committee that he occupied suite 42 on the Senate side of Parliament House.<sup>16</sup>

1.19 Pursuant to this evidence, on 18 June 2014, the Senate agreed to a motion by Senator Faulkner and Senator Bernardi, in his capacity as Chair of the committee, that the use of CCTV footage by officers of DPS for internal investigations of DPS staff be referred to the Senate Committee of Privileges (Privileges Committee) for inquiry and report. The specific terms of reference for the Privileges Committee report are set out at Appendix 5.<sup>17</sup>

1.20 Subsequently, the Senate agreed to the current inquiry and its terms of reference.<sup>18</sup>

### **The context and need for an interim report**

1.21 At the time this inquiry was referred to the committee in June 2014, DPS was also the subject of inquiries by the Privileges Committee and the ANAO. The committee was mindful of the fact that, to a certain extent, there was an overlap between various aspects of the three inquiries, and that there would be resource limitations on DPS' ability to engage fully with each inquiry. The committee therefore decided to only hold one public hearing with DPS, on 17 November 2014, prior to these other inquiries being completed. Two further public hearings have subsequently been held, on 2 and 16 March 2015.

1.22 On 5 December 2014, the Privileges Committee tabled its report into the use of CCTV material in Parliament House. The Privileges Committee drew this committee's attention to contradictory evidence provided by Ms Mills during the Budget Estimates hearing on 26 May 2014. The committee decided to consider this evidence under the auspices of the current inquiry. The committee wrote to Ms Mills and sought an explanation from her of the contradictory evidence identified by the Privileges Committee in its report. The committee received correspondence from Ms Mills on this matter on 20 February 2015. In addition, the Clerk of the Senate, Dr Rosemary Laing, also wrote to the committee on 17 March 2015, providing information relevant to the committee's deliberations on this issue.

1.23 The ANAO tabled its report on the management of assets and contracts at Parliament House in the House of Representatives on 26 February 2015.

1.24 With the tabling of reports by the Privileges Committee and the ANAO, along with the three public hearings that the committee has held in this inquiry, as well as two estimates hearings, it is an opportune time for the committee to bring together some of this evidence and table an interim report.

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16 *Estimates Hansard*, 26 May 2014, pp 75-76.

17 The Privileges Committee tabled its report into the matter on 5 December 2014. See Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160<sup>th</sup> Report, December 2014.

18 *Journals of the Senate*, No. 37 – 26 June 2014, p. 1019.

1.25 The purpose of this interim report is to highlight concerns the committee has regarding some of the matters that the committee has focussed on so far in its inquiry. Specifically, the interim report discusses the ANAO's report, the process for selecting Ms Anne Zahalka for a photographic commission for the 25<sup>th</sup> Anniversary of Parliament House and the committee's investigation to date of misleading evidence by the Secretary of DPS at the Budget Estimates hearing on 26 May 2014.

### **Acknowledgement**

1.26 The committee thanks all those who contributed to the inquiry by making submissions, providing additional information and appearing at the public hearings. The committee would also like to place on the record its thanks to former Senators the Hon John Faulkner and the Hon Kate Lundy for their work on the current inquiry.

## Chapter 2

### **ANAO report on managing assets and contracts at Parliament House**

2.1 On 26 February 2015 the ANAO's report on the management of assets and contracts at Parliament House (ANAO Report) was tabled in the House of Representatives.<sup>1</sup> The ANAO made six recommendations in its report relating to strengthening DPS' asset management (including heritage management) and contract management arrangements.

2.2 The committee was particularly interested in the ANAO's findings on some key areas of concern identified in the committee's 2012 report, namely: contract management arrangements; the management of heritage assets; and management arrangements in DPS.<sup>2</sup>

#### ***Contract management***

2.3 The ANAO outlined the extent and importance of DPS' contracting activities:

DPS administered some 190 contracts, involving expenditure of \$62.8 million in 2013–14. DPS also managed over 30 press gallery and retail licences, which generated around \$1.6 million in annual revenue for the department. The breadth and focus of its contracted activities reflect DPS' role as steward of a large building of public significance and heritage value, as well as its financial and other legislative responsibilities.<sup>3</sup>

2.4 While DPS has established a contract management framework which includes a range of policies, procedures and systems 'to encourage structured and consistent management of contracted activities', the ANAO found:

[S]everal systemic gaps and weaknesses have led to inconsistent, and at times non-compliant, contracting practices across the entity. Out-of-date guidance material, inadequate training, poor record keeping practices, and weaknesses in DPS' systems underpinning its contract management functions have, collectively, adversely impacted on the department's contracting activities, and ultimately its ability to demonstrate effectiveness of its contracting activities and financial accountability.<sup>4</sup>

2.5 Overall, the ANAO concluded there has been little improvement in DPS' contract management framework, processes or capability since the committee's 2012 report.<sup>5</sup>

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1 *Votes and Proceedings*, No. 99 – 26 February 2015, p. 1152.

2 The ANAO report also covered asset management (Chapter 2) and the establishment and management of contracts (Chapter 5).

3 ANAO Report, p. 73.

4 ANAO report, pp 19-20.

5 ANAO Report, p. 16.

### *Management of heritage assets*

2.6 The ANAO referred to the concerns in the committee's 2012 report about heritage management at Parliament House:

DPS has also invested considerable resources in responding to [the committee's] concerns about the need for better heritage management through changes to management arrangements and assessment processes. However, these changes have lacked continuity, and the department was unable to demonstrate broad or systematic consideration of cultural or heritage value in making changes to the building through its capital works program or in storing or disposing of assets in 2013 and 2014.<sup>6</sup>

2.7 The ANAO report noted that in November 2011, DPS had established a Heritage Management Framework, but following the criticism by the committee in its previous inquiry, this framework was disbanded in October 2012. In its place DPS is developing a Conservation Management Plan (CMP), however this is not scheduled for completion until mid-2015.<sup>7</sup>

2.8 At the public hearing, Mr Andrew Morris, Executive Director, Performance Audit Services Group, ANAO, acknowledged that the absence of any framework for guiding heritage management has had an impact:

By the time we went to do the audit, we would have expected to see quite a sophisticated system in place for heritage management; or at least be able to have good visibility about what the policies and procedures were, how they had gone about making assessments, what the criteria were for an assessment and then what the assessments had found. Nevertheless, [DPS] did have a heritage management team and they had a precursor to that team. We really would have expected more consistency across capital works and the particular heritage items. We were looking for some sort of evaluation of the heritage management and some repository of heritage assessments. We could not see that. I know that they are building towards this at this time. But that lack of a framework for the 18 months or two years really has stopped their progress.<sup>8</sup>

2.9 Mr Morris observed:

I think there was a tendency once there was criticism of the framework to think, 'We had better get a comprehensive new plan, a big new plan, in place that will be able to fix it once and for all very comprehensively.' So in their work towards bringing that about there seemed to be a reluctance, perhaps, to be putting policies and procedures in place that may not be consistent with what the new conservation management plan might prefer. There just seemed to be an absence of coordinated work.<sup>9</sup>

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6 ANAO Report, p. 16.

7 ANAO Report, p. 18.

8 *Proof Committee Hansard*, 2 March 2015, p. 5.

9 *Proof Committee Hansard*, 2 March 2015, p. 5.

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### *Management arrangements in DPS*

2.10 The ANAO noted that from mid-2012, when Ms Mills joined DPS as Secretary, there had been a process to 'transform' DPS. That transformation process included 'an organisational restructure, the recruitment of senior executives to key leadership roles, and the conduct of reviews of capability, processes, practices and systems across many major functions of the department, including asset and contract management'.<sup>10</sup> However:

At the time of the audit...a number of these reviews had yet to be completed and recommended changes implemented. Until such changes are embedded, the department's processes do not exhibit the discipline required to provide assurance that assets and contracts are being effectively managed.<sup>11</sup>

2.11 At the public hearing on 2 March 2015, Mr Ian McPhee, the Auditor-General stated:

[W]hen introducing change agendas it is very important to prioritise work to make sure the general management of the department or organisation continues to perform at a reasonable level. But to get some early successes up, and to build on those successes and the change program, you need to bring people along; it is not an easy task but it needs to be done.<sup>12</sup>

2.12 The committee sought an example from the Auditor-General of an 'early success' in DPS' change program. Mr McPhee acknowledged that it was not clear that there were early successes on which to build.<sup>13</sup>

2.13 Mr Morris also admitted it was difficult to identify any successes:

Probably the most positive thing that we could see coming out of the report was the responses from the parliamentarians that did respond to our survey about their satisfaction with the services at Parliament House...

[Parliamentarians] were not happy with the food. No, that was at the bottom of the list. They were happy with some of the other elements. But I do take your point: apart from that, we were finding it difficult to find successes.<sup>14</sup>

2.14 In terms of the rate of progress in transforming DPS since mid-2012 the Auditor-General observed:

[T]hat progress has been 'measured'—and others might say it has been at [the] slower end—in this space and there is a serious job to be done to address all of the matters required by this department [DPS].<sup>15</sup>

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10 ANAO Report, p. 15.

11 ANAO Report, p. 15.

12 *Proof Committee Hansard*, 2 March 2015, p. 2.

13 *Proof Committee Hansard*, 2 March 2015, p. 2.

14 *Proof Committee Hansard*, 2 March 2015, p. 2.

15 *Proof Committee Hansard*, 2 March 2015, p. 2.

**Committee view**

2.15 It has now been almost two-and-a-half years since this committee tabled its final report for its previous inquiry into the performance of DPS. The committee notes the Secretary's evidence that DPS is prioritising and working very hard on a number of the committee's recommendations and that the systems in place were much worse than she had anticipated when she took up the position in mid-2012.<sup>16</sup>

2.16 However, the committee believes that the ANAO Report demonstrates that there is little evidence of significant change in DPS since the committee tabled its final report in November 2012. In the committee's view, the Auditor-General has been generous in his assessment of DPS' progress in implementing the recommendations as at the 'slower end'.

**Anne Zahalka Photography Commission**

2.17 At the Supplementary Budget Estimates hearings in October 2014 the committee questioned the Secretary of DPS about a contract for \$30,000 for photographic works for the 25<sup>th</sup> Anniversary of Parliament House which was awarded to Ms Anne Zahalka.

2.18 Initially, Ms Mills informed the committee:

Ms Zahalka was chosen because of her international reputation and experience in photographic commissions. She is represented in major national and international art collections and in the Parliament House art collection. The process for procuring her was along the same model as we use for historic memorials collection. The contract...was based on the standard fee and was inclusive of associated travel and material costs and attendance by Ms Zahalka at a launch event. The project commissioned her to produce a folio of six to 10 large-scale photographic prints which would become part of the Parliament House art collection and which were brought into the collection at the approval of the [Art Advisory] committee at its most recent meeting.<sup>17</sup>

2.19 However, Ms Mills subsequently revealed she knew Ms Zahalka 'a little'.<sup>18</sup> When pressed further on this point, Ms Mills informed the committee:

I know her because we live in the same neighbourhood in Sydney and I have met her a couple of times at Christmas functions.<sup>19</sup>

2.20 The fact that Ms Mills personally knew the artist who was commissioned to carry out \$30,000 worth of work for DPS, led the committee to further inquire into the nature of the process to select Ms Zahalka.<sup>20</sup>

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16 *Proof Committee Hansard*, 2 March 2015, pp 12-13.

17 *Estimates Hansard*, 20 October 2014, p. 153.

18 *Estimates Hansard*, 20 October 2014, p. 162.

19 *Estimates Hansard*, 20 October 2014, p. 162.

2.21 To summarise, in late 2012 DPS was involved in discussions with the then Prime Minister's office regarding events for the celebration of the 25<sup>th</sup> Anniversary of Parliament House.<sup>21</sup> In January 2013, the then Director of Art Services at DPS prepared a draft brief for the photographic commission setting out a shortlist of nine artists for the commission, including Ms Zahalka.<sup>22</sup> The Presiding Officers were provided with a brief on 5 March 2013, outlining the proposed activities to celebrate the 25<sup>th</sup> Anniversary, including 'a photographic history record of the twenty-fifth anniversary activities held this year that would form part of the Parliament House Art Collection'.<sup>23</sup> On 14 June 2013, an officer of DPS contacted Ms Zahalka to ascertain her interest in the project. The contract with Ms Zahalka was finalised on 22 August 2013.<sup>24</sup>

2.22 The committee was informed there is a period of three months in the commissioning process, from early March to early June 2013 where 'there has been quite a lapse in the documentation process' and no documents exist for that period.<sup>25</sup>

2.23 During that three month period, Ms Zahalka became the 'preferred tenderer' for the work, however DPS was unable to provide the committee with any documentation as to how that decision was made.<sup>26</sup> Further, there is 'very limited

20 A timeline of key events, as disclosed by DPS at the public hearing on 17 November 2014 and in answers to questions on notice following that hearing, as well as from other information received by the committee, is set out in Appendix 6. Ms Carol Mills, Secretary, DPS, advised the committee that the amount of \$30,000 was decided upon for the commission based on the standard historic memorials portrait commission price, *Estimates Hansard*, 20 October 2014, p. 153. Dr Dianne Heriot, Parliamentary Librarian, DPS, informed the committee that she had purchased a further two photographs from Ms Zahalka for the Parliamentary Library collection, for a total of \$10,000. The photographs were taken by Ms Zahalka as part of the original commission but were not included in the final 10 photographs selected for the Parliament House Art Collection; see *Committee Hansard*, 17 November 2014, pp 26-27.

21 Ms Lisa Kearney, Director, Legal Services, DPS, *Committee Hansard*, 17 November 2014, p. 30.

22 DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 299-300.

23 DPS, answer to question on notice, 17 November 2014 (received 30 January 2014), pp 307-308. The brief to the Presiding Officers recommended that they sign a request to the Finance Minister for one-off funding for DPS to meet the costs of 'permanent records of the twenty-fifth anniversary of Parliament House'. The Finance Minister responded in April 2013 advising that DPS would be receiving an addition \$85,000 for the 2012-13 financial year; see DPS, answer to question on notice, 17 November 2014 (received 30 January 2014), pp 307-313.

24 Ms Lisa Kearney, Director, Legal Services, DPS, *Committee Hansard*, 17 November 2014, p. 34.

25 Ms Lisa Kearney, Director, Legal Services, DPS, *Committee Hansard*, 17 November 2014, p. 31. See also Ms Myra Croke, Chief Operating Officer, DPS, *Committee Hansard*, 2 March 2015, p. 25.

26 See Ms Lisa Kearney, Director, Legal Services, DPS, *Committee Hansard*, 17 November 2014, pp 31-32.

recollection from the staff members involved as to what the process was in arriving at the decisions to approach Ms Zahalka' over the other eight artists who were identified as potentially suitable for the project in January 2013.<sup>27</sup>

2.24 Ms Mills informed the committee that she did not make any formal written declaration of a conflict of interest regarding the fact that she knew Ms Zahalka in a personal capacity. Ms Mills' evidence was that she had provided verbal advice through the process, from January 2013 onwards, that one of the suggested artists was a person 'known a little to me', but that no formal conflict of interest disclosure had been made:

I did not believe at that time, and I still think this is right, that I had a relationship of a type that warranted full conflict of interest recognition, because I only know the person very briefly. I really know them through their work more than anything. And I felt that advising people that this was someone familiar to me was sufficient information for them, given the very tenuous nature of my relationship.<sup>28</sup>

2.25 Ms Mills did admit discussing the potential commission with Ms Zahalka 'probably over Christmas' in 2012, prior to DPS briefing the Presiding Officers or receiving funding to go ahead with the commission.<sup>29</sup> Ms Mills' evidence to the committee was that, as far as she was aware, apart from this conversation, no one from DPS discussed the project with Ms Zahalka prior to 14 June 2013. Ms Mills agreed that 'it would have been a surprise' to Ms Zahalka to be contacted by a DPS officer in June 2013, some six months after the conversation at Christmas, to inquire as to whether she would be interested in undertaking the photographic commission.<sup>30</sup>

2.26 However, it also came to the committee's attention that in May 2013, prior to DPS contacting Ms Zahalka to inform her that she was the preferred tenderer, the following interview with Ms Zahalka was published:

**What is next for Anne Zahalka?**

In collaboration with performance and multimedia artist Silvia Schwenk, I have undertaken a residency with HMAS Penguin to create an artwork for their centenary to be exhibited at the Mosman Art Gallery. A case study on my work currently at Lake Macquarie City Gallery features key works (including *The New Bathers*), and I have been invited to do a commission about the public and private areas of Parliament House for their forthcoming anniversary...<sup>31</sup>

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27 Ms Lisa Kearney, Director, Legal Services, DPS, *Committee Hansard*, 17 November 2014, p. 32.

28 *Committee Hansard*, 17 November 2014, p. 36. See also, Ms Carol Mills, Secretary, DPS, 2 March 2015, p. 25.

29 *Committee Hansard*, 17 November 2014, p. 40

30 *Committee Hansard*, 17 November 2014, pp 40-41.

31 Lake Macquarie City Art Gallery, *A case study: Anne Zahalka*, Education Resource Kit, 2013, p. 19.

2.27 The ANAO Report provided the following assessment of the commissioning process:

The ANAO identified weaknesses in DPS' record keeping in relation to this matter. In particular, the department had not retained records outlining its consultation with the curatorial staff of the National Portrait Gallery, which was the agreed approach for selecting the artist, and thereafter deciding to only approach and commission Ms Anne Zahalka.

While the Commonwealth Procurement Rules allow limited tenders for procurements below the \$80 000 threshold, there are clear benefits for a department approaching more than one provider, particularly as the estimated cost of services increases. In this light, the procurement process and decision could have placed greater emphasis on the procurement principles of contestability and value for money. Further, the decision would have been more transparent had DPS maintained complete records covering its consultation and decision making processes. In this regard, it would also have been prudent for the Secretary of DPS to have documented an approach to manage any potential conflict of interest arising from her prior acquaintance with Ms Zahalka.<sup>32</sup>

### *Committee view*

2.28 In the committee's opinion, the commissioning of the photographs to mark the 25<sup>th</sup> Anniversary of Parliament House epitomises the failings that still exist within DPS. Crucially, DPS are unable to produce documents for a three-month period during the commissioning process. As former Senator John Faulkner summed up the situation:

We do not know why [Ms Zahalka] was chosen, we do not know who chose her and we do not know when she was chosen—but we know that, as a result of her being chosen, \$40,000 of Commonwealth money was provided to her after 12 photographs were provided to the Department of Parliamentary Services.<sup>33</sup>

2.29 In addition to this three-month period of missing documentation, there is the issue of the Secretary's failure to declare the perceived conflict of interest, given her prior association with the artist who was selected for the commission. As the ANAO states, such a declaration in the circumstances would have been 'prudent'. To compound this situation, Ms Mills has admitted that she was reticent to inform the committee that she knew Ms Zahalka when the matter was first discussed at that Supplementary Estimates hearing on 20 October 2014 on the basis that 'people [might] jump to a false conclusion that I might know her well as a result'.<sup>34</sup>

2.30 Finally, there is the unexplained situation where, aside from a conversation between Ms Mills and Ms Zahalka in or around December 2012, no one from DPS has

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32 ANAO Report, p. 91.

33 *Committee Hansard*, 17 November 2014, p. 33.

34 *Proof Committee Hansard*, 2 March 2015, p. 24.

discussed the commission with Ms Zahlaka, yet in May 2013 Ms Zahalka effectively announced that she has been invited to do the photographic commission for the 25<sup>th</sup> Anniversary of Parliament House. While the committee does not have any evidence of wrongdoing, the fact that this situation has arisen in an already flawed process, does not reassure the committee that DPS is developing a strong culture of probity and accountability.

2.31 While the committee has spent some considerable time investigating the process for the photographic commission for the 25<sup>th</sup> Anniversary of Parliament House, it still has further matters to pursue on this matter during the remainder of this inquiry.

### **Inquiry into the use of CCTV material at Parliament House**

2.32 On 5 December 2014 the Privileges Committee tabled its report into the use of CCTV material in Parliament House. In its report the Privileges Committee highlighted an apparent contradiction in evidence between statements Ms Mills made at the Budget Estimates hearings and the submission and additional documents that were provided by DPS to the Privileges Committee during the course of its inquiry. The Privileges Committee referred to the evidence that Ms Mills provided on 26 May 2014:

The DPS Secretary told the [Finance and Public Affairs Legislation Committee (F&PA Committee)] estimates hearing in May 2014 that the matter now referred to the Privileges Committee had only come to her attention on the day of that hearing, on the basis of inquiries she made after questions were asked of the Senate department.

[The Secretary's] evidence was that it was "possible DPS has breached the code [of practice] in investigating a case to do with a staff member", and she explained the apparent breach as "an inadvertent conflict between staff management issues and the protocol of the protection of members' and senators' rights to do business in the building". The Secretary told the hearing that "there may have been an inadvertent and ancillary breach of the statement of purpose" because the CCTV footage "may have captured [the employee] doing other activities in the building besides the one for which the CCTV footage was released".

When asked whether the activities she had referred to involved a person or people providing information to Senator Faulkner, Ms Mills replied "That is what I am looking into. That is the issue that was brought to my attention today..."<sup>35</sup>

2.33 In contrast, DPS's submission to the Privileges Committee stated that the discovery of footage showing the employee placing an envelope under a senator's office door was communicated to the Secretary on 27 February 2014, three months prior to the Budget Estimates hearing. The Privileges Committee noted:

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35 Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160<sup>th</sup> Report, December 2014, p. 9.

[DPS] submission did not suggest that there had been an inadvertent conflict. Instead it is founded on the Secretary's response, given the same day [27 February 2014], "that 'contact by individuals with parliamentarians is not something we monitor...'. The [DPS] submission asserts that:

*Accordingly, the footage relating to the visit to the Senator's office was not investigated further and Employee X was not questioned in any way in relation to her attendance at the Senator's office.*

The submission contends that the Secretary "made a conscious decision *not* to take action in respect of Employee X's approach to Senator Faulkner by effectively instructing that DPS could not consider that conduct and had no interest in the matter."<sup>36</sup>

2.34 Additional documents provided to the Privileges Committee by DPS also 'demonstrate[d] that the Secretary was made aware of all aspects of the incident as it transpired [in relation to the use of CCTV by DPS officers]'.<sup>37</sup> In particular, the Privileges Committee stated:

[T]he documents show:

- that when Ms Mills approved a preliminary code of conduct investigation on 25 February she also approved the release of still photographs from security cameras
- that the request which Ms Mills approved on 25 February informed her that the CCTV system had already been used to gather information on the matter
- that the discovery of footage showing the employee placing an envelope under Senator Faulkner's office door was communicated to Ms Mills on 27 February.<sup>38</sup>

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36 Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160<sup>th</sup> Report, December 2014, pp 9-10. Ms Mills' response is contained in an email to one of her staff and states: 'You may be aware that contact by individuals with parliamentarians is not something that we monitor in order to provide privacy to them in the conduct of their business. Happy to discuss', see Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160<sup>th</sup> Report, December 2014, p. 10.

37 Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160<sup>th</sup> Report, December 2014, p. 10.

38 Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160<sup>th</sup> Report, December 2014, p. 10.

2.35 In respect of this contradictory evidence, the Privileges Committee concluded:

The submission and additional documents cast considerable doubt upon the evidence given by the Secretary [during the F&PA Committee estimates hearing]. The [Privileges Committee] has not been able to reconcile the evidence given at the estimates hearing with the submission and documents which DPS has subsequently provided, and considers that the Finance and Public Administration Legislation Committee was misled about the Secretary's knowledge of the events that led to this inquiry.

The committee has determined that it is appropriate in the circumstances to publish the relevant documents so that they are available to the Finance and Public Administration Legislation Committee in its oversight of the Department of Parliamentary Services.<sup>39</sup>

2.36 The Privileges Committee recommended:

That the attention of the Finance and Public Administration Legislation Committee be drawn to the matters...relating to the misleading evidence given at its estimates hearing on 26 May 2014.<sup>40</sup>

### *Secretary's response*

2.37 Following the tabling of the Privileges Committee report, the committee wrote to the Secretary, noting the recommendations of the Privileges Committee, and invited Ms Mills to provide a submission outlining any further material or evidence for the committee to consider in its deliberations on this matter.

2.38 In correspondence to the committee the Secretary rejected the conclusion by the Privileges Committee that she or other DPS officers provided misleading evidence at the Budget Estimates hearing. Ms Mills stated that, following a 'series of broad questions about the CCTV operating policy' to the Department of the Senate on the morning of 26 May 2014, and an indication from the committee that they intended to take the issue up with DPS later in the day, she had sought to investigate what the questioning might relate to:

At the time I appeared before [the committee] I had not been able to establish that. There was nothing in the line of questioning that morning [to the Department of the Senate] that would reasonably suggest that I should have been able to make a connection between the use of CCTV and a case

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39 Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160<sup>th</sup> Report, December 2014, pp 10-11.

40 Senate Committee of Privileges, *The use of CCTV material in Parliament House*, 160<sup>th</sup> Report, December 2014, p. 38. On 2 March 2015, the President of the Senate tabled his response to the Privileges Committee report agreeing to this recommendation of the Privileges Report, see *Journals of the Senate*, No. 79 – 2 March 2015, p. 2191. A copy of the President's response is attached to correspondence from Senator Jacinta Collins, Chair of the Privileges Committee, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 12 March 2014, available on the committee's website at: [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/DPS\\_2014/Additional\\_Documents](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/DPS_2014/Additional_Documents).

early in the year where I had very clearly stated that 'contact by individuals with parliamentarians is not something we monitor'.<sup>41</sup>

2.39 Ms Mills insisted that nothing in her investigations on the morning of 26 May 2014 caused her to make the connection between the CCTV case earlier in the year with the line of questioning that the committee had taken with the Department of the Senate:

This includes advice I sought from the Clerk of the Senate to ascertain what the Senator might be referring to that morning. The Clerk advised me of the existence of a report relating to disciplining an officer for contact with a Senator's office. I was not aware of any such report.<sup>42</sup>

2.40 The Secretary argued the description that the Clerk gave was such that she was unable to make the connection with the matter which was subsequently referred to the Privileges Committee:

It must be emphasised that the investigation which was the subject of the referral to the Privileges Committee was not an investigation into contact with a Senator, but into a very different circumstance of harassment of another employee of my Department. Knowing no further detail at the time of my evidence there was simply no way for me to directly connect that description to the case that was ultimately the subject of the referral to the Privileges Committee.<sup>43</sup>

### *Correspondence from the Clerk of the Senate*

2.41 Following publication of Ms Mills' response on the committee's website, the committee received correspondence from the Clerk of the Senate, Dr Rosemary Laing. The Clerk disputed Ms Mills' recollection of their meeting on 26 May 2014:

Ms Mills' account does not accord with my recollection of events on the morning of 26 May 2014.

As soon as I returned to my office at approximately 10.30am on that morning from giving evidence to the committee, my executive assistant informed me that Ms Mills wished to see me as soon as possible, to which I agreed. When Ms Mills came into my office I said to her words to the effect of, "you haven't been using CCTV for internal disciplinary matters, surely?" When Ms Mills denied it, I informed her that I had seen a draft report confirming that to be the case and that it raised highly problematic issues in

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41 Correspondence from Ms Carol Mills, Secretary of DPS, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 20 February 2015, p. 1.

42 Correspondence from Ms Carol Mills, Secretary of DPS, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 20 February 2015, pp 1-2.

43 Correspondence from Ms Carol Mills, Secretary of DPS, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 20 February 2015, p. 2.

this environment because of the potential impact on senators carrying out their functions.<sup>44</sup>

2.42 Contrary to Ms Mills' account of the meeting, the Clerk states that 'I neither perceived nor described the draft report as relating to contact with a senator but as concerning alleged dealings between DPS employees'.<sup>45</sup>

2.43 The Clerk informed the committee:

I was in no doubt that Ms Mills was aware of the particular case because, although she denied having seen the draft report, she referred in my office to the victim of the alleged harassment by name and gave an account of how much the incident had upset the victim, coming on top of some personal issues.<sup>46</sup>

2.44 The Clerk also addressed Ms Mills' claim that she only became aware of the matters which were referred to the Privileges Committee on the morning of 26 May 2014:

Some time, possibly weeks, later, I recall being puzzled by Ms Mills' claim that these matters had only come to her attention on the morning of the [Budget Estimates] hearing because I had a niggling recollection of her referring on another occasion to DPS staff being "caught" providing information to senators. Eventually, I sourced the recollection to a meeting of the heads of the parliamentary departments held on 28 February 2014. These meetings are held on a quarterly basis but that was the only heads' meeting Ms Mills attended in 2014. On checking the papers I located an email from Ms Mills, sent on 27 February 2014 at 1.08pm, asking to add to our agenda "a discussion on how parliamentary departments generally deal with issues like the unauthorised disclosure of information by their staff – not privileges but internal departmental information"...<sup>47</sup>

2.45 The Clerk noted that Ms Mills' email at 1.08pm on 27 February 2014, adding the agenda item, was sent 'a few minutes after a response by Ms Mills to an email informing her that investigation of the particular disciplinary matter involving alleged

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44 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 17 March 2015, pp 1-2.

45 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 17 March 2015, p. 2.

46 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 17 March 2015, p. 2.

47 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 17 March 2015, p. 2.

harassment had located additional CCTV footage showing the person under investigation placing a "brown envelope" under Senator Faulkner's door'.<sup>48</sup>

### ***Committee view***

2.46 Ms Mills explanation contained in her letter of 20 February 2015 provides no reassurance to the committee that it was not misled at the Budget Estimates hearing on 26 May 2014. In fact, in the committee's view, the explanation that Ms Mills has provided further contradicts the evidence she gave to the committee on 26 May 2014.

2.47 The committee finds it implausible that Ms Mills now argues that on the morning of 26 May 2014, at the time she appeared before the committee, she effectively had not been able to connect the events of the matter which became the subject of the referral to the Privileges Committee with the preliminary code of conduct investigation which she had approved some three months earlier. This is despite Ms Mills informing the committee on 26 May 2014:

- that the matter involved a potential code of conduct case against a DPS staff member;<sup>49</sup> and
- that this was the only code of conduct investigation that she was aware of in which CCTV footage was authorised to be accessed.<sup>50</sup>

2.48 The committee also notes the correspondence from the Clerk of the Senate which disputes Ms Mills' explanation in her letter of 20 February 2015. In particular, the Clerk indicates that at the time Ms Mills met with her on 26 May 2014, Ms Mills was aware that the matter involved a code of conduct dispute and, in fact, spoke specifically about the events which led to the instigation of the code of conduct investigation.

2.49 The committee intends to take up these inconsistencies, as well as the contradictory evidence identified by the Privileges Committee in its report, with Ms Mills during the remainder of the inquiry.

### **Conclusion**

2.50 None of the evidence in this inquiry to date, or the material covered in the Privileges Committee and ANAO reports, gives the committee any comfort that DPS has made significant progress in terms of addressing the shortcomings which were identified in the committee's final report of November 2012.

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48 Correspondence from Dr Rosemary Laing, Clerk of the Senate, to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 17 March 2015, pp 2-3.

49 *Estimates Hansard*, 26 May 2014, p. 33. See also *Estimates Hansard*, 26 May 2014, pp 37, 38, 39, 40.

50 *Estimates Hansard*, 26 May 2014, pp 34, 35, 37, 39. Mr Neil Skill, First Assistant Secretary, Building Management Division, DPS, also gave evidence that this was the only case he was aware of where CCTV footage was used in relation to staff matters, *Estimates Hansard*, 26 May 2014, pp 35, 40.

2.51 DPS drew the committee's attention to the several reviews it is undertaking pursuant to the recommendations in the committee's 2012 report.<sup>51</sup> The committee notes that these reviews have been undertaken by external providers at significant cost and, in many cases, the outcomes of many of these reviews are yet to be implemented. DPS also referred to the recruitment of staff to key positions and a restructure of the management of the department.<sup>52</sup> However, this recruitment appears to have taken DPS much longer than anticipated and, as the Secretary admitted, DPS' poor reputation means it struggles to attract staff.<sup>53</sup> Further, there was also evidence to the committee of an ongoing problem of low staff morale in areas of DPS.<sup>54</sup>

2.52 The committee strongly disagrees with the Secretary of DPS, Ms Mills, that this lack of progress reflects the 'timeframe with which DPS has had to make the changes'.<sup>55</sup> DPS has had two-and-a-half years in which to address the recommendations and effect some change. Frankly, the complete lack of progress is unacceptable.

2.53 The ANAO report supports the committee's view of the lack of progress by DPS. The ANAO was highly critical of DPS and as the Auditor-General stated, the report is 'at the more critical end' of ANAO reports.<sup>56</sup>

2.54 The committee notes that the six recommendations in the ANAO Report go largely to the review and further development of policies and ongoing training for department staff. The committee made similar recommendations in its 2012 report and the ANAO report highlighted 'inadequate staff training and out-of-date guidance material' were particular areas of concern in the audit.<sup>57</sup> Unfortunately, given that DPS has thus far been unable to implement the committee's recommendations from 2012, the committee holds little hope that DPS will be able to effectively implement the ANAO's recommendations.

2.55 Overall, the evidence to the committee so far demonstrates that DPS, as currently managed, is deeply dysfunctional.

2.56 Furthermore, the committee has no confidence in the evidence provided to date by Ms Mills to explain the contradictory evidence outlined in the Privileges Committee report or her role in the commissioning of the photographic works by Ms Zahalka. While the committee intends to provide Ms Mills with a further

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51 Mr Neil Skill, First Assistant Secretary, Building and Asset Management, DPS, *Committee Hansard*, 17 November 2014, pp 3, 5-6.

52 See Mr Neil Skill, First Assistant Secretary, Building and Asset Management, DPS, *Committee Hansard*, 17 November 2014, p. 6; Ms Carol Mills, Secretary, DPS, *Proof Committee Hansard*, 2 March 2015, p. 12.

53 *Proof Committee Hansard*, 2 March 2015, p. 19.

54 See Ms Karen Greening, *Committee Hansard*, 17 November 2014, p. 11.

55 *Proof Committee Hansard*, 2 March 2015, p. 14.

56 *Proof Committee Hansard*, 2 March 2015, p. 2.

57 ANAO Report, p. 15.

opportunity to explain at a hearing, in the committee's view, this situation has seriously eroded her standing as a witness before the committee and casts doubt over other evidence provided by Ms Mills.

2.57 As the committee has noted, some of the matters in this interim report remain unresolved and the committee intends to continue to pursue these issues. However, the committee is also of the view that it is now time to look more broadly at the role, functions and structure of DPS within the current framework. The committee intends through the remainder of this inquiry to work with both Presiding Officers with a view to improving the management and operation of DPS.

2.58 After the committee drafted this report, and prior to its tabling, the committee was advised that Ms Mills ceased employment as Secretary of DPS.

**Senator Cory Bernardi**

**Chair**



# **APPENDIX 1**

## **Submissions and additional information received by the committee**

### **Submissions**

- 1 Department of Parliamentary Services
- 2 Community and Public Sector Union
- 3 Australian Parliamentary Service Commissioner
- 4 Australian Heritage Council
- 5 Joint Standing Committee on the Parliamentary Library
- 6 Name Withheld (8 individuals)
- 7 Mr Michael Bolton
- 8 Speaker of the House of Representatives and the President of the Senate

### **Additional information**

1. Additional information from Department of Parliamentary Services, received 5 December 2014
2. Correction to evidence from Ms Bowring Greer, received 12 December 2014
3. Correspondence from Ms Anne Zahalka, received 3 December 2014
4. Correction to evidence from Ms Dianne Heriot, received 5 December 2014
5. Correspondence from Ms Carol Mills, dated 20 February 2015
6. Correspondence from the Privileges Committee dated 12 March 2015
7. Correspondence from the Clerk of the Senate, received 17 March 2015

### **Answers to Questions on Notice**

1. Answers to questions taken on notice from Canberra public hearing, 17 November 2014, provided by Department of Parliamentary Services, received 30 January 2015



# **APPENDIX 2**

## **Public Hearings**

*Monday, 17 November 2014*  
*Senate Committee Room 2S1*  
*Parliament House, Canberra*

### **Witnesses**

#### **Department of Parliamentary Services**

Ms Carol Mills, Secretary  
Dr Dianne Heriot, Parliamentary Librarian  
Mr Neil Skill, First Assistant Secretary, Building and Asset Management  
Ms Eija Seittenranta, Chief Operating Officer  
Mr Steve McCauley, A/g Chief Information Office  
Ms Karen Greening, Assistant Secretary Recording and Reporting  
Ms Freda Hanley, Assistant Secretary Parliamentary Experience  
Mr Gary Gordon, Assistant Secretary Strategic Asset Planning and Performance  
Mr Ben Wright, Chief Financial Officer  
Ms Erin Noordeloos, Assistant Secretary Security  
Ms Lisa Kearney, Director Legal Services  
Ms Justine Van Mourik, Manager Art Collection and Exhibition  
Ms Ilse Wurst, Director Heritage

*Monday, 2 March 2015*  
*Senate Committee Room 2S1*  
*Parliament House, Canberra*

### **Witnesses**

#### **Australian National Audit Office**

Mr Ian McPhee, Auditor – General  
Ms Corrine Horton, Director, Performance Audit Services Group  
Mr Andrew Morris, Executive Director, Performance Audit Services Group  
Ms Barbara Cass, Group Director, Performance Audit Services Group

#### **Department of Parliamentary Services**

Ms Carol Mills, Secretary  
Dr Dianne Heriot, Parliamentary Librarian  
Ms Eija Seittenranta, Chief Information Officer

Mr Neil Skill, First Assistant Secretary  
Ms Myra Croke, Chief Operating Officer  
Mr Ben Wright, Chief Finance Officer  
Ms Karen Greening, Assistant Secretary  
Ms Freda Hanley, Assistant Secretary

*Monday, 16 March 2015*  
*Senate Committee Room 2S1*  
*Parliament House, Canberra*

**Witnesses**

**Department of Parliamentary Services**

Dr Dianne Heriot, Acting Secretary  
Ms Eija Seittenranta, Chief Information Officer  
Mr Neil Skill, First Assistant Secretary  
Mr Garry Gordon, Assistant Secretary, Strategic Asset Planning and Performance  
Ms Erin Noordeloos, Assistant Secretary, Security  
Ms Myra Croke, Chief Operating Officer  
Mr Ben Wright, Chief Finance Officer  
Ms Freda Hanley, Assistant Secretary

## **APPENDIX 3**

### **Terms of Reference for 2011 inquiry into the performance of the Department of Parliamentary Services**

On 23 June 2011 the Senate referred the following matter to the Finance and Public Administration Legislation Committee as an inquiry under standing order 25(2)(a), for inquiry and report by 29 November 2011:

The performance of the Department of Parliamentary Services (DPS), with particular reference to:

- (a) matters raised at the Budget estimates hearing of the committee on 23 May 2011 and in answers to questions taken on notice;
- (b) policies and practices followed by DPS for the management of the heritage values of Parliament House and its contents;
- (c) asset management and disposal policies and practices;
- (d) resource agreements and/or memoranda of understanding for the provision of services within and by DPS;
- (e) an assessment of the efficiencies achieved following the amalgamation of the three former joint parliamentary service departments and any impact on the level and quality of service delivery;
- (f) the efficient use, management and delivery of information technology services and equipment; and
- (g) any related matter.



## **APPENDIX 4**

### **Previous recommendations from the 2011 inquiry into the performance of the Department of Parliamentary Services**

**Inquiry into the performance of the Department of Parliamentary Services,  
Interim report recommendation:**

#### **Recommendation 1**

**5.24** The committee recommends that the Commonwealth Government provide the Department of Parliamentary Services a one-off additional appropriation of \$100,000 to be used, together with the existing Department of Parliamentary Services allocation of funds, for the completion of the document, *The Architect's Design Intent for Parliament House, Canberra: Central Reference Document*, by Ms Pamille Berg.

**Inquiry into the performance of the Department of Parliamentary Services,  
Final report recommendations:**

#### **Recommendation 1**

**10.12** The committee recommends that the funding and administration of the Department of Parliamentary Services be overseen by the Senate Appropriations and Staffing Committee and the House Appropriations and Administration Committee meeting jointly for that purpose, and that standing orders be amended as necessary.

#### **Recommendation 2**

**10.19** The committee recommends that the Department of Parliamentary Services implements appropriate training programs for managers in relation to bullying and harassment and ensures that adequate processes are in place so that all employees are confident in reporting bullying and harassment.

#### **Recommendation 3**

**10.20** The committee recommends that the Department of Parliamentary Services develop a bullying register to record information about bullying such as details of the incident, where it happened and what action that has been taken so that any trends can be quickly and easily identified.

#### **Recommendation 4**

**10.21** The committee recommends that if areas with systemic bullying issues are identified, that the Department of Parliamentary Services undertake a pre-

emptive investigation of the area rather than wait until formal complaints are received.

#### **Recommendation 5**

**10.22** The committee recommends that the Department of Parliamentary Services approach Comcare to undertake a further audit, including a survey of all staff, before the end of 2013 to measure improvements, if any, in the management of bullying and inappropriate workplace behaviour in the Department of Parliamentary Services.

#### **Recommendation 6**

**10.26** The committee recommends that the Department of Parliamentary Services ensure that all recruitment processes are open, transparent and based on merit.

#### **Recommendation 7**

**10.27** The committee recommends that the Department of Parliamentary Services ensures that all staff involved in the conduct of selection processes receive adequate training and that a review of recruitment processes and tools be undertaken to ensure that they are relevant and appropriate.

#### **Recommendation 8**

**10.28** The committee recommends that the Department of Parliamentary Services investigate the use of systems, including electronic recruitment, to better manage recruitment and ensure efficient processes.

#### **Recommendation 9**

**10.29** The committee recommends that the Department of Parliamentary Services approaches the Merit Protection Commissioner to establish independent selection advisory committees for forthcoming recruitment processes.

#### **Recommendation 10**

**10.32** The committee recommends that the Department of Parliamentary Services review rates of personal leave in order to identify any underlying causes of the high levels of personal leave taken in the department.

#### **Recommendation 11**

**10.33** The committee recommends that the Department of Parliamentary Services undertake a work health and safety audit within Hansard services to identify any factors contributing to overuse injuries.

#### **Recommendation 12**

**10.41** The committee recommends that the Presiding Officers arrange for the installation of a plaque within the Parliamentary Precincts, during the building's 25th anniversary, commemorating the contribution made by Mr Romaldo Giurgola, as well as all those who worked on the planning, design and construction of Parliament House.

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**Recommendation 13**

**10.49** The committee recommends that the Presiding Officers table in both Houses, on a biennial basis, a report devoted specifically to the building and its contents including information on the condition of the building and its contents, costs of upkeep of the building, heritage concerns and any other related matter so as to fully inform the Parliament and the public about the building.

**Recommendation 14**

**10.53** The committee recommends that the Department of Parliamentary Services undertake capability reviews in relation to design integrity, project management and technical areas including fire safety and engineering services.

**Recommendation 15**

**10.55** The committee recommends that the Department of Parliamentary Services undertake an audit of fire safety in Parliament House and consider reviewing the standard of building documentation.

**Recommendation 16**

**10.58** The committee recommends that the Department of Parliamentary Services provide more accurate, meaningful and transparent information, including information about costs and construction projects undertaken in Parliament House, in its annual report.

**Recommendation 17**

**10.63** The committee recommends that the Department of Parliamentary Services undertake a full audit of the Parliament House status A and B furniture with particular regard to condition, conservation measures, use of furniture, and past disposal practices.

**Recommendation 18**

**10.66** The committee recommends that the Department of Parliamentary Services ensures that all staff involved in contract development and management have relevant skills and receive appropriate training where necessary.

**Recommendation 19**

**10.68** The committee recommends that the Department of Parliamentary Services review the way in which it develops and manages contracts.

**Recommendation 20**

**10.69** The committee recommends that the Department of Parliamentary Services consider approaching the Auditor-General to undertake an audit by arrangement of DPS contract development and management.

**Recommendation 21**

**10.72** The committee recommends that the Security Management Board review the criteria for the issue of photographic security passes for Parliament House.

**Recommendation 22**

**10.74** The committee recommends that, as a matter of priority, arrangements should be completed for the transfer of responsibility for mobile and multifunction devices to the Department of Parliamentary Services.

**Recommendation 23**

**10.77** The committee recommends that the Commonwealth exempt the Department of Parliamentary Services from any future one-off, additional efficiency dividends.

## **APPENDIX 5**

### **Privilege Committee 160th Report: The use of CCTV material in Parliament House Terms of Reference**

In relation to the use of closed circuit television footage by officers of the Department of Parliamentary Services (DPS) for internal investigations involving DPS staff:

- (a) whether there was any improper interference, or attempted improper interference, with the free performance by Senator Faulkner or any other senator of their duties as a senator;
- (b) whether disciplinary action was taken against any person in connection with the provision of information to Senator Faulkner or any other senator; and
- (c) if so, whether any contempts were committed in respect of those matters.



## APPENDIX 6

### Timeline for the 25<sup>th</sup> Anniversary of Parliament House photographic commission

Date	Comment
From late 2012	<p>DPS is involved in discussions regarding events for the 25th Anniversary celebrations for Parliament House. Some of those discussions occurred between the Secretary of DPS and the then Prime Minister's office.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 30.</p>
Around Christmas 2012	<p>Ms Mills has a conversation with Ms Zahalka at the street Christmas party.</p> <p>On 17 November 2014 Ms Mills described the content of that conversation as she had told Ms Zahalka her 'there were projects go forward in the 25th anniversary and one of them might be a photographic exhibition'. See <i>Committee Hansard</i>, 17 November 2014, p. 40.</p> <p>On 2 March 2015 Ms Mills recounted the conversation to the committee again:</p> <p><i>...I told her that we were doing this project and we were hoping to get some resources for it but we were not sure. It was a sort of project that was a lot like the work that she does. As I said to you, I know her work well, I have known her work for 15 years. She is an appropriate type of artist, I do not think I went beyond a compliment that you might say at a Christmas function.</i></p> <p>See <i>Proof Committee Hansard</i>, 2 March 2015, p. 31.</p>
16 January 2013	<p>The then Director of Art Services, DPS, starts work on a brief for the photographic work to be undertaken as part of the 25th Anniversary celebrations. The brief sets out a list of nine possible artists which required 'further investigation to short-list'.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 299-300; Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 30.</p>
18 January 2013	<p>The Executive Assistant to the Secretary of DPS emails a copy of the draft brief back to the Director of Art Services. The emailed copy of the brief has the Secretary's handwritten notes on it, which comment on the scope of the project, based on the Secretary's discussions with the then Prime Minister's office about the nature of the procurement process.</p> <p>Under the heading 'Scope – Possible approaches/options' the Secretary circles 'direct source approach' (limited tender) as opposed to an open tender process.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 302-303; Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 30.</p>

21 January 2013	<p>The Director of Art Services produces a revised draft brief based on the comments by the Secretary. Under a heading 'Scope – Possible approaches/options (TBC)' is written:</p> <p><i>(Assuming it would be a direct source approach, not an open tender).</i></p> <ul style="list-style-type: none"> <li>• <i>One or two photographers and possibly one video artist would be commissioned to provide a specified number of images (perhaps 20-30 images each) responding to a different theme or subject – e.g. focussing on architecture, landscape, people, infrastructure/support systems, or from an indigenous perspective.</i></li> <li>• <i>DPS would then choose from the images submitted to select a final group for acquisition.</i></li> </ul> <p>There are no artists listed on the revised draft brief.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 304-305.</p>
5 March 2013	<p>The Presiding Officers are provided with a brief, under the Secretary's name, about events for the 25th Anniversary celebrations. The brief includes a request for the Presiding Officers to write to the Minister for Finance and Deregulation and request \$100,000 in additional funding for the 25<sup>th</sup> Anniversary events. The brief to the Presiding Officers refers 'very generally' to photographic work, but the commissioning process is 'not mentioned in detail'.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 31; DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 307-308.</p>
5 March 2013 – 3 June 2013	<p>There is 'a lapse in the documentation process' for the commissioning process and '[t]here is very limited recollection from the staff members involved as to what the process was in arriving at the decision to approach Ms Zahalka over the other eight...artists that were initially suggested in the brief'.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, pp 31-32.</p>
13 March 2013	<p>The Presiding Officers sign a letter to the Minister for Finance and Deregulation requesting \$100,000 in additional funds for the 25<sup>th</sup> Anniversary.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 309-310.</p>
19 April 2013	<p>The Minister for Finance and Deregulation writes to the Presiding Officers confirming additional funding for the 2012-13 financial year of \$85,000.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 311-313.</p>

May 2013	<p>Ms Zahalka gives an interview in which she is asked about upcoming work and responds:</p> <p><i>'... and I have been invited to do a commission about the public and private areas of Parliament House for their forthcoming anniversary...'</i></p> <p>Lake Macquarie City Art Gallery, <i>A case study: Anne Zahalka</i>, Education Resource Kit, 2013, p. 19.</p>
3 June 2013	<p>The then Director of Procurement and Contract Management (Director of Procurement), DPS, writes to two directors in the newly established Parliamentary Experience Branch, DPS, confirming that the Commonwealth Procurement Rules permit a limited tender approach for the commissioning of artworks.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 31; DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), p. 315.</p>
4 June 2013	<p>The Director of Procurement writes to the National Portrait Gallery requesting advice on the commissioning of artwork and commercialisation of that artwork. The email notes that DPS did not have much experience in this area.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 31; DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), p. 317.</p>
Around 13 and 14 June 2013	<p>A director in the Parliamentary Experience Branch commences work with the Director of Procurement and a legal officer around the commissioning process, and particularly the drafting of the commissioning contract.<sup>1</sup></p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 31.</p>
14 June 2013 (11.56am)	<p>The Assistant Director of Legal Services, DPS, emails the Director of Procurement stating that the photography contract needs to be progressed 'ASAP'. The Assistant Director notes that they need to discuss:</p> <ul style="list-style-type: none"> <li>- the form for the Statement of Requirement; and</li> <li>- procedures for opening discussions with the photographer before the contract is put in place.</li> </ul> <p>The Assistant Director also asks if the Director of Procurement has had any response from the National Portrait Gallery.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 318-19.</p>

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1 It appears from documents provided in answers to questions on notice that the director in the Parliamentary Experience Branch that Ms Kearney is referring to was the Director of Parliamentary Events and Business Development.

<p>14 June 2013 (1.14pm)</p>	<p>The Director of Procurement emails the Director of Parliamentary Events and Business Development (Director of Parliamentary Events) and the Assistant Director of Legal Services attaching the Commonwealth Short Form Contract and a previous Art Services contract 'that may assist in the scoping conversation' and suggesting they look at 'hard copies of the contracts from Museum of Australian Democracy to get some ideas'. The Director of Procurement also writes:</p> <p><i>In terms of where to from here, we are able to start speaking to the preferred tenderer, on the basis of seeking their interest for the work. It would be preferable to have the Statement of Work ready so that a quote can be provided by the tenderer. It would also be appropriate to flag at that time the intent for DPS to have rights to commercially exploit the work.</i></p> <p>The Director of Procurement states that he has 'had no luck with the Portrait Gallery', but intends to try again that afternoon.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), p. 318.</p>
<p>14 June 2013 (2.09pm)</p>	<p>A representative from National Portrait Gallery responds to the Director of Procurement's email of 4 June 2013 and provides a template commission agreement.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 31; DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 316-17.</p>
<p>14 June 2013 (3.41pm)</p>	<p>The Director of Procurement forwards the email from the National Portrait Gallery to the Director of Parliamentary Events and the Assistant Director of Legal Services.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), p. 316.</p>
<p>14 June 2013</p>	<p>The Acting Assistant Secretary of the Parliamentary Experience Branch emails the Secretary of DPS, advising she has spoken to the Director of Parliamentary Events about 'recovering' the timeline of the commission. The subject of the email is 'conversation with Anne Zahalka':</p> <p><i>I asked [the Director of Parliamentary Events] to check whether, in the absence of the contract (first draft now rec'd) it was proper to write to her [Ms Zahalka] about it. [The Director of Parliamentary Events] checked with [the Director of Procurement] who said this was ok, and so he rang her.</i></p> <p>The Acting Assistant Secretary then provides a dot point summary of the conversation the Director of Parliamentary Events had with Ms Zahalka:</p> <ul style="list-style-type: none"> <li>• <i>I let Anne know that I was doing some research for a possible commission</i></li> <li>• <i>discussed her interest and availability for the project (she is interested and available)</i></li> <li>• <i>let her know that we wanted to have an exhibition of the works in November 2013 (this is do-able for her)</i></li> <li>• <i>let her know that the works would be part of the art collection</i></li> <li>• <i>Talked a little about the types of images...she was keen to photograph the spaces eg. Basement; library; members dining rooms, chambers (this may change as she thinks more about the project)</i></li> <li>• <i>She was not keen to do portraiture</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>Anne wanted more information</i></li> <li>• <i>I asked about money (I did not let her know our budget) she was talking about \$5000 per image</i></li> <li>• <i>I let her now that I would speak with her either late today or early next week.</i></li> </ul> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 31. DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), p 321.</p>
4 July 2013	<p>The Acting Assistant Secretary of the Parliamentary Experience Branch provides a written brief to the Secretary on progress of the project:</p> <p><i>Renowned photo media artist Anne Zahalka has been identified as an excellent artist for this project...Zahalka is represented in major national and international art collections and has extensive experience in photographic commissions that connect the client with their audience...</i></p> <p>The Acting Assistant Secretary recommends that the Secretary approve the following:</p> <ul style="list-style-type: none"> <li>• the Director of Parliamentary Events contacting Ms Zahalka formally to discuss the project;</li> <li>• an amount of \$30,000 to be paid to the artist inclusive of travel, accommodation and printing;</li> <li>• the contract (attached to the brief);</li> <li>• the Photographic Commission Artist Brief (attached to the brief); and</li> <li>• a letter of invitation to Anne Zahalka (attached to the brief).</li> </ul> <p>The contact officer for the brief is the Director of Parliamentary Events and the brief is provided under the signature of the Acting Assistant Secretary. The brief is signed and dated by Ms Mills on 4 July 2013.</p> <p>DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 326-7.</p>
Early July 2013	<p>A 'Photographic Commission Artist Brief' is provided to Ms Zahalka. This is a one-page document setting out the nature of project; contracting process and the budget. The contact for the brief is the Director of Parliamentary Events.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 32; DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 322-323.</p>
Date unknown.	<p>Ms Zahalka provides a one-page proposal for the project in response to the request by the Director, Events and Business Development, Parliamentary Experience Branch, DPS.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 33; DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), p. 324.</p>
13 August 2013	<p>The Acting Assistant Secretary for the Parliamentary Experience Branch provides a written brief to the Secretary on commercial aspects of the contract. The Acting Assistant Secretary notes that Ms Zahalka has identified concerns with aspects of the Intellectual Property clause of the contract and requested some amendments to the contract with regard to the commercialisation of the work.</p>

To summarise, Ms Zahalka is seeking:

- to edition the works, with DPS receiving edition 1 of the suite and the remaining 4 being available for purchase through the artist's dealer;
- contractual reassurance that DPS will not modify or adapt images of the work, meaning that DPS would have to reproduce the image in full and not use cropped details of the image; and
- to ensure that she received a royalty fee if the work is used to generate income through commercial exploitation.

Ms Zahalka also agreed that the works can be reproduced in DPS non-commercial publications and in commercial publications such as catalogues which promote the commission and the Parliament House Art Collection.

The recommendations in the brief are that the Secretary agree that:

- no less than 3 images from the suite are exclusive to DPS and the edition size for the remaining images in the suite is no large than 5. Noting that the artist usually prints photographs in an edition of 5 and that gallery sales of the artist's work are valued at around \$5000 per image;
- DPS not agree to the reassurance about not modifying images and instead an arrangement be made so that cropped details of images may be used by DPS if a smaller version of the full image is printed on the reverse or inside of the publication. Notes that the National Gallery of Australia follows this practice.
- DPS not agree to a royalty fee. Instead:
  - The starting negotiating position should be that the artist is not entitled to further compensation beyond the initial commission fee in the event that DPS uses the works for commercial purposes.
  - As a fall back negotiating position, DPS propose that the artist will receive no fee for the use of the image on commercial paper products such as posters, cards and calendars and for online or digital purpose. The use of the images in other commercial products such as T shirts, mugs, mouse pads etc will be done in consultation with the artist and may incur a fee which would need to be negotiated at the time the contract is prepared. Notes if this is the agreed option, it is recommended that a flat fee is negotiated at the commencement of the contract rather than an ongoing royalty fee. There are sufficient funds in the budget to cover an additional fee of up to \$5000.
- DPS is able to reproduce the works for other non-commercial purposes, beyond promoting only the commission and the Art Collection, for example use of the works to promote Parliament House generally.

Further it is not recommended that DPS agree to both allowing the artist to sell the remainder of the editions commercially and to receive royalties in the event that DPS wishes to use the images commercially. Given the starting value of the commission, allowing both of these requests would significantly increase the potential value of the commission for the artist.

A hand written note on the side of the brief states that 'Carol' agreed to the fall back negotiating position about the use of images on commercial products.

The contact officer for the brief is the Director of Parliamentary Events and the brief is provided under the signature of the Acting Assistant Secretary. The brief is signed and dated by Ms Mills on 13 August 2013.

	DPS, answer to question on notice, 17 November 2014 (received 30 January 2015), pp 329-330.
22 August 2013	<p>Contract with Ms Zalhalka is finalised. The Director of Parliamentary Events signs on behalf of DPS.</p> <p>Ms Lisa Kearney, Director, Legal Services, DPS, <i>Committee Hansard</i>, 17 November 2014, p. 34; answer to question on notice, 17 November 2014 (received 30 January 2015), p. 291.</p>